

Received
Washington State Supreme Court

MAR 30 2015

Ronald R. Carpenter
Clerk

No. 91247-5

SUPREME COURT OF THE STATE OF WASHINGTON

CAROLYN ROBBS BILANKO, an individual,

Plaintiff/Petitioner,

v.

BARCLAY COURT OWNERS ASSOCIATION, a Washington non-
profit corporation,

Defendant/Appellant.

APPELLANT BARCLAY COURT OWNERS ASSOCIATION'S
OPENING BRIEF

Averil Rothrock, WSBA #24248
Lawrence A. Costich, WSBA #32178
Milton A. Reimers, WSBA #39390
SCHWABE, WILLIAMSON & WYATT
U.S. Bank Centre
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Tel: 206.622.1711
Fax: 206.292.0460
Attorneys for Barclay Court Owners Association

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I. INTRODUCTION

This Court should reverse for legal errors summary judgment to condominium owner Carolyn Bilanko that invalidated a rental cap amendment to the condominium's governing documents and awarded her damages constituting lost rent. The judgment rests on two incorrect interpretations of a single section in the Washington Condominium Act ("Condo Act"), RCW 64.34.264. The condominium owners association Barclay Court seeks reversal and direction for judgment in its favor.

Reversal and judgment to Barclay Court are supported by two legal grounds. First, Bilanko's challenge to the amendment is tardy. The one-year time-bar of RCW 64.34.264(2)¹ bars this lawsuit. The time-bar, whether a statute of repose or a statute of limitations, prevents litigation on the merits of Bilanko's challenge. This statutory time-bar serves important purposes. It provides certainty and finality to an association, the unit owners, prospective buyers, and lenders. It preserves the *status quo* in a condominium association and prevents inconsistent application of amendments. It avoids loss of evidence relevant to amendment actions when association boards turn over and members move away. All owners have an opportunity to raise a timely challenge within one year of the

¹ The statutory time-bar reads: "No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded."

passing and recording of the amendment. After that, the law bars a legal challenge. Here, not only does the Condo Act establish a one-year bar, but the Declaration also contains an applicable contractual time-bar. CP 193-94 (App. B).²

Ms. Bilanko purchased her unit already subject to the amendment and after the one-year bar was in place. She abided by the amendment. Five years later, she started a family, bought a house, and decided to move. At this point, she wanted to retain the unit as a rental. When it appeared her unit would not soon fit within the rental cap based on a waiting list maintained by the association, she sued. The one-year time-bar in the Condo Act and the Declaration prohibit this lawsuit and support summary judgment to Barclay Court. Failure to apply the time-bar in these circumstances would render the time-bar meaningless.

This Court also should reverse and direct judgment to Barclay Court because Barclay Court passed the rental cap amendment with sufficient approval from the unit owners. This Court should hold that a rental cap amendment, such as the one adopted by Barclay Court, requires at least a 67% owner approval under the Condo Act, RCW 64.34.264(1). The higher burden of a 90% approval set forth in RCW 64.34.264(4) does

² The contractual time-bar reads: "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."

not apply to rental cap amendments. The Court of Appeals in *Filmore LLLP v. Unit Owners Association of Centre Point Condominium*, 183 Wn. App. 328, 333 P.3d 498 (Div. I Sept. 2, 2014) (“*Filmore*”), misinterpreted the Condó Act to hold otherwise. The Supreme Court has accepted review of *Filmore*. See 2015 Wash. LEXIS 238 (Wash., Mar. 4, 2015).³

On either or both of these two legal grounds reviewed *de novo*, the Court should reverse the trial court’s judgment and direct judgment to Barclay Court.

II. ASSIGNMENTS OF ERROR

This case concerns cross motions for summary judgment. Reversal of the summary judgment to Ms. Bilanko should result in direction that summary judgment be granted to Barclay Court, based on these assignments of error:

1. The trial court erred as a matter of law when it granted summary judgment to Ms. Bilanko.
2. The trial court erred as a matter of law when it denied summary judgment to Barclay Court and failed to dismiss with prejudice Ms. Bilanko’s claims of declaratory relief, injunctive relief, and breach of contract seeking invalidation of the rental cap amendment and damages resulting from enforcement of the rental cap amendment.

³ Barclay Court has asked the Supreme Court to hear this appeal directly and decide the legal issues in conjunction with its decision in *Filmore*. Oral argument in *Filmore* currently is set for June 11, 2015.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The following legal issues pertain to both assignments of error:

ISSUE A. Does the statutory time-bar set forth in RCW 64.34.264(2) or the contractual time-bar in the Declaration bar Ms. Bilanko's challenges to the validity and enforceability of the rental cap amendment when Ms. Bilanko raised her challenge long after the allowed time period (in fact, Ms. Bilanko bought her unit after that period had passed), or is the time-bar inconsequential and meaningless if Barclay Court would lose on the merits of the challenge?

ISSUE B. On the merits, did Barclay Court validly adopt the rental cap amendment with an adequate percentage of votes according to the Declaration and RCW 64.34.264(1) and (4), when it is undisputed that the condo owners passed the amendment by a 67% majority and the rental cap did not change the "use" of the units?

IV. STATEMENT OF THE CASE

Barclay Court appeals the summary judgment order in favor of Ms. Bilanko that invalidated a rental cap amendment to Barclay Court's governing documents and awarded her damages constituting lost rent.

A. Barclay Court's condominium unit owners adopted a rental cap amendment to their Declaration by a 67% supermajority and properly recorded it.

Barclay Court is a condominium owners association for twenty-

eight residential units located at the foot of Queen Anne Hill in Seattle. CP 148 ¶ 3. The Condominium Declaration for Barclay Court (“Declaration”) was recorded on May 2, 2001. CP 148-49 ¶¶ 3, 152. Among other things, the Declaration provides, “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.” CP 193-94.

In 2008, the membership of Barclay Court considered adopting Amendment No. 1 (“Amendment”), which included a rental cap limiting the number of units that could be rented at one time. CP 150 ¶ 4; 206-10 (§ 9.2.6 “Limitations on Leasing”), 349-50 ¶ 3. Barclay Court’s Declaration specifically addresses “leasing.” Section 25.2.1 requires approval from 67% of the unit owners in order to adopt an amendment restricting leasing, stating, “The consent of Owners holding at least Sixty-Seven Percent (67%) of the votes in the Association... shall be required to materially amend any provisions of the Declaration... which establish, provide for, govern, or regulate any of the following: ... (k) imposition of any restrictions on leasing of Units[.]” CP 194 (emphasis added). After consulting with multiple law firms, the association was advised that the Amendment would need approval of at least 67% of the membership in accordance with RCW 64.34.264(1) and Barclay Court’s Declaration at

Article 25. CP 349-50 ¶¶ 3, 352.

Barclay Court properly recorded the Amendment with a certification under oath by the then-President of the Amendment's adoption on November 3, 2008. CP 149 ¶¶ 4, 203, 204, 210-11. The Amendment specifies the adoption steps taken by the association. CP 204 (the Board submitted the Amendment to the owners for approval, the owners were duly notified and given a copy of the Amendment prior to the vote, not less than 67% approved the Amendment in writing, and Eligible Mortgagees were notified and expressly or impliedly consented).

The Amendment provides the following rental cap: “[N]o Owner of a Unit may Lease the Unit... if Leasing the Unit would result in more than seven (7) Units in the Condominium being Leased at the same time.” CP 207. An exception exists if the Board grants a waiver for a substantial hardship “not of the Owner’s making” or for a “temporary absence.” CP 207-08 ¶ 9.2.6.5.

The members adopted the Amendment to protect “the availability of buyer financing which, in turn, is influenced by the existence and extent of Leasing activity in the Condominium as a whole”; “[t]he sense of community which is fostered by a shared common purpose, including a shared perspective that the Condominium is the shared residence of Owners (and not just an ‘investment’ they hold in common)”; “[t]he

ability to self-govern, through management by a Board comprised of Owner-volunteers,” and “the ability to reside harmoniously[.]” CP 206-07 ¶¶ 9.2.6.2(1)-(4). The Association considered and adopted the Amendment to improve and protect the Barclay Court community.

B. Ms. Bilanko bought her unit more than a year after the rental cap amendment had been recorded and complied with it for five years before bringing this challenge on the ground that an inadequate majority had approved the so-called change in “use.”

Ms. Bilanko purchased her two-bedroom unit November 20, 2009, more than one year after the recording of the Amendment. CP 2. She chose to become an owner in Barclay Court with notice of the governing documents—including Amendment 1 and the one-year contractual bar to challenging amendments. *See* CP 95 (Ms. Bilanko’s statutory warranty deed referencing the Declaration and Amendment).

For five years, Ms. Bilanko lived in her unit in compliance with the rental cap amendment. In 2013, after Ms. Bilanko and her new husband were expecting a child and had purchased a home, Ms. Bilanko sought permission to lease her unit according to the rules of the Association. CP 149 ¶ 6. In March 2013, Ms. Bilanko asked to be put on the waiting list to be one of the seven units permitted to lease property at any one time. CP 149 ¶ 5. The Board placed her on the list; she was number five in line to lease her unit. CP 149 ¶ 5, 7.

Not satisfied with the speed at which she might be able to lease her unit, in September 2013 Ms. Bilanko requested a hardship waiver from the Board under Section 9.2.6.5 of the Amendment. CP 149 ¶¶ 5-7. The Board denied her a hardship waiver because her circumstance did not qualify for a waiver: she failed to show a substantial hardship not of her making and her intended absence was not temporary. *Id.*; CP 214.

In October 2013, after she had been placed on the wait list and denied a hardship waiver, Ms. Bilanko suggested for the first time that the Amendment had not been passed with the requisite percentage of membership approval. CP 149 ¶ 7. Ms. Bilanko threatened to sue Barclay Court if the Association did not immediately allow her to lease her unit. *Id.*; CP 217-18. Ms. Bilanko commenced this action in July 2014, almost six years after the Amendment was adopted and recorded. CP 1.

Ms. Bilanko has not disputed the occurrence of the vote, voting procedures, or the result that 67% of the members approved the Amendment. CP 1-7 (Complaint); CP 15-87 (motion for summary judgment); CP 354-363 (response to Barclay Court's motion for summary judgment). Ms. Bilanko's claim rests on the undisputed fact that a 67% majority rather than a 90% majority approved the Amendment. *Id.*

C. The Superior Court first applied the Condo Act's time-bar to dismiss Bilanko's tardy challenge.

Ms. Bilanko alleged claims for declaratory relief, injunctive relief,

and breach of contract for failure to adopt Amendment 1 with the requisite approval. CP 1-7. The parties did not dispute any facts germane to this appeal. Shortly after Ms. Bilanko sued, the Court of Appeals published *Filmore*. This decision held that the Condo Act at RCW 64.34.264(4) requires leasing restrictions be passed with at least 90%, not 67%, of the membership's approval on the theory that leasing restrictions constitute a "change in use." *Filmore* at 338-47.

The parties filed cross motions for partial summary judgment. Ms. Bilanko argued based on *Filmore* that because the Amendment was not passed by at least 90% of the membership, she should prevail on the merits. CP 20-23. Barclay Court preserved its arguments that *Filmore* was wrongly decided. CP 273-77. Barclay Court moved to enforce the statutory and contractual time-bars to dismiss the lawsuit, arguing that the merits of Ms. Bilanko's challenge should not be reached because the lawsuit was too late. CP 133-43.

Ms. Bilanko countered that the statutory time-bar did not apply because the amendment was not "correctly" adopted on the merits "pursuant to" RCW 64.36.264. CP 25. Her argument hinges on the language "pursuant to" in the following provision meaning that an amendment must be adopted "in strict compliance with" § 264:

No action to challenge the validity of an amendment

adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded[.]

RCW 64.36.264(2) (emphasis added). According to Ms. Bilanko, the parties should litigate the merits of her challenge, i.e., whether the Amendment was “correctly” adopted in strict compliance with § 264, to determine if the time-bar prevents litigation on the merits. CP 25. Bilanko also argued that because the amendment was *void ab initio*, the time-bar is inconsequential. CP 24.

The King County Superior Court first awarded summary judgment to Barclay Court. CP 400-05. The Superior Court concluded that the words “pursuant to” in the statutory time-bar did not require a showing on the merits that the amendment was correctly adopted in strict compliance with the statute before the time-bar would apply. *Id.* The Honorable Roger S. Rogoff applied the time-bar where the undisputed evidence showed that Barclay Court adopted the amendment “in consequence or in prosecution of the [Condo Act].” CP 404. Judge Rogoff rejected Ms. Bilanko’s interpretation that would require adoption “in compliance with” or “in strict compliance with the terms of” the statute before the time-bar applied. CP 403. The Superior Court denied Ms. Bilanko’s motion for partial summary judgment and granted Barclay Court’s motion for summary judgment on its defense. CP 404-05.

D. After Division III decided *Club Envy v. Ridpath Tower*, the Superior Court changed its ruling, held the time-bar inapplicable, and granted summary judgment to Ms. Bilanko.

Shortly after the Superior Court ruled on the cross motions for summary judgment, Division III of the Court of Appeals addressed the statutory time-bar. In *Club Envy of Spokane, LLC v. Ridpath Tower Condo. Ass'n*, 184 Wn. App. 593, 337 P.3d 1131 (2014), Division III addressed a claim to invalidate an amendment to a declaration where the proper recording of the amendment was disputed along with whether the association had even voted on the amendment. CP 431-32. Division III rejected application of the time-bar as a defense. 184 Wn. App. at 599-601.

After the *Club Envy* decision, Ms. Bilanko moved the Superior Court to revise its rulings. CP 418-26. The court did so. It vacated the summary judgment order in favor of Barclay Court and granted summary judgment in favor of Bilanko. CP 464-67. The court also awarded Ms. Bilanko damages of \$27,600 in lost rent plus interest. CP 464-67. This timely appeal followed.

V. STANDARDS OF REVIEW

This appeal presents purely legal issues reviewed *de novo*. Appellate courts review summary judgment orders *de novo*. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 908, 154 P.3d 882 (2007). Statutory

interpretation similarly is a legal issue reviewed *de novo*. *Id.* at 908. Construction of a contract ordinarily is also a legal issue reviewed *de novo*. *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995). Review of a condominium declaration, like a deed, presents a mixed question of law and fact; the factual issue is the declarant's intent, which courts discern from the face of the declaration, and the declaration's legal consequences are questions of law reviewed *de novo*. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516 , 526, 243 P.3d 1283 (2010).

On *de novo* review, this Court should reverse.

VI. ARGUMENT

This Court should reverse the trial court's summary judgment order declaring the rental cap amendment invalid and awarding damages to Bilanko. This Court should direct that Barclay Court is entitled to summary judgment on its time-bar defense, which defense otherwise is nullified. Alternatively, on the merits Barclay Court should prevail as a matter of law because the Condo Act requires only a 67% membership approval in order to adopt a rental cap amendment, which amendment is not a change in "use." *Filmore*, currently on review before the Supreme

Court, was wrongly decided on that point. Either legal ground supports reversal and summary judgment to Barclay Court.

A. Ms. Bilanko's claims are barred by the time-bar in RCW 64.34.264(2) of the Condo Act and the contractual time-bar in the Declaration.

The Condo Act and the Declaration both incorporate one-year time-bars from the recording of an amendment that prevent subsequent challenges. Ms. Bilanko challenged the Amendment almost six years after it was passed by the membership and properly recorded. Her opportunity to challenge the Amendment has long since passed and her claims are time-barred. Any other interpretation would fail to enforce legislative or contractual intent and would render the time-bars meaningless.

1. The one-year time-bar from recording of an amendment in RCW 64.34.264(2) bars this lawsuit.

The statutory time-bar bar prevents this lawsuit. For condominiums created after July 1990 the legislature replaced the Horizontal Property Regime Act, Chapt. 64.32 RCW ("HPRA"), which had governed condominiums, with the Washington Condominium Act, Chapt. 64.34 RCW. See RCW 64.34.010. Article 2 addresses "Creation, Alteration, and Termination of Condominiums." RCW 64.34.200-280. Within Article 2, § 264 addresses amendments to governing documents of a condominium association. RCW 64.34.264 ("Amendment of Declaration") (App. A). This section establishes the rules related to

amendment, including a minimum 67% vote for any amendment, the requirement for recording and certifying every amendment, and restrictions on amendments that modify special declarant rights. See RCW 64.34.264(1), (3), (5) and (6). Subsection (4) specifies certain types of amendments that require an extraordinary 90% approval. RCW 64.34.264(4).

Critical to this review, subsection (2) contains a time-bar. It states, “No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.” RCW 64.34.264(2).

This statutory time-bar prevents reaching the merits of Ms. Bilanko’s action. Barclay Court was entitled to summary judgment, as the Superior Court first concluded. CP 400-05. This was correct. Later, based on *Club Envy, supra*, the Superior Court reached a conclusion contrary to the statute when it changed its ruling.

“Statutory terms are given their plain and ordinary meaning.” *In re Higgins*, 120 Wn. App. 159, 164, 83 P.3d 1054 (2004). “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Keller v. Sixty-01 Assocs.*, 127 Wn. App. 614, 624, 112 P.3d 544 (2005) (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). Statutes should not be read in a

way that “nullifies [the] legislative choice.” *In re Leach*, 161 Wn.2d 180, 187, 163 P.3d 782 (2007).

On *de novo* review, this Court should conclude based on these interpretation principles that the time-bar applies. The latter principle—avoiding a nullification of legislative choice—is a particularly persuasive guide in this case. It cannot be disputed that the legislature plainly included a time-bar. Additionally, the legislature expressed an intent to prohibit, based on the passage of time, an “action to challenge” “the validity of the amendment.” The Association amended the Declaration “pursuant to” § 264 within the meaning of the time-bar provision. The Association amended the Declaration as amendments generally are allowed under § 264, after consulting with attorneys and intending to follow the Condo Act. There is no evidence to the contrary. The Association took action “under” or “in pursuit of” the statute.

- a. The time-bar is meaningless if it only applies if the Association first can defend the challenge on the merits.

Ms. Bilanko’s argument emasculates the time-bar, rendering it meaningless. As stated in *In re Leach*, 161 Wn.2d at 187, such nullification should be avoided. Ms. Bilanko would have a party defend a challenge on the merits to justify its right to assert the time-bar, which time-bar then would prohibit litigation on the merits, except that such

litigation on the merits already had occurred to decide whether to apply the time-bar. This circular quagmire finds no justification in the statute.

Ms. Bilanko contends that the time-bar is inapplicable because the Amendment “was not ‘*adopted... pursuant to this section*’” where she can show that the amendment did not comply with all the requirements of § 264. CP 24-25. She contends that if the Association did not in fact *comply with* or succeed in fulfilling all the requirements of § 264, the amendment was not adopted “pursuant to” § 264. In Ms. Bilanko’s view, the Association adopted the amendment not “pursuant to” but “in contravention of” § 264, and therefore is not entitled to the time-bar. In other words, the time-bar does not apply if the Association would lose on the merits.

This argument turns the time bar on its head. The Court should reject it. The argument disregards the purpose of a time-bar based on misinterpretation of the words “pursuant to.” Judge Rogoff first concluded this based on review of case law that defined the phrase “pursuant to.” CP 400-05. Judge Rogoff concluded that the language usually meant “acting in consequence of” or “in prosecution of,” and was not restrictively interpreted to require strict conformance with, as Judge Rogoff explained:

[T]he Court interprets the phrase, “pursuant to,” to mean “acting in consequence or in prosecution of, or following after or following out.” *Old Colony Trust Co. v. Commissioner of Internal Revenue*, 301 U.S. 379, 383 (1937); *State v. Morley*, 134 Wn.2d 588, 595-6, 952 P.2d 167 (1988); *Cathcart v. Andersen*, 10 Wn. App. 429, 432, 517 P.2d 980 (1974). A more restrictive definition would render the time-bar statute meaningless.

CP 400-05. This Court should adopt Judge Rogoff’s correct analysis and interpret “pursuant to” to include an amendment like this one undertaken in consequence of the right to amend in § 264 (“Amendment of Declaration”). “[P]ursuant to’ means ‘in the course of carrying out.’” *In re Higgins, supra*. Here, Barclay Court was in the course of carrying out the act of amendment authorized in § 264 when it adopted its Amendment imposing a rental cap.⁴

Ms. Bilanko’s interpretation is not reasonable. It would make application of the time-bar depend on the merits of the dispute. Rather than prevent merits litigation of stale claims, the time-bar would require merits litigation to determine whether it should apply. Under this reading, the time-bar only bars a challenge that lacks merit. This makes no sense. As Chief Justice Madsen has observed, “It is my understanding that the

⁴ Ms. Bilanko assumes that “pursuant to” modifies “adopted,” and Barclay Court addresses her argument as if it does. But “pursuant to” may modify “action to challenge.” In other words, the legislature expressed that no action pursuant to §264 to challenge an amendment shall be permitted one year after recording of the amendment.

timeliness of a legal challenge is addressed before the merits of the challenge are assessed.” *Henderson Homes, Inc. v. City of Bothell*, 124 Wn.2d 240, 253, 877 P.2d 176 (1994) (Madsen, C.J., dissenting). Statutes are to be interpreted to avoid an “absurd” or “anomalous result.” *State v. Wofford*, 148 Wn. App. 870, 883-84, 201 P.3d 389 (2009). In the Condo Act, the legislature expressly barred any challenge to an amendment if the challenge comes more than one year after the amendment was recorded. This bar does not turn on the merit of the challenge. To rule otherwise would nullify the time-bar.

This Court should conclude that the time-bar applies to bar Ms. Bilanko’s lawsuit, supporting reversal.

- b. RCW 64.34.264(2) bars Ms. Bilanko’s claims whether it is a statute of repose—the correct characterization—or a statute of limitations.

Whether a statute of repose or a statute of limitations, the Condo Act’s one-year time-bar prevents Ms. Bilanko’s action as a matter of law.

This Court should hold that § 264(2) establishes a statute of repose. “A statute which terminates any right of action after a specified time has elapsed, regardless of whether there has as yet been an injury, is called a ‘statute of repose.’” *Morse v. Toppenish*, 46 Wn. App. 60, 64, 729 P.2d 638 (1986); *see e.g.*, RCW 4.16.350(3) (“in no event shall an action be commenced more than eight years after said act or omission...”).

A statute of repose is distinct from a statute of limitations and “terminates a right of action after a specified time, even if the injury has not yet occurred.” *1000 Virginia Ltd. P’ship v. Vertecs*, 158 Wn.2d 566, 574-75, 146 P.3d 423 (2006). Here, the statute provides that one year after recording, “no action ... may be brought.” This phrasing relies on an elapse of time, not the occurrence of an injury. By its terms, the provision “terminates any right of action.” The Court should conclude that § 264(2) is a statute of repose. Because the specified time has elapsed, Bilanko’s right of action is terminated.

Alternatively, § 264(2) is a statute of limitations. “In contrast [to a statute of repose], a ‘statute of limitation’ does not begin to run until ‘injury’ occurs, which may involve ‘discovery of harm’ provisos.” *Morse v. Toppenish*, 46 Wn. App. at 64. Even if § 264(2) is a statute of limitations, the time for commencing an action has run. Ms. Bilanko knew when she purchased her unit, or should have known based on public notice provided by the recording of the Declaration and Amendment and the specific reference to the Declaration and Amendment in her statutory warranty deed, *see* CP 95, that the property interest was subject to a rental cap since 2001. The Amendment stated on its face that it was passed with a 67% majority. CP 204. She knew or should have known all the elements to seek relief from an allegedly invalid and unenforceable leasing

restriction burdening her property. The Declaration also informed her of its one-year time-bar to challenge any amendment.

Statutes of repose and statutes of limitations are in place because “the right to be free of stale claims in time comes to prevail over the right to prosecute them.” *Order of R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944). “The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.” *Id.* See also *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630, 633 (2006) (same). These time-bars serve to “instill a measure of certainty and finality into one’s affairs by eliminating the fear of threatened litigation.” *Wakeman v. Lommers*, 67 Wn. App. 819, 840 P.2d 232 (1992). They are also “designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *Order of R. Telegraphers*, 321 U.S. at 348-49.

These purposes are served here by barring Ms. Bilanko’s claims. Barclay Court and all of its property owners have abided by the Amendment since 2008. Ms. Bilanko seeks to upset that *status quo* and

force the current Board and owners to defend her tardy challenge. Ms. Bilanko's stale claims are not permitted.

- c. Even if the Amendment was not adopted in conformance with the Condo Act, the Amendment is not void *ab initio*.

Ms. Bilanko has contended that the time-bar is inapplicable because the Amendment is void *ab initio*. This is wrong. Contracts are only void *ab initio* for failure to comply with statutory requirements if that statute expressly so provides. The Condo Act does not provide that failure to comply with § 264 renders an amendment void *ab initio*. To the contrary, rather than require invalidation of a non-compliant amendment, the statute instead bars tardy challenges. This demonstrates legislative intent exactly opposite to what Ms. Bilanko asserts: namely, that an amendment shall not be void at its inception, but if not timely challenged will be beyond invalidation, avoiding uncertainty, inconsistent application, and lost evidence. No facts or law renders the Amendment void *ab initio*.

Black's Law Dictionary provides that a contract is void *ab initio* "if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract." See *Black's Law Dictionary*, 1604 (8th ed. 2004). Contracts that fail to comply with a statute are only void at the inception if expressly provided for by the legislature (*Fleetham v. Schneekloth*, 52 Wn.2d 176, 180-81, 324 P.2d 429

(1958), citing *Way v. Pacific Lbr. & Timber Co.*, 74 Wash. 332, 133 Pac. 595 (1913)), or where the terms or conditions are unconscionable (*Riste v. E. Wash. Bible Camp*, 25 Wn. App. 299, 605 P.2d 1294 (1980) (restrictive covenant violated anti-discrimination laws), or when they violate public policy. *Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 854 P.2d 1072 (1993) (covenants may be deemed void if against public policy although court held it was not void in this instance); *In re Corporate Dissolution*, 132 Wn. App. 903, 913, 134 P.3d 1188 (2006).⁵

Ms. Bilanko never has argued that the Amendment is unconscionable or void for public policy, but insists only that the Amendment is void *ab initio* because it was adopted without a 90% majority. CP 22-23. The Washington Supreme Court, moreover, has

⁵ Many other cases show that contracts or acts that violate a statute are not void *ab initio* unless dictated by the express terms of the statute or contrary to public policy. See *Yakima Lodge No. 53, Knights of Pythias v. Schneider*, 173 Wash. 639, 24 P.2d 103 (1933) (where ordinance did not provide that contracts made in violation of it should be void and where the lease was not in violation of public policy, the lease remains enforceable.); *Allison v. Medicab Int'l*, 92 Wn.2d 199, 203, 597 P.2d 380 (1979) (“The failure to register [a franchise under RCW 19.100.020] does not make the [franchise] agreement void.”); *Stegall v. Kynaston*, 26 Wn. App. 731, 733, 613 P.2d 1214 (1980) (“Since neither the federal or state mobile home acts contains a provision rendering sales contracts in violation of the act void, the promissory note is enforceable.”); *Hennessey v. Vanderhoef*, 1 Wn. App. 257, 262, 461 P.2d 581 (1969) (same regarding insurance agreement). This case law underscores that because RCW 64.34.264 states no circumstances whereby a declaration amendment is void, Ms. Bilanko’s argument fails.

recognized that there is nothing fundamentally wrong with leasing restrictions, and that such restrictions are commonly adopted around the country. *Shorewood West Condo Ass'n v. Sadri*, 140 Wn.2d 47, 53-56, 992 P.2d 1008 (2000).

Here, the legislature did not provide that amendments that fail to comply with RCW 64.34.264(1) and (4) are unenforceable. It could have, but chose not to. Where the legislature intends for a contract to be void for lack of compliance with a statute, it plainly says so. There are many examples of this in Washington's statutes, for example, as underscored:

- **RCW 19.142.090 concerning health studio services:** “Any contract for health studio services which does not comply with the provisions of this chapter or in which a buyer waives any provision of this chapter is void and unenforceable as contrary to public policy.”
- **RCW 26.26.240 concerning Uniform Parentage Act:** “A surrogate parentage contract entered into for compensation, whether executed in the state of Washington or in another jurisdiction, shall be void and unenforceable in the state of Washington as contrary to public policy.”
- **RCW 46.96.240 concerning Manufacturers' and Dealers' Franchise Agreements:** “Notwithstanding the provisions of a franchise agreement or other provision contrary to law, the venue for a cause of action... in which the parties are a manufacturer or distributor and one or more motor vehicle dealers, the venue is the state of Washington... [A]ny provision... that requires [otherwise] is void and unenforceable.”

The legislature in fact has specified within the Condo Act some circumstances that automatically void certain actions, such as in these underscored sections:

- **RCW 64.34.224(5):** “Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.”
- **RCW 64.34.316(5)(d):** “Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor’s transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void.”
- **RCW 64.34.340(4):** “A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.”
- **RCW 64.34.348(4):** “Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.”

In notable contrast to these provisions, RCW 64.34.264 reads very differently. In § 264, the legislature elected not to specify that an amendment is void if not compliant with § 264. Going even further, the legislature included a time-bar to any challenge. This Court should conclude that amendments failing to satisfy the requirements of § 264 are merely voidable within one year, not void *ab initio*.

None of the cases cited by Ms. Bilanko support her view that the Amendment is void *ab initio*. For example, *Keller v. Sixty-01 Assocs.*, *supra*, concerns a condo subject to the HPRA, *supra*, not the Condo Act.

127 Wn. App. at 620-21. The HPRA did not contain a one-year time-bar, as that court plainly noted. *Id.*, 127 Wn. App. at 620-21 (because the HPRA has no applicable time-bar, only the six-year statute of limitations for contracts was potentially applicable). The *Keller* court, moreover, refrained from hasty conclusions about the void *ab initio* doctrine, remanding the case expressly for analysis of the void *ab initio* issue.⁶ Ms. Bilanko's reliance on *Keller* for her void *ab initio* argument is misplaced. (As will be discussed, Division III in *Club Envy* also misunderstood *Keller* in this respect. *See, infra*, VI.A.1.d).

Similarly, neither *Bogomolov v. Lake Villas Condominium Ass'n of Apartment Owners*, 131 Wn. App. 353, 359 (2006), or *Harstene Point Maintenance Ass'n v. Diehl*, 95 Wn. App. 339, 341-45 (1999), support Ms. Bilanko's void *ab initio* argument, although she relied on them in her summary judgment motion. *See* CP 24. Neither discusses the one-year

⁶ The *Keller* court directed,

[T]he trial court must determine on remand whether the 1992 amendment was properly adopted. If it was, this issue is moot. **If the 1992 amendment was not properly adopted, the trial court must determine whether the purported amendment was void or merely voidable. If it was void, the Board's action in 1999 is inconsequential and this issue is moot. If the trial court determines that the purported amendment was voidable, it may consider whether RCW 4.16.040(1) applies as well as whether the Board's procedures were proper.**

127 Wn. App. at 621 (emphasis added).

statute of limitations in § 264 or what constitutes a contract void *ab initio*.

Ms. Bilanko relies on the Rhode Island case *America Condominium Ass'n, Inc., v. IDC, Inc.*, 844 A.2d 117 (R.I. 2004), to conclude that amendments not adopted in accord with § 264 are void *ab initio*. The Rhode Island court's analysis, however, is not binding and is wholly unpersuasive. In that case, the majority summarily concluded without germane authority that the one-year statute of limitations similar to Washington's did not apply and the amendment was void *ab initio*. The dissent called the majority to task, explaining that the majority cited no authority for its conclusion, as follows:

The majority's opinion simply disposes of this one-year statute of limitations by declaring that actions challenging the validity of amendments that are alleged to be invalid *ab initio* are not subject to the one-year limitation period specified in the act for challenging the validity of amendments. As legal authority for this remarkable conclusion, the majority cites to our recent decision in *Theta Properties v. Ronci Realty Co.*, 814 A.2d 907 (R.I. 2003) (*Theta*), even though that case provides no support whatsoever for such a proposition.

Theta holds that service of process on a dissolved corporation after the statutory period for doing so had expired is void *ab initio* and that the period to accomplish such service of process cannot be extended by retroactive legislation enacted after the statutory period for initiating such service has expired. *Theta*, 814 A.2d at 913. But *Theta* provides no support whatsoever for the proposition that claims challenging the validity of amendments to a condominium declaration, which are alleged to be void *ab initio*, are exempt from the applicable statute of limitations.

America Condominium Ass'n, 844 A.2d at 136-37 (R.I. 2004) (Flanders, J., dissenting). Not only is the majority's conclusion unsound and unsupported—as the dissent demonstrates—but it has no applicability in Washington. The Washington authorities demonstrate that any alleged failure to comply with RCW 64.34.264(1) or (4) does not result in a void amendment if the statute does not so provide.

This Court should remain unpersuaded by the Rhode Island case and, instead, bar tardy challenges as the legislature provided. Ms. Bilanko should not succeed in an end run around the time-bar through the unsupported “void *ab initio*” argument.

- d. *Club Envy* is distinguishable because it concerned an improperly recorded amendment; *Club Envy* also was poorly reasoned and wrongly decided.

This Court should reach a different result on applicability of the time-bar than that reached in *Club Envy, supra*, 184 Wn. App. 593. This Court either should distinguish *Club Envy* or not follow it. Its reasoning and analysis are incorrect.

Club Envy is distinguishable and should be confined to its unique facts. In *Club Envy*, evidence was presented that the President of the association (a convicted criminal) fraudulently and unilaterally executed the amendment. 184 Wn. App. at 597. The Court explained, “Both amendments were executed by Mr. Jeffreys. Mr. Jeffreys has since been

convicted on a series of federal fraud charges unrelated to these transactions.” *Id.* at 597. Although the Opinion is not explicit about this, noncompliance with the recording requirement was facially evident. *See* CP 431-32, 432 n. 1. At most, *Club Envy* should be read as refusing to apply the time-bar where defects in the recording exist. This ties RCW 64.34.264(5), setting forth the requirements of a proper recording, to the time-bar in RCW 64.34.264(2). If the recording was proper, the time-bar applies. If it was not, a party’s ability to assert the time-bar is in question.

In the case at bar, it is undisputed that the Amendment complied with RCW 64.34.264(5) and that the Association carefully considered Amendment 1, actually approved it by a more than 67% majority, and properly recorded it. When the Superior Court first applied the time-bar, it explained that the undisputed evidence showed that the Association *did* adopt Amendment 1 pursuant to the Condo Act, stating,

[T]here is no doubt the HOA intended to comply with the WCA’s voting requirements. In all ways other than the percentage of unit owners agreeing to the amendment, they complied with the terms of the WCA. They used the WCA as the basis for the vote, and used what they believed were the correct voting percentages to pass the amendment. In providing for a one-year time bar, the statute itself recognizes that there will be situations where a HOA passes an Amendment to the Condominium Declaration that does not strictly comply (either procedurally or substantively with every requirement of the WCA). The statute recognizes that, when nobody complains about such

amendment for a year, a subsequent attack on them is barred.

CP 403:22-404:2. These facts support a different result than that reached in *Club Envy*.

Club Envy also failed to address the significant ramifications of *Filmore* or how its holding should be read with *Filmore*. This is understandable as *Filmore* only had been recently decided. Division III, therefore, did not have the benefit of any such considerations or any briefing. In light of *Filmore*, a rigorous analysis should consider the interrelationship of subsections (1), (2) and (4) of § 264 of the Condo Act. Such an analysis leads to the conclusion that the time-bar of subsection (2) applies to bar tardy challenges whenever an amendment has been properly recorded in compliance with § 264(5). A unit owner who sits on his or her rights after an amendment is properly recorded may not later create havoc and uncertainty regarding enforceability of the amendment, including in instances when the law changes, is established or evolves long after amendments have been recorded. This is what the legislature has chosen as a matter of policy.

If this Court does not distinguish *Club Envy* or otherwise confine it to its facts, it should not follow it. This Court or any panel of the Court of Appeals can reject the reasoning and holding of *Club Envy* and reach a

different result. The reasoning in *Club Envy* does not hold up. The *Club Envy* court mistakenly relied on two authorities that do not support its conclusions: *America Condominium Ass'n* and *Keller*. The Court stated, "Based on both *American* [sic] *Condominium Ass'n* and *Keller*, and the plain meaning of RCW 64.34.264(2), Club Envy's challenge to the validity of the amendment as not being properly passed by the association pursuant to the WCA is not barred by RCW 64.34.264(2)'s one-year limitation." 184 Wn. App. at 601. None of the authorities support the conclusion.

As already discussed, *America Condominium Ass'n* does not justify failure to enforce the time-bar; the Rhode Island case reached a conclusion unsupported by Rhode Island law, as the dissent explained, and contrary to Washington law. *See supra*, VI.A.1.c.

Further, the *Club Envy* court misunderstood *Keller* when it assumed that its comments regarding an amendment potentially void *ab initio* applied to cases governed by the Condo Act. Division III erroneously connected the holding in *Keller* directly to the language in the Condo Act's time-bar regarding "pursuant to this section," stating:

In remanding the matter on another issue, Division One of this court [in *Keller*] noted, "[T]he trial court must determine on remand whether the 1992 amendment was properly adopted. ... If it was void, the Board's action in 1999 is inconsequential and this issue is moot." In other

words, if the amendment was void from its inception because it was not “adopted by the association pursuant to this section,” then RCW 64.34.264(2)’s time limitation does not apply.

Club Envy, 184 Wn. App. at 600-01. This analysis fails to recognize that *Keller* was an HPRA case, and that Division I’s comments did not apply “in other words” to language in the Condo Act. The HPRA has no time-bar. In contrast, the legislature included one in the Condo Act. In so doing, the legislature did not direct that failure to strictly comply with the requirements of § 264 resulted in an amendment void at inception. It indicated the opposite. The existence of a time-bar is incompatible with the void *ab initio* argument, a point never engaged by the *Club Envy* court.

Additionally, as discussed in section (d) above, Division I in *Keller* did not reach a conclusion whether the amendment under the HPRA was void *ab initio*; Division I instead remanded the issue. *Keller*, 127 Wn. App. at 621. This caution was justified, because examination of the issue—which the court in *Club Envy* never independently undertook—shows that Washington law does not support the assumption that an amendment is void *ab initio* for failure to comply with a statute if the statute does not so state. *Keller* does not show otherwise. *Club Envy* is unsound because it is premised on inadequate analysis of the void *ab initio* doctrine, undue reliance on *America Condominium* and *Keller*, and

insufficient attention to legislative intent.⁷

Ms. Bilanko's belated challenge to the amendment would irreparably damage the association. Leasing restrictions serve salutary purposes, including the benefits related to financing, the sense of community, and self-governance. To unravel the membership's decision more than six years after the Amendment was adopted would forever harm the association and upset the expressed will of the membership. If *Club Envy* would require a holding that the time-bar does not apply, this Court should reject its analysis.

2. Ms. Bilanko's claims are barred by the private time-bar in the Declaration, which bars claims brought more than one year after recording of an amendment pursuant to the Declaration.

Barclay Court's Declaration also contains a one-year time-bar that alternatively prohibits Bilanko's challenge. It provides in Article 25, Section 25.1: "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." CP 193-94. This contractual provision bars this lawsuit.

"There is no question that parties to a contract may establish a

⁷ It is apparent no party characterized the time-bar as a statute of repose to the *Club Envy* panel (or to the Rhode Island court). The decision mistakenly refers to the time-bar as a statute of limitations, *see* 184 Wn. App. at 599, which is wrong. *See supra*, VI.A.1.b.

shorter period of limitation of time within which to commence an action and such a provision is recognized and enforced by the courts.”

Southcenter View Condominium Owners Association v. Condominium Builders, 47 Wn. App. 767, 773, 736 P.2d 1075 (1986) (quoting *Driscoll v. Board of Educ.*, 98 N.Y.S.2d 610, 612 (New York 1950)). Contracts should be read “giving words their plain, ordinary meaning.” *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2 567, 575-76, 964 P.2d 1173 (1998). “Contracts should not be given a strained or forced interpretation, but a practical and reasonable one.” *Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 296, 991 P.2d 638 (1999).

Here, Barclay Court complied with Article 25 when it amended the Declaration. The Amendment expressly recites on its first page satisfaction of “requirements of Declaration Article 25.” CP 204. Also, Article 25.2.1 specifically requires a 67% approval for restrictions on leasing. CP 194. This was met. Barclay Court amended the Declaration strictly “pursuant to” and in absolute conformance with Article 25, as Ms. Bilanko would have this language mean. This independently supports reversal without regard for resolution of the statutory issues.

In sum, the time-bars in both RCW 64.34.264(2) and the Declaration apply to prevent Ms. Bilanko’s untimely challenge. The Superior Court’s decision should be reversed with a direction to enter

judgment of dismissal in favor of Barclay Court.

B. The rental cap amendment, which is not a change in “use,” was properly adopted under the Condo Act and the Declaration with 67% approval.

The Court should also reverse because Barclay Court approved the Amendment with a 67% majority as required by the Condo Act and the Declaration for rental cap amendments. The summary judgment should be reversed on the merits.

1. The Condo Act and Barclay Court’s Declaration both require 67% approval to adopt a rental cap amendment.

RCW 64.34.264(1) of the Condo Act generally requires 67% approval for amendments to a condominium declaration. This sub-section provides:

(1) Except... as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

RCW 64.34.264(1) (emphasis added). This general, minimum requirement applied to the amendment at issue and was satisfied.

Certain exceptional amendments to a condominium declaration require 90% approval from the unit owners, including amendments to “uses” of any unit, as follows:

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or 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 other than the declarant or such larger percentage as the declaration provides.

RCW 64.34.264(4) (emphasis added). Ms. Bilanko contends that an amendment to change the “uses to which any unit is restricted” includes amendments restricting leasing, which triggers subsection (4)’s exceptional requirement of 90% approval. CP 21-23. This is wrong. “Use” refers to residential or nonresidential use. It does not refer to the litany of restrictions and prohibitions that might be placed on condominiums used for residential living, such as pet restrictions, aesthetic restrictions, or leasing restrictions. Such restrictions only require the general, minimum 67% approval, not the extraordinary 90% approval required only for exceptional amendments.

Barclay Court’s Declaration is even more explicit than the Condo Act concerning leasing restrictions. Section 25.2.1 clearly requires approval from 67% of the unit owners in order to adopt an amendment restricting leasing, stating, “The consent of Owners holding at least Sixty-Seven Percent (67%) of the votes in the Association... shall be required to

materially amend any provisions of the Declaration... which establish, provide for, govern, or regulate any of the following: ... (k) imposition of any restrictions on leasing of Units[.]” CP 194.⁸

Section 25.2.1 expressly requires 67% approval for an amendment which restricts leasing. The Amendment plainly complied with the requirements in the Declaration.

2. A “change of use” as employed in RCW 64.34.264(4) do not include leasing restrictions.

The Condo Act does not contain an explicit definition of “use.” Well-established principles of statutory construction demonstrate that a “change” to “uses to which any unit is restricted” as set forth in subsection (4) does not include adoption of a rental cap amendment. This is the plain meaning of § 264(4).

“A court’s objective in construing a statute is to determine the legislature’s intent.” *Udall v. T.D. Escrow Servs., Inc., supra*, 159 Wn.2d at 909-11. “If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Id.* To determine plain meaning, a court considers “the language

⁸ This provision, drafted twelve years after the Condo Act was enacted, was intended to be consistent with the Condo Act. “Use” as employed in subsection (4) of the Condo Act was not generally understood to mean restrictions on leasing where such a meaning is inconsistent with real property and land use law. *See infra*, VI.B.2.c. When *Filmore* was decided to the contrary in September 2014, it created a stir.

at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.” *Id.* These considerations, discussed below, show that in § 264(4) a “change” of “use” does not include adoption of a rental cap.

- a. The Condo Act distinguishes between “use” and “leasing.”

The Condo Act clearly distinguishes between restrictions on “use” and “leasing” in multiple sections of the statute. A “fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms.” *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). This distinction should be maintained throughout the Condo Act.

Most compelling is the legislature’s differentiation between restrictions on “use” and “leasing” in RCW 64.34.410, which sets forth the particular disclosures that must be made in a public offering statement. A public offering statement is a document made available by a condominium builder to prospective buyers with information about the condominium building and the units. When establishing what a public offering statement shall contain, the legislature addressed separately “use and use restrictions pertaining to the units” and “restrictions ... on the renting or leasing of units,” as follows:

- (1) A public offering statement shall contain the following

information:

...

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;...

RCW 64.34.410(1)(g), (h) (emphasis added). This is critical evidence whether the legislature considered “restrictions... on the renting and leasing of units” to be “uses and use restrictions pertaining to the units.” It did not. It addressed them separately. This demonstrates that “restrictions on the renting or leasing of units” are not subsumed in, or a mere subset of, “uses and use restrictions pertaining to the units.” If such restrictions were, the legislature would not have treated them separately in § 410.

Looking again to the Condo Act, RCW 64.34.216 prescribes the required content of a condominium declaration and distinguishes restrictions on “use” of a unit from restrictions that control occupancy or alienation of a unit. Subsection (1)(n) refers to occupancy or alienation of a unit distinctly from use of a unit, as follows:

(1) The declaration for a condominium must contain:

...

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units....

RCW 64.34.216(1)(n). (emphasis added). Here, the word “or” necessarily

means that restrictions controlling “occupancy” or “alienation” are not “use restrictions.” Like it does in § 410(1)(g) and (h), the legislature again in § 216(1)(n) distinguishes between “use” and “leasing” when it separates from “use” restrictions the concepts of restrictions on “occupancy” and “alienation.”

These provisions inform the meaning of “use” in § 264(4). The legislature has demonstrated that where it intends within the Condo Act to refer to restrictions on leasing, it does so expressly. *See* RCW 64.34.410(1)(g) and (h) and RCW 64.34.216(1)(n). It did not do so in § 264(4). Although it could have, the legislature did not require that amendments restricting leasing obtain 90% approval. The minimum 67% approval—and not the exceptional 90% approval—applied to Amendment 1.

- b. The Condo Act’s references to “residential use” and “nonresidential use” show that these are the intended exclusive sub-categories of “use.”

The term “use” in the Condo Act is not a generic, catch-all term. Instead, “use” refers to the overarching dichotomy of the use of real property: either residential or non-residential. The Condo Act refers to “use” as being either “residential” or “nonresidential” (i.e., commercial). These are the exclusive sub-categories. This is the single way in which the legislature employed the word “use.”

“[W]hen similar words are used in different parts of a statute, ‘the meaning is presumed to be the same throughout.’” *State v. Gonzalez*, 168 Wn.2d 256, 264, 226 P.3d 131, 135 (2010). When interpreting the HPRA, this Court looked “to the context of the other provisions of the HPRA.” *Lake v. Woodcreek Homeowners Ass’n.*, 169 Wn.2d at 529 and 533. This methodology supports Barclay Court’s interpretation.

For example, RCW 64.34.264(1) (which requires 67% approval for general amendments) refers to “non-residential use.” It carves out an exception to the general 67% requirement for nonresidential use units, stating that “the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.” RCW 64.34.264(1). This is consistent with interpreting “use” to describe the fundamental purpose of the property as either residential or nonresidential.

Throughout the Condo Act the legislature employed “use” to refer to the residential or nonresidential nature of the property, including these provisions raised by the Association in its Opening Brief in *Filmore*:

64.34.216(1)(e) (“nonresidential use”)	64.34.415(2) (“residential use”)
64.34.268(1) (“nonresidential uses”)	64.34.440(2) (both appear)
64.34.348(1) (“nonresidential uses”)	64.34.440(6)(f)(i) (“residential use”)
64.34.352(8) (“nonresidential use”)	64.34.445(3) (“residential use”)

64.34.380(4) (“nonresidential use”)	64.34.450(1) (“nonresidential use”)
64.34.400(1) (“nonresidential use”)	64.34.450(2) (“residential use”)

That the term “use” is modified throughout the Condo Act by either “residential” or “nonresidential” underscores the legislature’s employment of “use” to refer to that central dichotomy. Here, when the legislature employs “use” throughout the Condo Act, it is referring to a residential or non-residential use.

These provisions show the context in which the legislature employed the term. “Use” does not distinguish, as Ms. Bilanko would have it, between owner-occupied and tenant-occupied. And “use” does not suddenly mean in § 264 something more general. No provision or authority supports reading “use” in § 264 inconsistently with its employment in other parts of the statute.

In *Filmore*, the Court of Appeals unpersuasively dismissed this evidence as insufficient to inform the meaning of “use” in § 264. 183 Wn. App. at 343-44 (“Such distinctions do not necessarily mean the legislature intended the word ‘uses’ in RCW 64.34.264(4) to refer solely to residential or nonresidential.”) The Court of Appeals concluded that notwithstanding its specialized meaning in other parts of the statute, in § 264 “use” has a “common ordinary meaning.” 183 Wn. App. at 346.

The Court of Appeals's conclusion is unjustified. It is inconsistent with the instruction in *State v. Gonzalez, supra*, to attach the same meaning to the same words throughout the statute. It also fails to account for the compelling evidence in § 410 and § 216 that restrictions on use do not include restrictions on leasing. Taken together, these clues within the statute rebut the Court of Appeal's conclusion that "use" in § 264(4) is generic and includes restrictions on leasing. The statute in fact demonstrates the opposite: "use restrictions" do not include "restrictions on renting or leasing." The *Filmore* court's white-washing of these terms and blending them all into the word "use" in § 264(4) is unpersuasive.

- c. Case law, municipal codes, and commentators also distinguish "use" from "leasing restrictions."

In *Filmore*, the Court of Appeals not only failed to inform the meaning of "use" in § 264(4) from other provisions in the statute, it also divorced the Condo Act from its real property and land use context. This context should inform the meaning of the Condo Act's terms. This Court should interpret § 264(4) consistently with the rest of the statute and with the common law of real property and land use codes. In this context, "use" is a reference to the fundamental activity on the property, i.e. residential or non-residential.

The *Filmore* court cited *Swinomish Indian Tribal Cmty. v. Dep't of*

Ecology, 178 Wn.2d 571, 581, 311 P.3d 6 (2013), for the general proposition that a court's goal is to determine the legislative intent, *see* 183 Wn. App. at 339, but it overlooked this Court's instruction that "when technical terms or terms of art are used, [courts] give these terms their technical meaning." 178 Wn.2d at 581. Also instructive is *Hansen v. Virginia Mason Med. Ctr.*, where the Court of Appeals rejected interpreting "promised" in RCW 7.70.030 based on a dictionary definition, concluding that "promise is a term of art in contract law." 113 Wn. App. 199, 207, 53 P.3d 60 (2002). Similarly, in this case real property and land use law should inform the technical meaning of "use."

"Use" in the context of property law is defined by "the activity for which the building or lot is intended, designed, arranged, occupied, or maintained[.]" *King County, Dept. of Development & Environmental Services v. King County*, 177 Wn.2d 636, 641, 305 P.3d 240 (2013). "Use" means... the type of activity... to which land is devoted or may be devoted[.]" *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 210 n. 15, 810 P.2d 31 (1991) (quoting King County Code Chapter 21.04.910). "Use" refers to the overarching activity to which land is devoted, not to less central considerations such as whether a residential unit is occupied by a tenant or a pet. "Land use decisions encompass [] choices among categories of uses (e.g., residential, commercial, industrial,

agricultural)...” Arnold, Craig Anthony, *Eastern Water Law Symposium: Integrating Land Use Law and Water Law: The Obstacles and Opportunities: Clean-Water Land Use: Connecting Scale and Function*, 23 Pace Envtl. L. Rev. 291, 296 (2006). Krannich, Jess M., *A Modern Disaster: Agricultural Land, Urban Growth, and the Need for a Federally Organized Comprehensive Land Use Planning Model*, 16 Cornell J. L. & Pub. Pol’y 57, 74 (2006) (zoning requires classification of “uses to which a parcel of land may be put,” for example, “commercial, residential, or agricultural purposes”).

County and municipal codes similarly define “use” as a property’s fundamental and overarching purpose. The King County Code defines “use” as “the purpose for which land or a structure is designed, built, arranged, intended, occupied, maintained, let or leased.” See King County Code Chapter 21A.06.1345 (emphasis added). The City of Seattle Municipal Code provides: “‘Use’ means the purpose for which land or a building is designed, arranged or intended, or which it is occupied or maintained, let or leased.” See Seattle Municipal Code 23.60.940 (emphasis added).

On the other hand, restrictions on the right to lease, to sublease, or to assign a leasehold are a restriction or restraint on “alienation.” See *Shoemaker v. Shaug*, 5 Wn. App. 700, 701 & 704, 490 P.2d 439 (1971)

(addressing a covenant precluding subleasing or assignment of premises); *Ernst Home Center, Inc. v. Sato*, 80 Wn. App. 473, 476 & 486, 910 P.2d 486 (1996) (same), citing *Restatement (Second) of Property, Landlord and Tenant* § 15.2; see also *Shorewood West Condo Ass'n v. Sadri*, 92 Wn. App. 752, 759, 966 P.2d 372 (1998) (observing “[r]estrictions on leasing have been upheld as reasonable restraints on alienation”), *rev'd on other grounds*, 140 Wn.2d 47, 992 P.2d 1008 (2000).

Here, it is appropriate to inform the interpretation of “change of use” from this body of law. This results in the conclusion that “use” means residential or nonresidential purpose or activity, and does not include leasing restrictions, which relate to “alienation” of property.

“[T]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating and a statute will not be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it.” *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994). Here, the Condo Act regulates a unit owner’s real property and land use rights. The legislature did not express disregard for the technical and legal vocabulary attendant to such rights. Neither should this Court.

Ms. Bilanko’s incorrect contention that any amendment restricting leasing must be approved by at least 90% of the unit owners also fails the

reasonableness test. Her interpretation would greatly expand the number of amendments subject to the extraordinary 90% approval requirement and, ultimately, render all amendments that relate to any conceivable use of a unit—no matter how attenuated from the primary “residential” or “nonresidential” distinction—a change of use requiring 90% approval. The generally applicable 67% approval requirement would become the exception, and the 90% approval of subsection (4) would replace it as the norm. This interpretation would up-end the legislature’s reservation of 90% approval for exceptional amendments. A court should “prevent absurdities” in pursuit of legislative intent. *State v. Halsen*, 50 Wn. App. 30, 34, 746 P.2d 1235 (1987), *rev’d on other grounds*, 111 Wn.2d 121, 757 P.2d 531 (1988). As this Court noted in *Lake v. Woodcreek Homeowners Ass’n.*, when interpreting the HPRA, the statute should “make sense.” 169 Wn.2d at 529. Barclay Court’s interpretation makes sense.

The Court should hold that an amendment restricting leasing is subject to the 67% approval requirement under RCW 64.34.264(1). This supports reversal and direction for summary judgment to Barclay Court.

VII. REQUEST FOR ATTORNEY FEES AND COSTS

If Barclay Court prevails on appeal, this Court should award Barclay Court its fees and costs because Barclay Court should not have

been put to the expense and effort of defending time-barred claims. RCW 64.34.455 provides, “The court, in an appropriate case, may award reasonable attorney’s fees to the prevailing party.” An attorney fee award under the Washington Condominium Act, therefore, is discretionary. In *Filmore*, the Court of Appeals declined to award fees “given the debatable issues of law.” 183 Wn. App. at 353. Barclay Court distinguishes its request from that of the prevailing party in *Filmore* because here Barclay Court was forced to defend stale claims. In such circumstances, should Barclay Court prevail on the time-bar issue, the equities and purposes of both the time-bar and the fee provision together support an award of fees and costs. Pursuant to RAP 18.1(b), this Court should award fees and costs to Barclay Court if this Court holds that the time-bar applies.

VIII. CONCLUSION

The Superior Court’s summary judgment to Ms. Bilanko was legal error. This Court should reverse and direct that summary judgment be entered for Barclay Court dismissing Ms. Bilanko’s challenges to the rental cap amendment, either because the challenges are time-barred or because, on the merits, the Condo Act does not require a 90% approval of a rental cap amendment.

This Court should seize the opportunity of this dispute to settle this area of law and create certainty for condo associations and their members

throughout Washington. The Court should be guided by the goal of effectuating demonstrated legislative intent. Where the Condo Act is concerned this includes the intent to promote consistent application of governing declarations and freedom from stale claims.

Respectfully submitted on this 20th day of March, 2015.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Averil Rothrock, WSBA #24248

arothrock@schwabe.com

Lawrence A. Costich, WSBA #32178

lcostich@schwabe.com

Milton A. Reimers, WSBA #39390

mreimers@schwabe.com

*Attorneys for Barclay Court Owners
Association*

APPENDIX

RCW 64.34.264
Amendment of declaration

(1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An 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.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or 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 other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

[1989 c 43 § 2-117.]

After recording, return to
Mark Rowley
Garvey, Schubert & Barer
1191 Second Avenue, Suite 1800
Seattle, Washington 98101



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KING COUNTY, WA

RESIDENTIAL DECLARATION FOR BARCLAY COURT, A CONDOMINIUM

Grantor/Declarant BARCLAY SQUARE CONDOMINIUMS JOINT VENTURE, a
Washington joint venture
Grantee BARCLAY SQUARE CONDOMINIUMS JOINT VENTURE, a
Washington joint venture
Legal Description The Residential Unit of Barclay Square, on Queen Anne, a Condominium,
as described in Master Condominium Declaration recorded under King
County Recording No 20010502000058
Tax Parcel No Portion of 387990-0115-0

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ARTICLE 1. DEFINITIONS

Section 1.1 Words Defined. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

Allocated Interests means the allocation of Common Expense Liability, interest in Common Elements and voting for each of the Units in the Condominium as set forth in Section 5.4

Articles means the articles of incorporation for the Association

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

Association means the owners association identified in Article 12

Board means the board of directors of the Association, as described in Article 14

Books and Records of the Association shall be given the broadest possible meaning and shall include, without limitation, exception or qualification, the following

- (a) Declaration, Survey Map and Plans, Articles, Bylaws and other rules and regulations governing the Condominium or any part thereof, and all amendments thereto,
- (b) Minute books, including all minutes, of all Owner, Board, Officer, committee or other meetings relating to the Condominium or any part thereof, including all reports, documents, communications or written instruments attached thereto or referenced therein,
- (c) All financial records, including without limitation, canceled checks, bank statements and financial statements of the Association and source documents from the time of incorporation of the Association through the current date,
- (d) All reports, documents, communications or written instruments pertaining to the personal property of the Association or Condominium or any part thereof,
- (e) All reports, documents, communications or written instruments pertaining to the construction, remodeling, maintenance, repair, replacement or condition of the Condominium or any part thereof;
- (f) All insurance policies or copies thereof for the Association or Condominium or any part thereof;
- (g) Copies of any certificates of occupancy that may have been issued for the Condominium or any part thereof,

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(h) Any other permits or notices by governmental bodies applicable to the Condominium or any part thereof in force or issued,

(i) All written warranties that are still in effect for the Condominium or any part thereof, or any other areas or facilities which the Association has the responsibility to maintain and repair; from the Declarant, contractor, subcontractors, suppliers, and manufacturers, together with all owners' manuals or instructions furnished with respect to installed equipment or building systems;

(j) A roster of Owners, officers and Board members and eligible mortgagees and their addresses and telephone numbers, if known;

(k) Any leases of the Common Elements or areas and other leases to which the Association is a party, any employment, service, consultation, professional or other contracts in which the Association, Board or officer is one of the contracting parties, or in which the Association or the Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge, or which in any way relate to the Condominium or any part thereof;

(l) All reports, documents, communications or written instruments pertaining to any litigation or other legal or mediation/arbitration proceeding (whether pending, threatened, or under consideration) to which the Association (or Board, officer or Owner) is or may be a party, or which may relate to or affect the Condominium or any part thereof, and

(m) All other reports, documents, communications or written instruments in any way relating to or affecting the Association, Board, officers, Owners or the Condominium or any part thereof

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

City means the City of Seattle.

Commercial Unit means the commercial condominium within Barclay Square, a Condominium.

Common Elements means all portions of the Condominium other than Units, including the Limited Common Elements;

Common Expenses means expenditures made by or financial liabilities of the Association including those expenses related to the maintenance, repair and replacement of the Common Elements and the Limited Common Elements, including allocations to reserves, and the following utility services provided to the Unit owners: water, sewer, garbage removal and gas for cooking and fireplaces to certain Units

Common Expense Liability means the liability for Common Expenses allocated to each Unit, as set forth in Schedule B

Condominium means Barclay Court, a condominium, created under the Declaration and the Survey Map and Plans

Condominium Act means the Washington Condominium Act, codified at RCW 64 34, as it may be from time to time amended

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

Declarant means Barclay Square Condominiums Joint Venture, a Washington joint venture composed of RMB Properties, LLC and Roy Street Development, Inc, a Washington corporation, and its representatives, successors, and assigns

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 14.3

Declaration means this Condominium Declaration for Barclay Court, a condominium, as it may from time to time be amended

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

FHLMC means the Federal Home Loan Mortgage Corporation

FNMA means the Federal National Mortgage Association

Foreclosure means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof

HUD means the U.S. Department of Housing and Urban Development.

Identifying Number means the designation of the building and the number or other designation of the Unit, as listed in Schedule B and shown on the Survey Map and Plans, which identifies each Unit in the Condominium

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

Managing Agent means the person designated by the Board under Section 14.3.

Mortgage means a mortgage, deed of trust or real estate contract

Mortgagee means any holder, insurer or guarantor of a mortgage on a Unit

Notice and Opportunity to be Heard means the procedure described in Section 14.5

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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

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

Residential Unit means this Condominium, as a unit within Barclay Square on Queen Anne, a Condominium

Special Declarant Rights means rights reserved for the benefit of the Declarant as specified in Article 10

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

Transition Date means the date upon which the period of Declarant Control terminates as determined in Article 13

Unit means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 5.2 and shown on the Survey Map and Plans

Section 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.

Section 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. CONSTRUCTION AND VALIDITY OF DECLARATION

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 or 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 Barclay Court, a Condominium.

ARTICLE 4. DESCRIPTION OF LAND

The real property included in the Condominium and subjected to the Act is described in Schedule A, as it may from time to time be amended pursuant to this Article

ARTICLE 5. DESCRIPTION OF CONDOMINIUM, UNITS, AND ALLOCATED INTERESTS

Section 5.1 Description of Condominium. The Condominium is the Residential Unit of Barclay Square on Queen Anne, a Condominium

Section 5.2 Number and Identification of Units. The Condominium has twenty eight (28) Units. The Identifying Number of each Unit is set forth in Schedule B and shown on the Survey Map and Plans. The location of the Units are shown on the Survey Map and Plans

Section 5.3 Unit Boundaries. The boundaries of the Units, if any, are the walls, floors and ceilings of the Units, including all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof or the planes in space where there are no walls, floors or ceiling for portions of the Units; provided, that the Unit boundaries shall not include those Common Elements specified in Article 6. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Section 5.4 Unit Data. Schedule B sets forth the following data for each Unit

- 5.3.1 The approximate square footage,
- 5.3.2 The number of bathrooms, whole or partial,
- 5.3.3 The number of rooms designated primarily as bedrooms,
- 5.3.4 Whether the Unit has a built-in fireplace, and
- 5.3.5 The level or levels upon which the Unit is located.

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

Section 5.5 Allocated Interests. Schedule B sets forth the Allocated Interests of each of the Units in the Condominium for the purposes of Common Expense Liability and the interest of each Unit in the Common Elements, which allocation were made on the basis of the relative square feet of the Units. Voting is allocated equally to each Unit with each Unit entitled to one vote.

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ARTICLE 6. COMMON ELEMENTS

Section 6.1 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 5.2. 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.

Section 6.2 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.

Section 6.3 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 of the owners having at least Eighty Percent (80%) of the votes in the Association, including Eighty Percent (80%) of the votes excluding votes held by the Declarant or an affiliate of Declarant (as defined in the Condominium Act), but all of the owners of Units to which any Limited Common Element is allocated must agree in order to cover 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 7. LIMITED COMMON ELEMENTS

Section 7.1 Description. The Limited Common Elements allocated to each Unit and/or Building shown on the Survey Map and Plans are as follows:

- 7.1.1 The parking space or spaces assigned to the Unit pursuant to Section 8.1;
- 7.1.2 The storage space assigned to the Unit pursuant to Section 8.1, and
- 7.1.3 The terraces, if any, assigned to the Unit pursuant to Section 8.1.

Section 7.2 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 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 the 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

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a Limited Common Element or a Limited Common Element may be incorporated into an existing Unit with the approval of Sixty-Seven Percent (67%) of the Owners, including the Owner of the Unit to which the Limited Common Element will be allocated or incorporated. The Declarant reserves the right to reallocate any Limited Common Element from a Unit owned by Declarant to any other Unit owned by Declarant, including a reallocation of parking spaces between a Unit owned by Declarant within the Residential Unit and the Commercial Unit of Barclay Square on Queen Anne. Such reallocation shall be reflected in an amendment to the Declaration and Exhibit C thereof

Section 7.3 Use. Each Owner to which a Limited Common Element is allocated shall have the exclusive right to use the Limited Common Element. The right to use the Limited Common Element extends to the Owner's agents, servants, tenant, family members, invitees and licensees

ARTICLE 8. PARKING SPACES, STORAGE SPACES, AND TERRACES

Section 8.1 Assignment to Units. There are 30 covered parking spaces and 28 storage spaces, of which at least one covered parking space and one storage space is assigned to each of the Units, as designated in Schedule C. Declarant reserves the right from time to time to amend Schedule C to assign the balance of the parking spaces and/or reallocate parking spaces and storage spaces among the Units then owned by Declarant. There are terraces assigned to Units 301, 308, 309, 310, and 311, as shown on the Survey Map and Plans

Section 8.2 Rental of Parking and Storage Spaces. The owner of a Unit may rent a parking or storage space which is a Limited Common Element of that Unit to the occupant of another Unit in the Condominium, but such rental shall be subject to termination upon 15 days' notice. Rental of a parking or storage space shall be terminated automatically and without notice upon the transfer of title of the Unit to which it is a Limited Common Element

Section 8.3 Use of Parking Spaces. The parking spaces are to be used for the parking of operable passenger motor vehicles and may be used for parking trucks, trailers, boats and recreational vehicles subject to rules and regulations adopted by the Board. The Board may also adopt rules and regulations governing the use of the unassigned parking spaces, except that until all Units have been sold the Declarant shall have the right to control the use of the unassigned parking spaces. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space 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

ARTICLE 9. PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES

Section 9.1 Residential Use; Timesharing Prohibited. The Condominium is intended for and restricted primarily to residential uses, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such uses which may include use as a home office in accordance with City of Seattle ordinances and subject to rules and regulations adopted by the Board. Timesharing of Units, as defined in RCW 64 36, is prohibited.

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Section 9.2 Leases. Any lease or rental agreement of a Unit must provide that its terms shall be subject in all respects to the provisions of the 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. The Board may adopt a rule that requires any owner desiring to rent a Unit to certify or provide evidence to the Board or its designee that the prospective tenant (other than a relative of the owner) has been screened (a) by the owner for those matters that a residential landlord would normally screen as prescribed by rule or regulation of the Board or (b) by a tenant screening service designated or approved by the Board at the Owner's expense prior to Owner's entering into a lease with the prospective tenant. 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 the 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 the owner, to evict the tenant or occupant if the 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 collected and foreclosed by the Association in the same manner as assessments are collected and foreclosed under Article 16. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise rent its Unit.

Section 9.3 Maintenance of Units, Common Elements, and Limited Common Elements. 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 the 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. Each Owner shall keep their respective Limited Common Elements in a clean and orderly condition. Each owner shall replace any broken glass in the windows or exterior doors of the Unit. Each Owner shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heaters, fans, air conditioning and heating equipment, including the wiring, plumbing, duct work and conduit therefor, which serve only that Unit, whether or not located in the Unit. 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, fireplace and vent, bathtubs, sinks, toilets, hot water tank and plumbing and electrical fixtures. 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 the Owner

Section 9.4 Exterior Appearance. In order to preserve a uniform exterior appearance of the buildings, the Board shall provide for the maintenance of the exterior of the buildings. No Owner may modify the exterior of a 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. In particular, no portion of any solar panels, radio or television antennas, satellite dish, or other appliance may be installed on the exterior of a building without the prior written consent of the Board. Unless otherwise established by rule or regulation of the Board, all portions of curtains, blinds or draperies visible from outside the Units shall be white or off-white and the owners shall not replace the glass or screens in the windows or doors of the Units except with materials of similar color and quality to those originally installed.

Section 9.5 Effect on Insurance or Laws. Nothing shall be done or kept in any Unit or in any 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

Section 9.6 Use or Alteration of Common Elements 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, which the Board shall be authorized to adopt from time to time. Nothing shall be altered or constructed in or removed from any Common Element or Limited Common Element except with the prior written consent of the Board.

Section 9.7 Signs. 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, on 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 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.

Section 9.8 Pets. Domesticated animals, birds or reptiles (herein referred to as "pets") may be kept in the Units subject to rules and regulations adopted by the Board. Dogs will not be allowed on any Common Elements unless they are on a leash and are being walked to or from the Unit to a public road. The Board may, after Notice and Opportunity to be Heard, require the removal of any pet which it finds is disturbing other Owners unreasonably, and may exercise this authority for a specific pet even though other pets are permitted to remain

Section 9.9 Quiet Enjoyment. 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, sound system loudspeakers shall not be rigidly attached to the party wall with another Unit or to the

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ceilings, walls, shelves or cabinets in a Unit in a manner that will induce vibrations into the structure of the building.

Section 9.10 Trash Removal. Each Owner shall be responsible for removing all trash or garbage from the Unit and depositing it in proper receptacles.

Section 9.11 Offensive Activities. 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.

Section 9.12 Conveyance by Owners; Notice Required. The right of an Owner to convey its 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 20 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 10. DEVELOPMENT RIGHTS; SPECIAL DECLARANT RIGHTS

Section 10.1 Development Rights. The Declarant reserves the right the following Development Rights so long as it owns a Unit in the Condominium: (a) to complete storage spaces in the location indicated in the Survey Map and Plans and to assign such storage units as Limited Common Elements to each of the Units pursuant to Schedule C, and (b) to reallocate Limited Common Elements between the Units which are still owned by Declarant, including reallocation of parking spaces and storage spaces between the Commercial Unit and any Unit within the Residential Unit to the extent both Units are owned by Declarant.

Section 10.2 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights so long as it owns a Unit in the Condominium: (a) to complete the storage spaces shown on the Survey Map and Plans, (b) to maintain sales offices, management offices, signs advertising the Condominium, and models in Units which are not occupied and are for sale.

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by the Declarant, in Units owned by the Declarant, and in the Common Elements of the Condominium, (c) to use easements through the Common Elements for the purpose of making improvements within the Condominium; and (d) 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 13.

Section 10.3 Transfer. The rights described in this Article shall not be transferred except by instrument evidencing the transfer executed by the Declarant or the Declarant's successor and the transferee and recorded in the County in which the Condominium is located. 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

Section 10.4 Termination. The rights described in this Articles shall terminate on the conveyance by Declarant of all of the Units.

ARTICLE 11. ENTRY FOR REPAIRS 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 the Owner has failed to perform, or to prevent damage to the Common Elements or to another Unit. Except in cases of emergency that 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 the Owners and occupants as practicable. The Board may levy a special assessment against the Owner of the Unit for all or part of the cost of work that the 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 16.

ARTICLE 12: OWNERS ASSOCIATION

Section 12.1 Form of Association. The Owners of Units shall constitute an owners association to be known as the Barclay Court Owners Association. The Association shall be organized as a nonprofit corporation, no later than the date the first Unit in the Condominium is conveyed. It will be governed by the Board, the number of members of which shall be specified 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.

Section 12.2 Bylaws. The Board will adopt Bylaws to supplement the Declaration and to provide for the administration of the Association and the property and for other purposes not inconsistent with the Condominium Act or the Declaration.

Section 12.3 Classes of Members. 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.

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Section 12.4 Qualification and Transfer. 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 the 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.

Section 12.5 Powers of the Association. In addition to those actions authorized elsewhere in the Declaration, the Association shall have the power to:

- 12.5.1 Adopt and amend the Bylaws and the rules and regulations,
- 12.5.2 Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Common Expenses and special assessments from Owners;
- 12.5.3 Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors,
- 12.5.4 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, subject however to the procedures specified in Section 12.8 below
- 12.5.5 Make contracts and incur liabilities;
- 12.5.6 Regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements,
- 12.5.7 Cause additional improvements to be made as a part of the Common Elements,
- 12.5.8 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:
 - 12.5.8.1 If the estimated cost of any separate property acquisition or addition or improvement to the Condominium exceeds \$5,000 and has not been included in the current year's budget, the approval of the owners holding a majority of the votes in the Association shall be required; and if such estimated cost exceeds \$25,000 and has not been included in the current year's budget, the approval of the owners holding Seventy-Five Percent (75%) of the votes in the Association shall be required;
 - 12.5.8.2 No structural changes shall be made to a building without the approval of owners holding at least Seventy-Five Percent (75%) of the votes in the Association,

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12.5.8.3 No structural change shall be made to a Unit without the approval of the owner of that Unit; and

12.5.8.4 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

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

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

12.5.11 Acquire and pay for all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium,

12.5.12 Impose and collect charges for late payment of assessments as further provided in Article 16 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;

12.5.13 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,

12.5.14 Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance,

12.5.15 Assign its right to future income, including the right to receive assessments,

12.5.16 Provide or pay, as part of the Common Expenses, the following utility services to the Units: water, sewer, garbage removal and gas to certain Units for cooking and fireplaces.

12.5.17 Exercise any other powers conferred by this Declaration or the Bylaws,

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

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

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Section 12.6 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. 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 Thirty-Five (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 and Records of the Association. Upon written request of FHLMC, FNMA, HUD, or VA, if it is a Mortgagee, the Association shall provide within a reasonable time the financial statement of the Association for the preceding fiscal year.

Section 12.7 Inspection of 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 the Books and Records 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.

Section 12.8 Association Dispute Resolution.

12.8.1 The term "Legal Proceedings" as used herein shall include litigation, administrative, mediation, arbitration or other proceedings in the name of the Association on behalf of itself or Two (2) or more Unit Owners on matters affecting the Condominium.

12.8.2 The provisions of this Section 12.8 shall not apply to Legal Proceedings wherein the Association could not incur in the aggregate more than Five Thousand Dollars (\$5,000.00), (including fees for attorneys, experts, witnesses, investigations and other costs of suit).

12.8.3 In order for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in Legal Proceedings, and in order for the Association to become obligated in the aggregate sum in excess of Five Thousand Dollars (\$5,000.00), to professionals, consultants or other experts in connection with Legal Proceedings, the following conditions must first be satisfied.

(a) The Board has received a detailed written summary ("Litigation Summary") concerning the substance of the proceeding, including (i) agreements with lawyers, experts and consultants; issues involved, (ii) legal and factual basis of anticipated allegations on behalf of and against the Association; (iii) remedies to be sought on behalf of and

against the Association, (iv) estimated amount to be sought on behalf of (and that could be sought from) the Association; (v) Association's estimated costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suits) and any third-party costs of suit that the Association would pay if the Association does not prevail, (vi) reports and recommendations by any professionals or consultants retained by the Association (and by any opposing party, if available), (vii) any written demands or settlement offers made by an opposing party (the Board shall request that an opposing party make such demand and settlement offer); and (viii) any negative consequences that the Association, Condominium or Owners could suffer during such proceedings including required disclosures to prospective purchasers, impediments to Unit refinancing, or diminishment of Unit value.

(b) If the proceeding will involve a claim against the Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) concerning construction defects or other condition of the Condominium, the Litigation Summary will also include a description of the construction defects or other condition (which shall also have been transmitted to the Declarant), and any written response from the Declarant concerning such defects (including any offer to settle by performing remedial work, payment of cash or a combination of both).

(c) A copy of the Litigation Summary shall be transmitted to all Owners, together with a written notice of the Owner's right of access to the Books and Records of the Association as provided in Section 12.7, and a written notice of a special Owners' meeting to be convened as provided in this Declaration, at which meeting the Declarant (and its representatives shall be entitled to attend and participate in on a non-voting basis if Declarant no longer owns Units).

(d) The Owners holding Seventy Percent (70%) of the total Association voting power must grant approval for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in legal proceedings, provided, that under no circumstances may legal proceedings be commenced against Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) with respect to any alleged construction defect or other condition which Declarant has agreed in writing to remedy and is proceeding with reasonable due diligence to do so.

Section 12.9 Mediation: The parties to this Declaration (as specified in Section 12.10 below) hope there will be no disputes arising out of their relationship. To that end, each commits to cooperate in good faith and to deal fairly in performing their duties under this Declaration in order to accomplish their mutual objectives and avoid disputes. But if a dispute arises, the parties agree to resolve all disputes by the following alternate dispute resolution process: (a) the parties will seek a fair and prompt negotiated resolution, but if this is not successful, (b) all disputes shall be resolved by binding arbitration, provided that, during this process, (c) at the request of either party made not later than forty-five (45) days after the initial arbitration demand, the parties will attempt to resolve any dispute by nonbinding mediation (but without delaying the arbitration hearing date). The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury.

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Section 12.10 Arbitration. Any claim, except a claim involving an action for judicial or nonjudicial foreclosure of the Association's lien for assessments, between or among any party subject to this Declaration (including without limitation, the Declarant, Association, Board or officers, Unit Owners, or their employees or agents) arising out of or relating to this Declaration, a Unit or Units, the Condominium or the Association, shall be determined by Arbitration in the county in which the Condominium is located commenced in accordance with RCW 7 04 060, provided, that the total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed Fifty Thousand Dollars (\$50,000 00), including interest, attorneys' fees and costs. If any party demands a total award greater than \$50,000, there shall be Three (3) neutral arbitrators. If the parties cannot agree on the identity of the arbitrators within Ten (10) days of the arbitration demand, the arbitrators shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large, Complex Case Panel (or have similar professional credentials). Each arbitrator shall be an attorney with at least Fifteen (15) years experience in commercial or real estate law and shall reside in the county in which the Condominium is located. Whether a claim is covered by the Article shall be determined by the arbitrators. All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder. The arbitrators shall take such steps as may be necessary to hold a private hearing within Ninety (90) days of the initial demand for arbitration and to conclude the hearing within Three (3) days; and the arbitrators' written decision shall be made not later than Fourteen (14) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrators may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrators shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award and decision shall be final, and the judgment may be entered in any court having jurisdiction thereof. The arbitrators may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy; but shall not have the power to award punitive or exemplary damages; or to award attorneys' fees and costs in excess of \$10,000 to the prevailing party. The decision and award of the arbitrators need not be unanimous, rather, the decision and award of Two (2) arbitrators shall be final.

Section 12.11 Warranty Dispute Resolution. In the event Declarant has issued a warranty of quality to the initial purchasers of Units, and such warranty contains provisions governing the making of claims and governing the resolution of disputes, then the provisions of such warranty shall control over the provisions of this Article 24 with respect to all express and implied warranty claims (including, without limitation, the Washington Condominium Act implied warranties) involving Units and Common Elements (regardless of whether the Unit Owner, Association or Board is asserting the claim)

ARTICLE 13. DECLARANT CONTROL PERIOD

Section 13.1 Declarant Control Until Transition Date. Until the Transition Date, the Declarant shall have the right to appoint and remove all members of the Board, provided that

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(1) not later than 60 days after conveyance of Twenty-Five Percent (25%) of the Units to Owners other than the Declarant, at least one member and not less than Twenty-Five Percent (25%) of the members of the Board must be elected by owners other than the Declarant, and (2) not later than sixty days after conveyance of Fifty Percent (50%) of the Units to Owners other than the Declarant, not less than one-third of the members of the Board must be elected by Owners other than the Declarant

Section 13.2 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 Seventy-Five Percent (75%) of the Units to Owners other than the Declarant, (b) two years after the last conveyance or transfer of record of a Unit except as security for a debt; (c) two years after the last exercise of a Development Right to create Units, or (d) the date on which the Declarant records an amendment to the Declaration pursuant to which the Declarant voluntarily surrenders the right to further appoint and remove officers and members of the Board. If the Declarant voluntarily surrenders control pursuant to (d) above, the 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 the Declarant, be approved by the Declarant before they become effective.

Section 13.3 Declarant's Transfer of Association Control. Within 60 days after the Transition Date, the Declarant shall deliver to the Association all property of the owners and of the Association held or controlled by the Declarant including, but not limited to, the following:

13.3.1 The original or a photocopy of the recorded Declaration and each amendment to the Declaration, the certificate of incorporation of the Articles and all other Books and Records of the Association;

13.3.2 Resignations of officers and members of the Board who are required to resign because the Declarant is required to relinquish control of the Association,

13.3.3 Association funds or the control of the funds of the Association;

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

13.3.5 Except for alterations to a Unit done by a Unit Owner other than the Declarant, the copy of the Declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the 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 the Declarant in the construction or remodeling of the Condominium

Section 13.4 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

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unless the Owners, other than the Declarant, by two-thirds vote, elect to waive the audit. The costs of the audit shall be a Common Expense.

Section 13.5 Termination of Contracts and Leases Made by the Declarant. If entered into before the Board elected pursuant to Section 14.1 takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities or (2) any other contract or lease between the Association and the Declarant or an affiliate of the 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 14.1 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 14. THE BOARD

Section 14.1 Selection of the Board and Officers. Prior to the Transition Date, election or appointment of members of the Board shall be governed by Section 13.1. Within 30 days after the Transition Date, the Owners shall elect a Board, all of whom must be Unit Owners, and at least one of whom shall be a townhome Unit Owner. The number of Board members and their terms of service 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.

Section 14.2 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.

Section 14.3 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. If professional management has been required by FNMA, FHLMC or other similar agency or corporation, the procedure for terminating professional management and assuming self-management shall be that procedure set forth in Article 25. 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 (1) for cause, on 30 days' written notice, or (2) without cause, on not more than 90 days' written notice.

Section 14.4 Limitations on Board Authority. The Board 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 Article 25, to terminate the Condominium pursuant to Article 26, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office

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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.

Section 14.5 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, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in 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.

ARTICLE 15. BUDGET AND ASSESSMENTS

Section 15.1 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

Section 15.2 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 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. The Declarant shall prepare the initial budget for the first fiscal year of the Association.

Section 15.3 Ratification of Budget. Within 30 days after adoption of any proposed budget for the Condominium, 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 making 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. If the Board proposes a supplemental budget during any fiscal year that results in an increase in an Owner's Assessments, such budget shall not take effect unless ratified by the Unit Owners in accordance with this Section.

Section 15.4 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of assessments, the Board may prepare a

supplemental budget for the remainder of the year. A supplemental budget that results in increase in an Owner's Assessments shall be ratified pursuant to Section 15.3.

Section 15.5 Assessments for Common Expenses. The sums 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 Common Expense assessment for each Unit is determined by the Common Expense Liability allocated to each Unit times the Allocated Interest specified in Schedule B for such Unit. 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, assess the expense against the Unit.

Section 15.6 Contribution to Initial Working Capital. In connection with the first conveyance of each Unit, the initial purchaser shall pay to the Association as a nonrefundable contribution to an initial working capital fund 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, the 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. The 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.

Section 15.7 Special Assessments. For those Common Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy a special assessment for such expenses against the Units, subject to ratification by the owners pursuant to Section 15.3. To the extent that any Common Expense is caused by the misconduct of an Owner or tenant of any Unit, the Association may specially assess that expense against that Unit.

Section 15.8 Creation of Reserves; Assessments. The Board shall create reserve accounts for anticipated expenses for repairs, replacement and improvements 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.

Section 15.9 Notice of Assessment. 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 and the Common Expense Liability allocations which apply to the Unit on which the general and special assessments are based. The Board shall furnish the same information to an Owner's mortgagee if so requested.

Section 15.10 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 tenth day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 16.

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Section 15.11 Proceeds Belong to Association. All assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association

Section 15.12 Failure to Assess. Any failure by the Board or the Association to make the budgets and assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the monthly assessment amounts established for the preceding year shall continue until new assessments are established

Section 15.13 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.

Section 15.14 Recalculation of Assessments. If Common Expense Liabilities are reallocated, Common Expense assessments, special assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

ARTICLE 16. LIEN AND COLLECTION OF ASSESSMENTS

Section 16.1 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 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 15 which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a 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 the county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to above.

Section 16.2 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 61.12, or nonjudicially in the manner set forth in Section 16.3. 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 16.1, the holder of a mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall not be liable for any assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such mortgagee or other purchaser of the Unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the Unit prior to the date of such sale.

Section 16.3 Nonjudicial Foreclosure. A lien arising under this Article may be foreclosed nonjudicially in the manner set forth in RCW 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 Company or its successors or assigns ("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. Grantor warrants that the Unit is not used principally or primarily for agricultural purposes. The 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 16.1.

Section 16.4 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 the 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 attorneys' 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.

Section 16.5 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 the owner of the Unit when the

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assessment is made. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them

Section 16.6 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

Section 16.7 Joint and Several Liability. In addition to constituting a lien on the Unit, each assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same 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 shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums

Section 16.8 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.

Section 16.9 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.

Section 16.10 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 ten days or more delinquent in paying assessments.

Section 16.11 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

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ARTICLE 17. ENFORCEMENT OF DECLARATION, BYLAWS AND RULES REGULATIONS

Section 17.1 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.

Section 17.2 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 rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of 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 the 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 the Declarant.

ARTICLE 18. TORT AND CONTRACT LIABILITY

Section 18.1 Declarant Liability. Neither the Association nor any Owner except the Declarant is liable for the Declarant's torts in connection with any part of the Condominium which the 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 the Declarant reasonable notice of and an opportunity to defend against the action, the Declarant who then controlled the Association is liable to the Association or to any Owner: (1) for all tort losses not covered by insurance suffered by the Association or that Owner; and (2) for all costs which the Association would not have incurred but for a breach of contract or other wrongful act or omission by the Association. If the Declarant does not defend the action and is determined to be liable to the Association under this Section, the 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 it is a Unit Owner or a member or officer of the Association.

Section 18.2 Limitation of Liability for Utility Failure, etc. Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, the Managing Agent, nor the 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 which 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 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.

Section 18.3 No Personal Liability. So long as a Board member, or Association committee member, or Association officer, or the Declarant or the 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 19. INDEMNIFICATION

Each Board member, Association committee member, Association officer, the Declarant and the 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 malfeasance 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.

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ARTICLE 20. INSURANCE

Section 20.1 General Requirements. Commencing not later than the time of the first conveyance of a Unit to a person other than the 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) worker's 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 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 meets 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 modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds named therein, including owners, Mortgagees, and designated servicers of Mortgagees.

Section 20.2 Property Insurance. The property insurance shall, at the minimum, 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, and the equipment, fixtures, improvements in the Units installed by the Declarant, and personal property of the Association with an "Agreed Amount Endorsement" and, if required by FNMA or FHLMC, 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 provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. The policy may, in the discretion of the Board, have such deductible as the Board determines to be reasonable and may cover improvements or betterments installed in the Units by the Unit Owners. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the 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.

Section 20.3 Commercial General Liability Insurance. The liability insurance coverage shall insure the Board, the Association, the Owners, the Declarant, and the Managing Agent, and cover all of the Common Elements in the Condominium with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurer from 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 and 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

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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 \$2,000,000 general aggregate.

Section 20.4 Insurance Trustee; Power of Attorney. The named insured under the policies referred to in Sections 20.2 and 20.3 shall be the Association, as trustee for each of the owners in accordance with their respective interests in the Common Elements. 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 20.8, 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, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

Section 20.5 Additional Policy Provisions. The insurance obtained pursuant to Sections 20.2 and 20.3 shall contain the following provisions and limitations:

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

20.5.2 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.

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

20.5.4 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 the 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.

20.5.5 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 the Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

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20 5 6 A standard mortgagee clause which shall

(a) 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,

(b) 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;

(c) 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

(d) 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

Section 20.6 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 funds 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

Section 20.7 Owners' Individual Insurance. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit

Section 20.8 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) Owners holding at least Eighty Percent (80%) of the votes in the Association, including every Owner of a Unit or Limited Common Element which will not be rebuilt and Owners other than the Declarant holding at least Eighty Percent (80%) of the votes in the Association excluding votes held by the Declarant, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. 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

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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 of each Unit. 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 26 governs the distribution of insurance proceeds if the Condominium is terminated.

ARTICLE 21. DAMAGE AND REPAIR OR DAMAGE TO PROPERTY

Section 21.1 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 30 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable.

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

21.1.2 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 responsible contractors.

21.1.3 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.

21.1.4 The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, 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.

Section 21.2 Notice of Damage. The Board shall promptly, and in all events within 30 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 and each holder of a first mortgage on a Unit with a written notice describing the damage and summarizing the initial Board determinations made under Section 21.1. If the Board fails to do so within the 30-day period, any Owner or Mortgagee may make the determinations required under Section 21.1 and give the notice required under this Section.

Section 21.3 Definitions: Damage, Substantial Damage, Repair, Emergency Work. As used in this Article:

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21 3 1 Damage shall mean all kinds of damage, whether of slight degree or total destruction.

21 3 2 Substantial Damage shall mean that in the judgment of a majority of the Board the estimated assessment determined under Section 21.1.4 for any one Unit exceeds Ten Percent (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

21 3 3 Repair shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each Unit and the Common Elements and having substantially the same boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made

21 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

Section 21.4 Execution of Repairs.

21 4 1 The Board shall promptly repair the damage and use the available insurance proceeds therefor as provided in Section 20.8. If the cost of repair exceeds the available insurance proceeds the Board shall impose an Assessment against all Units in proportion to their Common Expense Liabilities in an amount sufficient to pay the excess costs

21 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

21 4 3 The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of \$50,000, or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article.

Section 21.5 Damage Not Substantial. If the damage as determined under Subsection 21.3.2 is not substantial, the provisions of this Section shall apply

21.5 1 Either the Board or the requisite number of Owners, within 15 days after the notice required under Section 21.2 has been given, may but shall not be required to, call a special Owners' meeting in accordance with Section 12.4 and the Bylaws to decide whether to repair the damage.

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21.5.2 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.

21.5.3 A decision to not repair or rebuild may be made in accordance with Section 20.8

Section 21.6 Substantial Damage. If the damage determined under Section 21.3.2 is substantial, the provisions of this Section shall apply.

21.6.1 The Board shall promptly, and in all events within 30 days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within 30 days, then notwithstanding the provisions of Section 12.4 and the Bylaws, any Owner or First Mortgagee of a Unit may call and conduct the meeting.

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

21.6.3 At the special meeting, the following consent requirements will apply

(a) The owners shall be deemed to have elected to repair the damage in accordance with the original plan unless the Owners of at least Eighty Percent (80%) of the total voting power of the Condominium other than that held by the 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.

(b) 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

(c) In addition to the consent by the 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 holders of first mortgages on Units that have at least SIX of the votes subject to eligible holder mortgages.

(d) Failure to conduct the special meeting provided for under Section 21.6.1 within 90 days after the date of damage shall be deemed a unanimous decision to repair the damage in accordance with the original plan

Section 21.7 Effect of Decision Not to Repair. In the event of a decision under either Section 21.5.3 or 21.6.3 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 grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed as provided in Section 20.8.

ARTICLE 22. CONDEMNATION

Section 22.1 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.

Section 22.2 Power of Attorney. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the 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.

Section 22.3 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 which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and its 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 the 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.

Section 22.4 Condemnation of Part of a Unit. Except as provided in Section 22.3, 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 the Owner or lienholders of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit, and (b) the portion of the Allocated interests divested from the partially-acquired Unit 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 and the basis of its reduced Allocated Interests.

Section 22.5 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 the 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

Section 22.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 21

ARTICLE 23. EASEMENTS

Section 23.1 In General. Each Unit has an easement in and through each other Unit and the Common 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.

Section 23.2 Encroachments. To the extent not provided by the definition of "Unit" in the Declaration and in the Condominium Act, each Unit and all Common 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 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, in no event shall a valid easement for encroachment be created in favor of a Unit if the encroachment was caused by the willful act with full knowledge of the Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit.

Section 23.3 Easements Reserved by the Declarant. The Declarant reserves an access easement over, across, and through the Common Elements of the condominium for the purpose 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 the Declarant's obligations or exercising Development Rights or Special Declarant Rights. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of the roadways, pathways, and utilities by the Owners of Units in the Condominium. This Section 23.3 may not be altered or amended without the written consent of Declarant or the then owner of the land which may be added to the Condominium if that land has been sold or transferred by Declarant.

Section 23.4 Utility Easements Granted by the Declarant. The Declarant grants to each company or municipality providing utility services to the condominium or to the Units in the condominium an easement for the installation, construction, maintenance, repair and reconstruction of all utilities serving the Condominium or the Owners, including without

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limitation, such utilities services as water, sanitary sewer, storm sewer, electricity, cable television and telephone, and an easement for access over and under the roadways and Common Elements of the condominium to the utility service facilities.

ARTICLE 24. PROCEDURES FOR SUBDIVIDING OR ALTERING UNITS

Section 24.1 Submission of Proposal to Subdivide Unit. No Unit or Units shall be subdivided either by agreement or legal proceedings, except as provided in this Article. An Owner may propose subdividing a Unit or Units by submitting the proposal in writing to the Board and to all other Owners and Mortgagees of the Unit 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 the Owner of the Unit to be subdivided upon approval pursuant to Section 24.2, 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 the Owner of the subdivided Unit. The Owner of the Unit to be subdivided shall bear all costs of the subdivision.

Section 24.2 Approval Required for Subdivision. A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by all Owners and Mortgagees of the Unit or Units to be subdivided, the Board and Fifty-One Percent (51%) of Eligible Mortgagees.

Section 24.3 Minor Alterations. 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 mechanical or electrical systems or lessen the support of any portion of the condominium. 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 24.5

Section 24.4 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 24.5, 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 mechanical or electrical systems 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. The 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.

Section 24.5 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, unless the proposed alteration does not comply with Section 24.4 or impairs the structural integrity or mechanical or electrical systems in the Condominium. The failure of the Board to act upon a request within such period shall be deemed approval thereof.

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Section 24.6 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

Section 24.7 Relocation of Boundaries--Adjoining Units. The boundaries between adjoining Units may only be relocated by an amendment to the Declaration, pursuant to Article 25, upon application to the Board by the Owners of those Units. If the 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. The 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

ARTICLE 25. AMENDMENT OF DECLARATION, SURVEY MAP AND PLANS, ARTICLES OR BYLAWS

Section 25.1 Procedures. Except in cases of amendments that may be executed by the 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 the 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 Twenty Percent (20%) or more of the votes in the Association, then, irrespective of whether the Board concurs in 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 in the county in which the Condominium is located. The amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. 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 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.

Section 25.2 Percentages of Consent Required. Except as provided in Articles 21 and 22 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.

25.2.1 The consent of Owners holding at least Sixty-Seven Percent (67%) of the votes in the Association and the consent of Eligible Mortgagees that have at least Fifty-One Percent (51%) of the votes of Units subject to Eligible Mortgagees 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 Common Elements into Units; (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 FNMA, 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 Survey Map and Plans; or (o) any provisions which are for the express benefit of holders of Mortgages.

25.2.2 An amendment that creates or increases Development Rights or Special Declarant Rights, increases the number of Units (other than an amendment creating Units in a Subsequent Phase), changes the boundaries of any Unit, the Allocated Interests of a Unit (except in connection with the creation of new Units in a Subsequent Phase), or the uses to which any Unit is restricted shall require the vote or agreement of the Owner of each Unit particularly affected and the Owners holding at least Ninety Percent (90%) of the votes in the Association

25.2.3 All other amendments shall be adopted if consented to by Sixty-Seven Percent (67%) of the Owners of the votes in the Association.

25.2.4 An Eligible Mortgagee who receives a written request, delivered by certified or registered mail, return receipt requested, 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.

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Section 25.3 Limitations on Amendments. No amendment may restrict, eliminate, or otherwise modify any Development Right or Special Declarant Right provided in the Declaration without the consent of the Declarant and any mortgagee of record with a security interest in the Development Right or Special Declarant Right or in any real property subject thereto, excluding Mortgagees of Units owned by persons other than the Declarant

ARTICLE 26: TERMINATION OF CONDOMINIUM

Section 26.1 Action Required. Except as provided in Articles 20 and 21, the Condominium may be terminated only by agreement of Owners of Units to which at least Eighty Percent (80%) of the votes in the Association are allocated and with the consent of Eligible Mortgagees of Units to which at least Sixty Seven Percent (67%) of the votes in the Association 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

Section 26.2 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.

ARTICLE 27: NOTICES

Section 27.1 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 the Owner of a Unit shall be sufficient if mailed to the Unit if no other mailing addresses 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 the Declarant until the Transition Date, and thereafter shall be given to the president or secretary of the Association.

Section 27.2 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. 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 the Declaration or Survey Map and Plans effecting a change in (i) the boundaries of any Unit, (ii) the exclusive easement rights, if any, appertaining to any Unit, (iii) the interest in the Common Elements or the liability for Common Expenses of any Unit, (iv) the number of votes in the

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Association allocated to any Unit, or (v) the purposes to which a Unit or the Common Elements are restricted, (b) any proposed termination of condominium status, transfer 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 which 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 20, (f) any proposed action that would require the consent of a specified percentage of Eligible Mortgagees pursuant to Articles 22, 25, or 26.

ARTICLE 28. 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 29. EFFECTIVE DATE

This Declaration shall take effect upon recording.

ARTICLE 30. REFERENCE TO SURVEY MAP AND PLANS

The survey Map and Plans were filed with the Recorder of King County, Washington, simultaneously with the recording of this Declaration under File No. 20010502 in Volume 174 of Condominiums, pages 20 through 24.
000054

ARTICLE 31. ASSIGNMENT BY DECLARANT

The 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.

2001 050 2000056

DATED: April 2, 2001

DECLARANT:

BARCLAY SQUARE CONDOMINIUMS JOINT VENTURE,
a Washington joint venture

By RMB Properties, LLC,
a Washington limited liability company, as joint venturer

By *R. Isaacs*
Ronald P Isaacs, Manager

By Roy Street Development, Inc.,
a Washington corporation, as joint venturer

By *[Signature]*
Norman Edward Cressey, President

2001 050 2000058

STATE OF WASHINGTON)
CITY OF VANCOUVER)
COUNTY KING) SS'
PROVINCE OF BRITISH COLUMBIA)

I certify that I know or have satisfactory evidence that Ronald P Isaacs is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of RMB Properties, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated April 23, 2001

Mark Kirby
Notary Public for the Province of British Columbia
My Commission expires 7/27/02

**SCHEDULE A
LEGAL DESCRIPTION OF PROPERTY)**

The Residential Unit of Barclay Square on Queen Anne, a Condominium, as described in Master
Condominium Declaration recorded under King County Recording No 20010502000056

2001 050 2000056

SEA_DOCS 553444 2

41

**SCHEDULE B
BUILDING/UNIT DATA**

UNIT #	FLOOR	UNIT DESCRIPTION			UNIT SQUARE	ALLOCATED INTERESTS
		# of Bathrooms	# of Bedrooms	# of Fireplaces	Surveyor's "as-built"	Common Expense Liability
						Common Elements
201	2	1	1	1	1044	4.77%
202	2	1	1	1	738	3.37%
203	2	1	1	1	1071	4.89%
204	2	1	1	1	1054	4.81%
205	2	1	2	1	903	4.13%
206	2	1	0	1	528	2.41%
301	3	2	2	1	1309	5.98%
302	3	1	1	1	738	3.37%
303	3	1	1	1	738	3.37%
304	3	1	1	1	738	3.37%
305	3	1	2	1	903	4.13%
306	3	1	0	1	553	2.53%
307	3	1	0	1	529	2.42%
308	3	1	1	1	838	3.83%
309	3	1	1	1	809	3.69%
310	3	1	0	1	623	2.85%
311	3	1	0	1	498	2.27%
401	4	2	2	1	1309	5.98%
402	4	1	1	1	738	3.37%
403	4	1	1	1	738	3.37%
404	4	1	1	1	738	3.37%
405	4	1	2	1	903	4.13%
406	4	1	0	1	553	2.53%
407	4	1	0	1	529	2.42%
408	4	1	1	1	838	3.83%
409	4	1	1	1	809	3.69%
410	4	1	0	1	623	2.85%
411	4	1	0	1	498	2.27%

2001 050 2000058

**SCHEDULE C
ASSIGNMENT OF PARKING AND STORAGE SPACES**

UNIT #	PARKING SPACE	STORAGE SPACE
201	15 - 2 nd level	26
202	13 - 2 nd level	1
203	20 - 2 nd level	25
204	21 - 2 nd level	24
205	27 - 2 nd level	23
206	13 - 1 st level	5
301	2 - 2 nd level	27
302	19 - 2 nd level	2
303	10 - 2 nd level	3
304	5 - 2 nd level	4
305	6 - 2 nd level	22
306	20 - 1 st level	6
307	12 - 1 st level	7
308	3 - 2 nd level	8
309	4 - 2 nd level	9
310	8 - 2 nd level	10
311	9 - 2 nd level	11
401	22 - 2 nd level	28
402	16 - 2 nd level	12
403	17 - 2 nd level	13
404	18 - 2 nd level	14
405	23 - 2 nd level	21
406	25 - 2 nd level	15
407	26 - 2 nd level	16
408	11 - 2 nd level	20
409	12 - 2 nd level	19
410	7 - 2 nd level	17
411	1 - 2 nd level	18

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AFTER RECORDING RETURN TO:

Leahy,ps
25 Central Way, Suite 310
Kirkland, WA 98033

CONFORMED COPY

20081103001419

LEAHY PS AMDCN 51.00
PAGE 001 OF 010
11/03/2008 14:43
KING COUNTY, WA

AMENDMENT NO. 1 TO
CONDOMINIUM DECLARATION FOR
BARCLAY COURT, A CONDOMINIUM

Grantor: BARCLAY COURT OWNERS ASSOCIATION, a Washington non-profit corporation

Grantee: BARCLAY COURT, A CONDOMINIUM
Additional names on pg. N/A

Abrv'd Legal: CONDOMINIUM CREATED UNDER CONDOMINIUM
DECLARATION RECORDED UNDER KING COUNTY AUDITOR'S
NO. 20010502000058.
Official Legal description Same

Assessor's Tax Parcel IDs #: 0519500 (Master Number)

Reference # (if applicable): 20010502000058

DEPARTMENT OF ASSESSMENTS
Examined and approved this 30 day of
November, 2008

snoble
Assessor

nward
Deputy Assessor

**AMENDMENT NO. 1 TO
CONDOMINIUM DECLARATION FOR
BARCLAY COURT, A CONDOMINIUM**

The Declarant of Barclay Court, A Condominium ("Barclay Court" or the "Condominium"), created the Condominium through recording a Condominium Declaration (the "Declaration") filed under King County Recording No. 20010502000058 and the Survey Map and Plans (the "Map and Plans") filed under King County Recording No. 20010502000057. This is the first amendment to the Declaration.

To satisfy requirements of Declaration Article 25;

1. A majority of the Board of Directors (the "Board" or the "Directors") of the Barclay Court Owners Association (the "Association") voted to submit this First Amendment to Declaration (the "Amendment") to the Owners for their approval;
2. All Owners were duly notified of this proposed Amendment and were given a copy of it before the Owners approved it;
3. Not less than sixty-seven percent (67%) of the Owners have approved the Amendment by consenting to it in writing; and
4. After not less than thirty (30) days' notice to all Eligible Mortgagees, in the manner provided in Article 25, not less than fifty-one percent (51%) of the Eligible Mortgagees have expressly or impliedly consented to this Amendment to Declaration.

NOW, THEREFORE, the President of the Association certifies the Declaration to have been amended in the following particulars:

A. Article 1, Section 1.1, of the Declaration is hereby amended to add the following new defined terms:

Governing Documents means the Declaration, the Articles of Incorporation, the Bylaws, all properly adopted rules, policies and resolutions, and all future amendments to any of these documents.

Occupant means anyone who (1) occupies a Unit as a permanent residence or who (2) stays overnight in any Unit more than fourteen (14) days in any calendar month or more than sixty (60) days in any calendar year.

Related Party means a person is related to the Unit Owner by blood, marriage or lawful adoption. "Related Party" includes the spouse, parent, parent-in-law, sibling, sibling-in-law, parent's sibling, and lineal descendant of the Unit Owner.

Renting or Leasing a Unit means (1) granting a right to use or occupy a Unit in exchange for receiving money or other goods or services of value and (2) allowing sole occupancy of a Unit, regardless of whether money or other goods or services of value are received in exchange. Co-ownership of a Unit is not Leasing. Co-habitation of a Unit with its Owner is not Leasing unless the Owner has granted the co-habitant Occupant a right to use or occupy the Unit in exchange for receiving money or other goods or services of value. Allowing a Related Party to occupy a Unit is not Leasing. "Lease" and "Rent", when used as verbs, are synonymous.

Tenant means a person who is Leasing a Unit. Synonyms for "Tenant" include "Renter" and "Lessee."

[T]he uses to which any Unit is restricted, as the phrase is used in Section 25.2.2 of the Declaration, means a restriction based on a land use classification of residential or non-residential, (such as those restrictions described in Sections 216(1)(e), 264(1), 268(1), 348(1), 352(8), 400(1), and 400(2) of the Washington Condominium Act).

B. Article 9, Section 9.2, of the Declaration is hereby deleted, and the following new provisions are added in its place.

9.2 Rental Units. The Leasing or Renting of a Unit by its Owner shall be governed by the provisions of this Section 9.2.

9.2.1 No Transient Purposes. With the exception of a lender in possession of a Unit following a default in a Mortgage, a Foreclosure proceeding or any deed or other arrangement in lieu of a Foreclosure, no Unit Owner shall be permitted to Lease his Unit for hotel or transient purposes which shall be defined as Leasing for any period less than thirty (30) days. A Lease shall have a minimum initial term of six (6) months. Time sharing of Units is not allowed.

9.2.2 No Partial Leases. No Unit Owner may Lease less than the entire Unit.

9.2.3 Written Leases. All Leases shall be in writing and be subject to the Governing Documents, such that a default by the Tenant in complying with the Governing Documents constitutes a default under the Lease.

9.2.4 Rent to Association. If a Unit is Leased by its Owner, and that Owner is more than thirty (30) days delinquent in payment of assessments or other costs to the Association, the Board may collect, and the Tenant shall pay over to the Board, so much of the rent for that Unit as is required to pay any amounts due the Association. The Tenant shall not have the right to question payment over to the Board. The Tenant is discharged from his obligation to pay a Unit Owner rent that the Tenant has paid over to the Board under this Section. The Association's receipt of rent under this Section shall not discharge the Unit Owner from liability for any balance remaining after application of amount received to the Unit Owner's account, nor shall it operate as an approval of the Lease. The Board may not exercise this power where a receiver has been appointed for the Unit or its Owner, or in derogation of any rights which a Mortgagee of the Unit may have to the rent.

9.2.5 Approval of Leases. Each Unit Owner desiring to rent his Unit shall submit for approval by the Board the Lease Agreement with the prospective Lessee. The Board shall approve such Lease Agreement provided that both the charge due the Association under Section 9.2.6.10 has been paid by the Unit Owner, and the Board determines that the Lease Agreement satisfies the requirements of this Article of the Declaration.

9.2.6 Limitations on Leasing.

9.2.6.1 Purpose. Amending the Declaration to create these limitations on Leasing is the result of a careful weighing of the pros and cons of limiting the Leasing of Units. These limitations derive from the conclusion that the long term best interests of the Condominium and of the Owners of the Units that comprise it lay in limiting Leasing so as to advance the purposes of preserving and enhancing the value of the Condominium and of the individual Units. That conclusion, in turn, was arrived at upon careful consideration of important underlying purposes and the relationship between Leasing and the achievement of those purposes. Factors which the Board and Owners weighed in the course of concluding that the Declaration should be amended to restrict Leasing include the following:

9.2.6.2 Attributes Of Value. Barclay Court, a Condominium, is a residential community featuring Units, which are separately owned, and Common Elements, which are owned in common. The value of individual Units, and of the Condominium, is a function of various internal and external factors, important among them the following:

1. The ability to sell a Unit depends, in part, upon the availability of buyer financing which, in turn, is influenced by the existence and extent of Leasing activity in the Condominium as a whole;

2. The sense of community which is fostered by a shared common purpose, including a shared perspective that the Condominium is the shared residence of Owners (and not just an "investment" they hold in common);

3. The ability to self-govern, through management by a Board comprised of Owner-volunteers, and through the availability of a larger pool of potential candidates to serve on the Board than would otherwise be available; and

4. The ability to reside harmoniously in such close proximity depends, in part, upon a shared understanding of, and commitment to, the duties and obligations arising from the Governing Documents.

9.2.6.3 Influence Of Leasing On Value. The widespread Leasing of Units is believed to conflict with the pursuit of achieving a stabilized community of owner-occupied dwelling Units. The widespread Leasing of Units, among other things, introduces occupancy of a more transient, less committed, nature which:

1. Contributes to a reluctance by lenders to make purchase money loans to potential buyers of Units in condominiums with a significant number of investor-owned Units;

2. Diminishes the sense of community which is fostered by a shared common purpose derived from the perception of shared ownership of a residence;

3. Diminishes the ability to self govern; and

4. Diminishes the self-regulatory benefits of a shared understanding of, and commitment to, the duties which the Governing Documents impose.

9.2.6.4 Restriction On Leasing. No Owner of a Unit acquired after the date of the recording of this Amendment to the Declaration (the "Effective Date") may Lease the Unit for one year after conveyance of the Unit to the Owner, unless the Owner has, prior to Leasing the Unit, requested and been granted a written Waiver of this restriction from the Board pursuant to Section 9.2.6.5 below. In addition, except as provided in Sections 9.2.6.5 through 9.2.6.7 below, no Owner of a Unit may Lease the Unit after the Effective Date if Leasing the Unit would result in more than seven (7) Units in the Condominium being Leased at the same time. No Owner shall own multiple Units whose combined percentage of the Allocated Interests exceeds ten percent (10%) of the Condominium's total Units.

9.2.6.5 Authorization To Grant Waivers. The Board may grant waivers of this Section 9.2.6.4 Restriction On Leasing for up to one year at a time ("a Waiver") where:

1. The Section 9.2.6.4 Restriction On Leasing results in a substantial hardship, not of the Owner's own making, such that a waiver is warranted in view of the Owner's particular circumstances; or

2. An Owner's particular circumstances result in the Owner's temporary absence from a Unit.

9.2.6.6 Exemption For Existing Rental Units. This Section 9.2.6.4 Restriction On Leasing shall not apply to the current Owner of any Unit that is being Leased on the Effective Date, as reflected on the list of such Units attached to this Amendment as Exhibit A, so long as that Owner owns the Unit or until that Owner becomes an Occupant of the Unit.

9.2.6.7 Exemption For Mortgagee In Possession. A Mortgagee that acquires fee title to a Unit may Lease its Unit and shall, in so doing, comply with any rule adopted pursuant to Section 9.2.6.

9.2.6.8 Use Of Waiting List. If an Owner of a Unit that is not exempt from this Restriction On Leasing under Section 9.2.6.6 desires to Lease the Unit at a time when seven (7) or more Units are being Leased, the Owner may place the Unit on a first-come, first-served waiting list to be used when fewer than seven (7) Units are being Leased. An Owner who is Leasing the Owner's Residential Unit shall, upon a Tenant's surrender of occupancy of the Residential Unit at the end the Lease, have up to sixty (60) days from the date occupancy was surrendered within which to commence a Lease of the Residential Unit to a different Tenant. (If the Owner does not intend to Lease the Residential Unit to a different Tenant, the Owner shall promptly notify the Board in writing that, as of a date specified in such notification, the Residential Unit will cease to be Leased.) If the Owner fails to Lease that Residential Unit to a Tenant within the sixty (60) day period, then the Owner's name shall be placed at the bottom of the waiting list. The Association shall then offer the Owner of the Residential Unit next in line on the waiting list sixty (60) days to Lease that Owner's Unit. If that Owner (1) waives its right to Lease at that time by written notice to the Board or (2) fails to Lease that Owner's Unit within the sixty (60) day period, then that Owner's name shall be placed at the bottom of the waiting list. This offer procedure shall then be repeated for the next Owner on the waiting list and shall be repeated until an Owner to whom the offer is extended Leases the Owner's Unit within the allowed sixty (60) day period.

9.2.6.9 Board Authorized To Regulate Leasing. Leasing of Units, to the extent permitted by Article 9, Section 9.2 of the Declaration, impacts the Association as described in Section 9.2.6.3. The Board is hereby authorized to adopt reasonable rules relating to and governing any and all aspects of the Leasing of Units, so as to (1) minimize or manage the impact that Leasing has upon the effective and efficient management of the Association and (2) carry out the

purposes expressed in Section 9.2.6.3. Rules which the Board is hereby authorized to create and enforce include, without limitation, rules:

1. Defining the meaning(s) of terms contained in the Governing Documents relating to the Leasing of Units;
2. Requiring that Lessees be furnished with copies of the Association's Governing Documents; and
3. Requiring Tenant-screening, including, without limitation, establishing the nature of screening required, provided, however, that any such Tenant-screening rule shall (1) require that the Owner, and not the Association, shall be responsible for any required Tenant-screening and (2) provide that the Owner certify to the Association that any required Tenant-screening has been performed, but the Owner shall not be required to submit the results of such screening to the Association.

9.2.6.10 Move-In Move-Out and Processing Fee. Because a Leased Unit experiences more frequent changes in occupancy than does an Owner-occupied Unit, the Board may set a reasonable fee to cover move-in and/or move-out damage to the Common Elements and facilities and to cover Leasing related administrative costs. The Owner of the Leased Unit shall pay the Association such fee prior to the Tenant's move-in.

9.2.6.11 Liability for Damages and Misconduct. An Owner is responsible for the conduct of its Tenant, Occupant, Related Party, guest, invitee and pet. An Owner is liable to the Association for damage and expenses the Association incurs as the result of misconduct by the Owner, Tenant, Occupant, Related Party, family, guest, invitee or pet. The charges for repair or replacement of any damage to the Condominium, the Common Elements, the Limited Common Elements or any Unit in excess of actual insurance proceeds received by, or to be paid to, the Association under the Association's policies of insurance and the expenses the Association incurs as the result of any such misconduct shall (1) be specially assessed to the Unit, (2) be a lien upon the Unit, and (3) be a personal obligation of the Unit Owner and of the Tenant or Occupant who engaged in the misconduct.

9.2.6.12 Enforcement Against Tenants.

9.2.6.12.1 A Tenant or Non-Owner Occupant who, after Notice and an Opportunity to be Heard by the Board in accordance with Section 14.5 of the Declaration, is determined to have violated the Governing Documents on two or more occasions may be evicted.

9.2.6.12.2 When the Board has made a determination as described in Section 9.2.6.12.1 above, the Board shall notify the Tenant or Non-Owner Occupant, and the Owner, of the determination and demand that the violations described in

the determination be remedied within ten days. If the second or subsequent violation has not been remedied within the ten (10) days, the Owner shall immediately commence eviction proceedings.

9.2.6.12.3 If evicting a Tenant, the Owner shall do so through diligent prosecution of an unlawful detainer action. If evicting a Non-Owner Occupant, the Owner shall give notice terminating the tenancy-at-will and give the Non-Owner Occupant thirty (30) days to permanently vacate the Unit, after which time any entry by the Non-Owner Occupant into the Unit or on to the Property shall be a trespass.

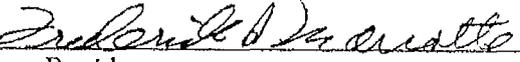
9.2.6.12.4 If the Owner fails to commence eviction proceedings within ten (10) days of becoming obligated by this Article to evict, then the Board shall have the right, but not the duty, to evict the Tenant or Non-Owner Occupant as the Owner's attorney-in-fact. All Owners hereby irrevocably appoint the Association as their attorney-in-fact for purposes of performing evictions described in this Article.

9.2.6.12.5 Eviction by the Board shall be at the Owner's expense, including all attorney's fees actually incurred. The costs of the action, including attorney's fees, shall be a personal obligation of the Owner and of the Tenant or Non-Owner Occupant and shall also be an Assessment secured by a lien on the Unit.

C. 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 of the Association. Except as amended by this instrument, the Declaration shall remain in full force and effect.

Dated this 29th day of October, 2008.

BARCLAY COURT OWNERS ASSOCIATION

By 
President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 29 day of OCTOBER, 2008, personally appeared before me FREDERICK MARCOTTE who furnished satisfactory evidence that he/she is the President of the Barclay Court Owners Association, the non-profit corporation that executed the instrument above, and who acknowledged it to be the free and voluntary act of the Association for the uses and purposes mentioned within it, and who on oath stated that he/she was authorized to execute the instrument.

Dated 10/29, 2008.

Jasbiran Singh Ghuman
Notary Public in and for the State of Washington.
My Appointment Expires MARCH 17, 2012
Print/type name JASBIRAN SINGH GHUMAN.



EXHIBIT "A"

The following Units were being Leased as of the Effective Date of this Amendment:

204
404
406
407
409

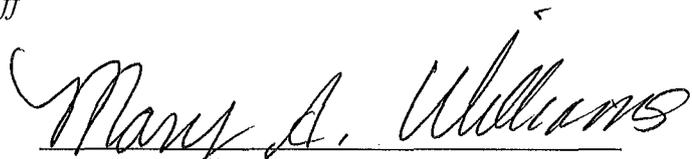
CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 30th day of March, 2015, I arranged for service *via email (pursuant to the parties' written agreement)* the foregoing APPELLANT BARCLAY COURT OWNERS ASSOCIATION'S OPENING BRIEF to the parties to this action as follows:

Matthew D. Hartman
Impact Law Group PLLC
1325 Fourth Ave., Ste. 1400
Seattle, WA 98101
Email: matt@impactlawgroup.com
Attorney for Plaintiff

Carolyn Robbs Bilanko
Bracewell & Giuliani LLP
701 5th Ave., Ste. 6200
Seattle, WA 98104
Email: Carolyn.bilanko@bgllp.com
Attorney for Plaintiff

Jeffrey E. Bilanko
Gordon & Rees LLP
701 5th Ave., Ste. 2100
Seattle, WA 98104
Email: jbilanko@gordonrees.com
Attorney for Plaintiff



Mary A. Williams