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SUPREME COURT OF THE STATE OF WASHINGTON

CAROLYN ROBBS BILANKO, an individual,

Plaintiff/Respondent,

v.

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

Defendant/Appellant.

APPELLANT BARCLAY COURT OWNERS ASSOCIATION'S SUPPLEMENTAL BRIEF

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This Court in *Filmore LLLP v. Unit Owners Association of Centre Pointe Condominium*, No. 90879-6 (September 3, 2015) ("*Filmore*"), decided a dispute between a condominium unit owners association and a builder who owned condo units regarding an amendment to restrict leasing of the condo units. This Court affirmed invalidation of the leasing restriction on fact-specific grounds because: (1) the declaration applied a 90% supermajority requirement to any amendment changing "use" and (2) the declaration treated restrictions on leasing as a "use." *Filmore* at 5-6.

Barclay Court's Declaration is different. It commands a different result if this Court reaches the issue. Barclay Court first has argued its Declaration or the Condo Act each provide a time-bar to this challenge. If the Court holds the lawsuit time-barred, it need not reach other issues. If the Court reaches the merits, it should reject the challenge on these facts.

A. The leasing restriction amendment is valid because—unlike the declaration in *Filmore*—Section 25.2.1(k) of the Declaration specifically requires 67 percent approval to impose leasing restrictions

Unlike in *Filmore*, this Declaration expressly dictates that the "imposition of any restriction on leasing" requires 67 percent approval. CP 194 at 25.2.1(k).[1] This makes the analysis under the Declaration simple.

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[1] Section 25.2.1 states: "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

"It is a well-known principle of contract interpretation that 'specific terms and exact terms are given greater weight than general language.'" *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 354 (2004). In accordance with its Declaration, Barclay Court properly adopted the amendment imposing restrictions on leasing by a 67 percent majority of its members.

The declaration at issue in *Filmore* did not contain this specific provision. The cases are distinguishable on these significant facts.

Section 25.2.1(k) is harmonious with Section 9.2 of the Declaration, which addresses "Leases" independently of Section 9.1 "Residential Use, Timesharing Prohibited." CP 166. Sections 25.2.1(k) and 9.2 work together to regulate leasing. The amendment at issue does not outright ban leasing; it only "restricts" leasing. CP 205.

Because the amendment restricting leasing is governed by Section 25.2.1(k), the amendment was adopted by the proper percentage of votes under the Declaration.

B. The leasing restriction also is not a change of "use" under Barclay Court's Declaration, which has different provisions and a different structure than the declaration in *Filmore*

Barclay Court's Declaration also differs from the declaration in *Filmore* because it does not treat leasing as a "use." Under this

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any restrictions on leasing of Units[.]" CP 194.

Declaration, imposition of leasing restrictions is not a change of "use."

In Article 9, "PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES," Barclay Court's Declaration restricts units to "residential uses" at Section 9.1. CP 165. This Section 9.1 "Residential Use; Timesharing Prohibited" does not address leasing as a separate type of "use." Section 9.1 instead specifies that the Condominium is "restricted primarily to residential uses, on an ownership, rental or lease basis." *Id.* (emphasis added). This Section permits residential uses. Its reference to "an ownership, rental, or lease basis" is not a reference to the "use" of the property, but to different types of occupancy arrangements consistent with the Condo Act.[2] In a separate and co-equal provision—not as a subset of Section 9.1 addressing Residential Use—the Declaration addresses "Leases." Other sections in Article 9 address a range of topics also in separate and co-equal provisions (e.g. Section 9.8 "Pets" and Section 9.10 "Trash Removal"). The separate headings "Residential Uses" and "Leases" are incompatible with the conclusion that leasing is a "use" under this Declaration. They are different.

Section 9.2 nowhere references "use." Section 9.2 addresses leases

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[2] The Condo Act requires that the Declaration address not only "use," but also "occupancy" and "alienation" of the units. *See Opening Brief* 38 citing RCW 64.34.216(1)(n) (declaration must contain "[a]ny restrictions in the declaration on use, occupancy or alienation of the units....").

and regulates how an owner may lease a unit, including requirements such as screening tenants and providing written leases to the Association, and how the Board shall deal with tenants who violate Association rules. CP 166. Section 9.2 specifies that only "as stated in this Section" is there any restriction on an Owner's right to lease. *Id.* Section 9.2 is independent of Section 9.1, not a subset of it. According to this structure—different than in *Filmore*—Section 9.2 is intended to exclusively regulate leasing; Section 9.2 controls the Amendment, which states "restrictions" on leasing by deleting Section 9.2 and replacing it. CP 205.

This structure and content of the Declaration contrasts with the declaration in *Filmore*. In *Filmore*, the Court was persuaded that the drafters intended that "leasing" was a "use" because "Lease Restrictions" were addressed as a subset of "Permitted Uses." *Filmore Opinion* at 5. In *Filmore*, Article IX "PERMITTED USES; ARCHITECTURAL UNIFORMITY" contains only two sections: "9.1 Permitted Uses" and "9.2 Architectural Uniformity." "Section 9.1 Permitted Uses" has as a subset "9.1.14 Lease Restrictions." This Court stated, "The positioning of section 9.1.14 within the section 9.1 'Permitted Uses' heading indicates that, for the purposes of this Declaration, a provision on leasing is one restricting the 'use' of a unit—an amendment that requires a 90 percent vote under section 17.3." *Id.* Barclay Court's Declaration does not have

this same structure. Leasing is not a subset of "use." The intent of the drafters was different.

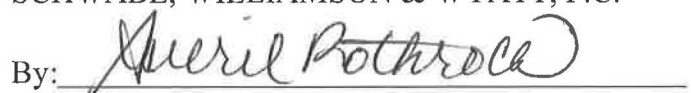
Barclay Court's Article 9 is more consistent with the Condo Act than is the declaration in *Filmore*. The Legislature treated differently "permitted uses and use restrictions pertaining to the units" from "restrictions, if any, on the renting or leasing of units by the declarant or other unit owners." *See Opening Brief* 37-39 citing RCW 64.34.410(1)(g), (h); RCW 64.34.216(1)(n). These provisions in the Condo Act show that "permitted use and use restrictions" are different than "restrictions on the renting or leasing of units." The Declaration tracks these differences.

CONCLUSION

Barclay Court's Declaration requires 67 percent approval to adopt an amendment restricting the number of units that can be leased at one time. Barclay Court's Declaration also does not treat leasing as a "use." On these facts, this Court should reach a different result than it did in *Filmore*. The Court should reverse the trial court's judgment, find the Amendment valid, and direct judgment to Barclay Court.

Respectfully submitted on this 12th day of October, 2015.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

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APPENDIX - A

FILE
IN CLERKS OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE SEP 03 2015
Madsen, C.J.
CHIEF JUSTICE

This opinion was filed for record
at 8:00AM on Sept. 3, 2015
Ronald R. Carpenter
Supreme Court Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILMORE LLLP, a Washington limited liability limited partnership,	)	
Respondent,	)	No. 90879-6
v.	)	En Banc
UNIT OWNERS ASSOCIATION OF CENTRE POINTE CONDOMINIUM, a Washington nonprofit miscellaneous corporation,	)	
Petitioner.	)	Filed SEP 03 2015

GONZÁLEZ, J.—We are asked whether amending a particular condominium declaration to provide that only a certain percentage of condominium units may be leased is an amendment that changes "the uses to which any unit is restricted," which requires special supermajority approval under RCW 64.34.264(4) and the declaration. We find that the amendment does change "the uses to which any unit is restricted" under this particular declaration because the declaration provides that leasing is a use, and, therefore, special supermajority approval was required for the amendment.

Because the amendment did not receive the required special supermajority approval, we find that the amendment is not valid and affirm the courts below.

FACTS

Centre Pointe Condominium is a residential condominium complex in Bellingham, Washington. The Unit Owners Association of Centre Pointe Condominium (Centre Pointe) was formed in May 2003 by a declaration of condominium (Declaration) recorded in Whatcom County.

The Washington Condominium Act (WCA), chapter 64.34 RCW, governs condominium complexes created after July 1, 1990. *Shorewood W. Condo. Ass'n v. Sadri*, 140 Wn.2d 47, 49, 52, 992 P.2d 1008 (2000) (citing RCW 64.34.010). Under RCW 64.34.264(1), a condominium declaration may be amended by the vote or agreement of owners to which at least 67 percent of the votes are allocated. RCW 64.34.264(4), however, provides an exception to that general rule, requiring the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least 90 percent of the votes are allocated for an amendment that "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*." (Emphasis added.)

The Declaration mirrors the WCA scheme and language. Section 17.1 of the Declaration provides that a 67 percent vote is generally sufficient to amend the Declaration, in line with RCW 64.34.264(1). Clerk's Papers (CP) at 68. Section 17.3

mirrors RCW 64.34.264(4), requiring "the vote or agreement of the Owner of each Unit particularly affected and his or her Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated" for certain changes, including any change to "the uses to which any Unit is restricted." *Id.* at 69. Although RCW 64.34.264(1) and (4) establish the minimum voting percentage required for certain declaration amendments, the declaration itself can provide for higher percentages. *See* RCW 64.34.264(1).

A clubhouse and three residential buildings with 97 units of the Centre Pointe complex were built prior to 2011. In May 2011, Filmore LLP bought an unfinished portion of the Centre Pointe complex and all related development and special declarant rights. Filmore's property is part of the Centre Point complex and subject to its Declaration. Section 9.1.14 of the Declaration provides that there is "no restriction on the right of any Unit Owner to lease his or her Unit" other than the restrictions described in section 9.1.14. CP at 55. Nothing in section 9.1.14 limits the number of units that may be leased.

In October 2011, owners of Centre Pointe units to which at least 67 percent (but less than 90 percent) of the votes in Centre Pointe were allocated approved the 12th amendment to the Declaration, requiring that no more than 30 percent of the total number of units could be leased. In October 2012, Filmore filed a complaint in Whatcom County Superior Court alleging that the Declaration's Twelfth Amendment violated RCW 64.34.264(4) and section 17.3 of the Declaration because the 12th

amendment was not passed with 90 percent of the eligible votes, requesting that the 12th amendment be found void and unenforceable. The trial court granted CR 56 summary judgment in favor of Filmore on February 8, 2013, finding that the 12th amendment is void because it was not passed with 90 percent of the eligible votes. The Court of Appeals agreed in a published opinion. *Filmore LLLP v. Unit Owners Ass'n of Centre Pointe Condo.*, 183 Wn. App. 328, 331 P.3d 498 (2014). We granted Centre Pointe's petition for review. Order No. 90879-6 (Wash. Mar. 4, 2015).

ANALYSIS

Our review is de novo. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002) (de novo review of summary judgment orders) (citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)); *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003) (de novo review of statutory interpretation) (citing *City of Pasco v. Pub. Emp't Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992)). Additionally,

> [a] condominium declaration is like a deed, the review of which is a mixed question of law and fact. *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 567, 571-72, 716 P.2d 855 (1986) (citing *Veach v. Culp*, 92 Wn.2d 570, 573, 599 P.2d 526 (1979)). The factual issue is the declarant's intent, which we discern from the face of the declaration. *See id.* The declaration's legal consequences are questions of law, which we review de novo.

Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

The vote or agreement of the owner of each unit particularly affected and the owners of units to which at least 90 percent of the votes are allocated must agree on

any declaration amendment that changes "the uses to which any unit is restricted" under RCW 64.34.264(4) and Section 17.3 of the Declaration. The word "use" is not defined in the WCA. "'When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning.'" *Lake*, 169 Wn.2d at 528 (quoting *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010)). Dictionary definitions, however, are not dispositive here because "use" is broadly defined in in the dictionary to include "the legal enjoyment of property that consists in its employment, occupation, exercise, or practice," WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2523 (2002), and also "[t]he application or employment of something," BLACK'S LAW DICTIONARY 1775 (10th ed. 2014).

But we need not interpret the WCA here because, in contrast to RCW 64.34.264(4), the Declaration itself identifies a number of "uses" that come within the special supermajority voting requirement in section 17.3. Under the Declaration's article IX, "Permitted Uses; Architectural Uniformity" and section 9.1, "Permitted Uses," section 9.1.14 provides, "Lease Restrictions." CP at 52-55. The positioning of section 9.1.14 within the section 9.1 "Permitted Uses" heading indicates that, for the purposes of this Declaration, a provision on leasing is one restricting the "use" of a unit—an amendment that requires a 90 percent vote under section 17.3. *Id.* This interpretation is bolstered by the fact that section 9.1.14 also provides that there is "no restriction on the right of any Unit Owner to lease his or her Unit" other than the

restrictions set forth in Section 9.1.14, such as that "[a]ll leases shall be in writing" and "[n]o lease shall have a term of less than one year," and nothing in section 9.1.14 limits the number of units that may be leased. *Id.* at 55. In other words, even if leasing is not a "use" under RCW 64.34.264(4), it is one under the language of the Declaration that is subject to section 17.3's special supermajority amendment process. We resolve this case exclusively on that basis.

Given that leasing is a "use" under this Declaration, a 90 percent supermajority was required to agree on any Declaration amendment that restricted leasing under RCW 64.34.264(4) and section 17.3 of the Declaration. Ninety percent supermajority approval was not received. Therefore, the 12th amendment is not valid.

CONCLUSION

We find that the declaration amendment restricting leasing is not valid because it purported to change "the uses to which any unit is restricted" without the requisite 90 percent supermajority approval. We find that the amendment is therefore invalid and affirm the courts below.

González, J.

WE CONCUR:

Madsen, C.J.

Stephens, J.

Johnson, J.

Wiggins, J.

Owens, J.

Gordon McCloud, J.

Fairhurst, J.

Yu, J.

APPENDIX - B

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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.

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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.

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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 G; 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

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

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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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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 12th day of October, 2015, I arranged for service *via email (pursuant to the parties' written agreement)* of the foregoing APPELLANT BARCLAY COURT OWNERS ASSOCIATION'S SUPPLEMENTAL BRIEF to the parties to this action as follows:

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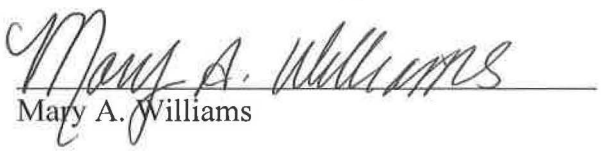

Mary A. Williams

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