

**DECLARATION**

**FOR**

**SORRENTO**

**CONDOMINIUMS**

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Declarant, its successors and assigns, by this declaration, and all future Unit Owners by their acceptance of individual deeds, covenant as follows.

**ARTICLE I. OWNERSHIP OF PROPERTY**

The undersigned Declarant has entered into an agreement with Dealer pursuant to which Dealer will acquire Lots in Phases, construct Units thereon, and convey such Units to the Condominium as part of the formation thereof or continued conveyance of Units thereto. Declarant and Dealer join in the subjecting or conveying the Real Property described in Exhibit I hereof, inclusive of the Lots in Phase I and all Lots which may subsequently be made subject to Condominium by way of exercise of Special Declarant Rights.

**ARTICLE II. DESCRIPTION OF PROJECT**

Declarant and Dealer have improved or intend to improve the Real Property by constructing thereon up to thirty residential duplexes containing sixty Units which will be constructed in one or more phases as hereinafter described. Such Units will be constructed in accordance with survey map and Plans prepared by Declarant. Attached hereto as Exhibit II is a survey consisting of 1 numbered sheets, 4 through     , inclusive dated 1-17-95. The initial condominiums consist of five lots, 16, 19, 24, 15 and 26, containing 10 condominium units.

**ARTICLE III. DEFINITIONS**

3.1 "Allocated Interests" means the undivided interests in the Common Elements, the common expense liabilities, and the votes in the Association allocated to each Unit.

3.2 "Articles" shall mean the Articles of Incorporation for Sorrento Condominium Association.

3.3 "Assessment" means all sums chargeable by the Association against a Unit, including, without limitation: (a) regular and special assessments for common expenses, and charges and fines imposed by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorney's fees, including those for appeals, incurred by the Association in connection with the collection of a delinquent Unit Owner's account.

3.4 "Association" means the Sorrento Condominium Association.

3.5 "Board" means the Board of Directors of the Sorrento Condominium Association.

3.6 "By-Laws" shall mean the By-Laws of the Sorrento Condominium Association.

3.7 "Common Elements" means all portions of the Condominium other than the Units, including, without limitation, the right to an undivided interest in those areas identified on the Plat as common areas or private roads whether directly or by the Sorrento Condominium Association's ownership of interests as a member of the Sorrento Home Owners Association through the Association.

3.8 "Common Expenses" means expenditures made by, or financial liabilities of, the Association together with any allocations to reserves.

3.9 "Common Expense Liability" means the liability for common expenses allocated to each unit pursuant to this Declaration.

3.10 "Condominium" means the Real Property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions.

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

3.12 "Conveyance" means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract, and with respect to a Unit in a Leasehold Condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

3.13 "Dealer" means Hamilton/Martin, Inc. and any person who acquires the lesser of one-half of the Units in the Condominium at any time or six Units for resale to persons who acquire such Units for residential purposes.

3.14 "Declarant" shall mean Sellaronda Associates.

3.15 "Declarant Control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors or to veto a proposed action of the Board or Association.

3.16 "Declaration" means this Declaration and any amendments thereto.

3.17 "Development Rights" means any right, if expressly reserved by the Declarant in this Declaration to (a) add Real Property or improvements to the Condominiums; (b) create Units, Common Elements, or Limited Common Elements within Real Property included or added to the Condominium; (c) to divide units or convert Units into Common Elements; (d) withdraw Real Property from the condominium; or, (e) to reallocate Limited Common Elements with respect to Units that have not been Conveyed by Declarant.

3.18 "Eligible Mortgagee" means the holder of a mortgage on a Unit who has filed with the Secretary of the Association a written request that the holder be given copies of notices of any action by the Association that requires the consent of mortgagees.

3.19 "Foreclosure" means a forfeiture or judicial or non judicial foreclosure of a mortgage, deed of trust, or real estate contract, or a deed in lieu thereof.

3.20 "General Common Elements" are Common Elements consisting of streets, gutters, sidewalks, parks, open spaces whether or not developed with recreational improvements, sewers, and utilities lines and hookups which are incorporated into the Condominium but which serve Phase I and all Subsequent Phases thereof whether or not such Subsequent Phases are ever incorporated into the Condominium, including, without limitation, the right to an undivided interest in those areas identified on the Plat as common areas or private roads whether directly or by the Sorrento Condominium Association's ownership of interests as a member of the Sorrento Home Owners Association through the Association, subject only to a duty on the part of such Subsequent Phases to the extent they are not incorporated therein to pay a proportionate part of the Common Element charges associated with the Common Elements as allocated pursuant to this Declaration.

3.21 "Identifying Number" means a symbol or address that identifies only one Unit in the Condominium.

3.22 "Interior Surfaces" means the interior face of interior walls within Units, exclusive of paint, wallpaper, paneling, carpeting tiles, finish flooring, and other such decorative or finished surface coverings which decorative and finish covering, along with fixtures and other tangible personal property (including furniture, planters, mirrors, and the like), located in and used in connection with said Unit or Limited Common Element, shall be deemed a part of such Unit or Limited Common Element, as the case may be.

3.23 "Institutional Holder" means a mortgagee which is a bank, or savings and loan association, or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which lends money to or buys obligations of purchasers of residential real estate as one of its businesses.

3.24 "Limited Common Elements" means a portion of the Common Elements allocated by the Declaration or by operation of the Act for the exclusive use of fewer than all Units.

3.25 "Lot" means a described separate parcel of real estate within the Real Property upon which a duplex containing two Units may be constructed which Lots may be included in the Condominium.

3.26 "Manager" means the person designated by Declarant or Board to manage the Condominium.

3.27 "Mortgagee" means the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Unit created by a mortgage or deed of trust, and, except as otherwise herein set forth, shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Unit, or in each case an institutional or governmental guarantor of such a mortgage, deed of trust or real estate contract.

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

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

3.30 "Phase" means a segregated group of Lots determined without regard to the inclusion thereof in the Condominium with Common Elements within the Real Property upon which Units may be constructed which will contain upon the completion of construction ten Units which will be constructed and offered approximately simultaneously, and which are numbered as projected Phases, I through VI, inclusive.

3.31 "Phase I" means the Lots contained in the first Phase, all of the Units with respect to which will be included initially within of the Condominium, which Phase I Lots are described on Exhibit 3.31 hereto.

3.32 "Plat" means the Plat filed of record with the Auditor's Office for Thurston County for and in connection with

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the subdivision of which Sorrento Condominium is a part and identified more particularly as SORRENTO.

3.33 "Property" shall mean the land, the buildings, and all improvements and structures now or hereinafter placed on the land described on Exhibit "I."

3.34 "Purchaser" means any person, other than Declarant who, by means of a Conveyance, acquires a legal or equitable interest in a Unit other than: (a) a leasehold interest, including renewal options, of less than twenty (20) years at the time of creation of the Unit; or (b) as security for an obligation.

3.35 "Real Property" means any fee, leasehold, or other estate interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights, and interest pertinent to which by custom, usage, or law, pass with a conveyance of land although not described in the contract of sale or instrument of conveyance which is described in Exhibit I and, without limiting the generality of the foregoing, includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water and the right to an undivided interest in those areas identified on the Plat as common areas or private roads whether directly or by the Sorrento Condominium Association's ownership of interests as a member in the Sorrento Home Owners Association through the Association.

3.36 "Residential Purposes" means use for dwelling purposes.

3.37 "Sale," "Transfer," or "Lease" means a voluntary or Conveyance to a purchaser or lessee of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest or any transfer or conveyance by Declarant to Dealer.

3.38 "Sorrento Home Owners Association" means the not for profit corporation organized under the Washington not for profit corporations act which owns certain of the common areas identified in the Plat and in which membership is based upon ownership of lots identified in the Plat including lots which are incorporated into the Condominium.

3.39 "Special Declarant Rights" means rights, as expressly reserved in the Declaration for the benefit of the Declarant to (a) complete improvements indicated on survey maps and plans filed with the Declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236 and Article VI hereof; (c) maintain sales offices, management offices, signs advertising the Condominium, and models under RCW 64.34.236 and

Article XXXIV; (d) use easements through the Common Elements for the purposes of making improvements within the Condominium or within real property which may be added to the Condominium under RCW 64.34.260; (e) make the Condominium part of a larger Condominium or development under RCW 64.34.280; (f) make the Condominium subject to a master association or RCW 64.34.276; (g) appoint or remove any officer of the Association or any master association or any member of the Board of Directors during any period of Declarant control under RCW 64.34.308(4) Article XXXIV.

3.40 "Subsequent Phase" means any Phase from the Real Property other than Phase I whether created as of the date hereof or hereafter from the Real Property described on Exhibit 3.40 hereto with respect to which Development Rights are reserved to the Condominium pursuant to RCW 64.34.236, RCW 64.34.260 and Article VI. All of the Real Property whether ultimately made part of the Condominium and whether included in Phase I or any Subsequent Phase shall have the right to use and be subject to assessment for General Common Elements as of the date a duplexes are first constructed on any Lots which are a part thereof on an as built basis.

3.41 "Subsequent Phase Amendment" means an amendment to this Declaration recorded by the Declarant adding all or a portion of the Subsequent Phase Property and creating Units Limited Common Elements, or Common Elements thereon pursuant to RCW 64.34.236, RCW 64.34.260, and Article VI.

3.42 "Subsequent Phase Property" means the Real Property other than that described in Exhibit 3.31 which is more particularly described in Exhibit 3.42 hereto, as it may from time to time be amended upon the recording of a Subsequent Phase Amendment pursuant to RCW 64.34.264 and Article VI, including, without limitation, interests as tenant in common in Common Areas identified in the Plat and membership interests in the Sorrento Home Owners Association as such interests are transferred to the Association or the Unit Owners.

3.43 "Survey Map and Plan" shall mean the Survey Map and Plans recorded under Thurston County Auditors Fee No. 950606013 which is recorded simultaneously with this Declaration.

3.44 "Transition Date" means the date upon which the period of Declarant Control terminates as determined in RCW 64.34.312 and Article XIV.

3.45 "Unit" means a physical portion of the Condominium designated for separate ownership in fee simple, the boundaries of which are described in RCW 64.34.216(1)(d) and this Declaration, including, without limitation, Units held by Unit

Owners and Units otherwise held by Hamilton/Martin, Inc., Builder, Declarant, developer or any affiliate thereof.

3.46 "Unit Owner" means a Declarant to the extent Declarant retains any Unit for purposes other than sale or use as a model in connection with selling Units or any other person who owns a Unit, either legally, beneficially, or in fee, but does not include a person who has an interest in the Unit solely as security for an obligation.

#### **ARTICLE IV. CONSTRUCTION AND VALIDITY**

4.1 **Severability.** All provisions of the Declaration and Bylaws are severable.

4.2 **Denial of Rule against Perpetuities.** The rule against perpetuities may not be applied to defeat any provision of the Declaration, By-laws, rules or regulations adopted pursuant to RCW 64.34.304 (1) (a).

4.3 **Conflict of Language.** In the event of a conflict between the provision of the Declaration and the By-laws, the Declaration prevails, except to the extent that the Declaration is inconsistent with the Article V.

4.4 **Insignificant Errors.** The creation of this Condominium shall not be impaired and title to the unit and the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the Declaration or Survey Map and Plan or any amendment.

#### **ARTICLE V. NAME OF CONDOMINIUM**

The name of the Condominium created by this Declaration and the Survey Map and Plans is Sorrento Condominium.

#### **ARTICLE VI. DESCRIPTION OF REAL PROPERTY**

The Real Property as described in Exhibit I hereto includes Lots which are initially part of the Condominium and Lots which may be subject thereto by exercise of Special Declarant Rights. Prior to the Conveyance of any of the Real Property (other than Common Elements) to the Condominium, it will be conveyed by Declarant to Dealer. Actual Conveyance of the Units and associated Real Estate to the Condominium will be made by Declarant and Dealer as their respective interests appear and title to the interests of each which is or will be transferred to the Condominium will be in fee simple. A collective description of that part of the Real Property included in Subsequent Phases which are projected to be Phases II through VI hereof is described on Exhibit 3.40. Until the first Unit is sold from any Phase, all of the Real Property

within that Phase may be excluded or removed from the Condominium at the election of Declarant in a manner consistent with Article VI hereof. To the extent the Real Property allocated to any Phase is excluded or removed from the Condominium, Declarant shall grant easements to portions thereof which would have been Common Areas other than Limited Common Areas for all purposes for which such Common Areas could have been used if the Phase had not been removed from the Condominium and shall be entitled to a like easement over all Common Areas in Phases included within the Condominium as if such Phase was, in fact, included therein. Declarant or Dealer, whichever is vested in the Lots, or assigns and the Association shall pay a proportionate part of the costs associated with such Common Areas, whether in the withdrawn Phase or in the Phases included within the Condominium based upon the number of residential units served by same to the total number of such residential units. The amount of the assessment shall be established jointly by the Association or Board on the one hand and a representative of the residential units or Lots which are not part of the Condominium which in each case are served by the easement. In the event of any dispute regarding allocation of cost, the dispute resolution procedure set forth in Article XXIX hereof shall control.

#### **ARTICLE VII. DECLARANT'S RIGHT TO AMEND PHASES**

7.1 **Description of Real Property and Improvements.** This Condominium consists of the Real Property and Units to be constructed thereon identified as Phase I together with the Common Elements which will serve same. The Phase I Real Property is described on Exhibit 3.31 hereto. Supplemental thereto, Development Rights are reserved with respect to the Real Property described in this Condominium which will be developed and established in more than one Phase. A description of the Lots, including a description of the real property on which the Condominium Units related thereto will be located, subject to the preceding sentence is attached hereto as Exhibit 3.42. This Declaration provides: a description of the land within all Phases; and the Units and Common Element improvements for Phase I; and the survey map and plans, filed simultaneously herewith, which includes, certified as built with respect to Phase I, a survey of the surface of Phase I land, the location of each Phase I Unit or Common Element improvement, and, the plans of the Phase I Common Element improvements and Units showing as to each unit in Phase I the vertical and horizontal boundaries, the location of all such Units, and the number and dimensions of all such Units. The provisions regarding Phase I shall be effective immediately to establish Phase I as a Condominium under the Act. The provisions regarding subsequent Phases merely amend the Declaration as to such Phases and do not establish separate Condominiums with respect thereto. All such Units and Common



Element improvements in any Phases are a part, of and are incorporated into the Condominium, except to the extent that Declarant exercises a Development Right to withdraw any Phase prior to the completion and sale of any Unit within such Phase. The addition of any Phase to or the withdrawal thereof from the Condominium shall be effective upon Declarant's recordation of an amendment to the Declaration, and, where necessary to the Survey Map and Plan, pursuant to the terms hereof.

**7.2 Addition of Subsequent Phase.** For each Subsequent Phase following Phase I, the Declarant shall execute and record an amendment to this Declaration incorporating such Subsequent Phase (including the Subsequent Phase Real Property, and all Units, and other improvements thereon to the extent not hereinbefore identified as Common Elements or improvements thereon) as a part of the Condominium and removing said Subsequent Phase from Real Property subject to Development Rights. From and after the recording of said amendment, all of the Real Property within Phase I and within such Subsequent Phase for which such amendment has been recorded, together with all Units, and other improvements thereon, shall constitute the Condominium pursuant to the Act and provisions of this Declaration.

**7.3 Content of Amendments.** In conjunction with said amendment to the Declaration, an updated or revised Survey Map and Plan, or the affected component thereof shall be filed if the previous Survey Map and Plan filed affecting or describing said subsequent phase lack required detail, certification or other matters required under the Act. The Declarant is the Unit Owner of any Units thereby created. The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The Common Elements thereby created and, in the case of Limited Common Elements, designate the Unit to which each is allocated to the extent required by RCW 64.34.228. Development Rights may be reserved within any Subsequent Phase and the Real Property associated therewith which is added to the Condominium if the amendment adding such Subsequent Phase with associated Real Property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the Survey Map and Plan include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of Development Rights imposed by this Declaration.

**7.4 Withdrawal Right.** Declarant may elect to withdraw any Subsequent Phase and the Real Property associated therewith and any Units or Common Elements located thereon at any time prior to the conveyance of the first Unit to be conveyed in that Subsequent Phase. Such withdrawal shall be effective as provided in Section 7.2 hereof and shall be executed by

amendments containing the information required by Section 7.3 hereof.

**7.5 Common Elements.** All Common Elements regardless of location will be subject to use and the expense thereof will be borne by all Unit Owners of Units in all Phases effective, in each case, when each Subsequent Phase is incorporated into the Condominium. The preceding sentence shall be subject to the limitations applicable to Limited Common Elements and further subject to the burdens and costs of General Common Elements.

**7.6 Completion.** Declarant or Dealer will complete the Units and other improvements on Subsequent Phases in accordance with the plans prepared from time to time by or for Declarant and as approved from time to time by governmental authorities having jurisdiction thereof and by the lender or lenders financing the construction of the Units or other improvements on Subsequent Phases. Units and other improvements within Subsequent Phases will be reasonably consistent with Units and other improvements in prior Phases in terms of quality of construction and general consistency of design with the overall design scheme for the Condominium. Declarant will use reasonable efforts to pursue Completion of the Units and other improvements on Subsequent Phases as promptly as marketing, financing general economic conditions or specific conditions affecting the construction, financing, or sale of such Units or other improvements justify in Declarant's sole discretion. All Units or other improvements for each Subsequent Phase will be substantially completed before such Subsequent Phase is incorporated into the Condominium. Nothing contained herein shall bind Declarant to include any Subsequent or to restrain Declarant from withdrawing any Subsequent Phase from the Condominium as long as Declarant exercises rights with respect thereto consistent with Special Declarant Rights or Development Rights described herein.

**7.7 Allocated Interests.** Allocated Interests shall be calculated on the basis of the number of Units in the Condominium at any time, determined as of the date specific Units are incorporated therein. Assessments shall be levied against on the basis of Allocated Interests as set forth in the preceding sentence. Reallocations of Allocated Interests required incident to the addition of Units to the Condominium shall be made in accordance with Article 11 hereof. A Unit in any Phase shall be incorporated into the Condominium effective when such Unit is first Conveyed to a Unit Owner regardless when such Phase is first conveyed into the Condominium. Prior to such incorporation, the Allocated Interest associated with such Unit shall be treated in the same manner as Real Property which is not part of the Condominium but which is served by General Common Elements and is subject to charges with respect thereto. Declarant or Board may upon the incorporation of any

one or more Units into the Condominium, based on the reallocation of Allocated Interest, recompute the budget and the Assessments, and impose such revised Assessments. The provisions hereof are expressly subject to special allocations of costs with respect to General Common Elements which may affect Real Property which is not incorporated into or is withdrawn from the Condominium.

**7.8 Easements for Phased Developments.**

7.8.1 In addition to the general easements reserved by statute and by reference in other sections of this Declaration, there is reserved a non-exclusive easement in, over and across the Phase I Real Property for the benefit of the Lots or improvements constructed thereon which have not been incorporated into the Condominium and across the Real Property for the benefit of the Condominium and any Lots incorporated therein or Units constructed thereon. The easements described in the first sentence hereof shall be for all purposes for which General Common Elements may be used, for activities of Declarant in connection with the design, development, construction, disposition, or operation of Units or other improvements on Real Property within the Condominium or the Lots or other Real Property not within the Condominium but which is within the Real Property described in Exhibit I for right of ingress and egress over such General Common Elements, and for any other purpose identified in subsection 7.8.2 hereof. The dominant estate with respect to each easement provided herein shall be subject to assessment for the costs of maintaining and improving such easements as otherwise provided in this Article VII. All such easements shall run with the Real Property.

7.8.2 The easements reserved under this Section shall entitle the Declarant (and Declarant's heirs, successors, assigns) and the dominant estate, in each case, for development of each Subsequent Phase of the Condominium, or for development and utilization of the Real Property which is a part of the Condominium or is subject at any time to Development Rights with respect thereto, regardless whether such Real Property or any part thereof is ever included in the Condominium: to tie into water, sewer, storm sewer, electrical, gas, telephone or other utility lines of all varieties; to connect with roadways or utility systems developed and emplaced in the completed Phases of the Condominium; and, to utilize any open spaces whether improved with recreational facilities developed in completed phases of the Condominium.

7.8.3 As to the Real Property which is subject to a Development Right, Declarant shall bear the cost of tie-ins to said utilities and roads and will not connect with said utilities in a manner that impairs or significantly reduces the

quality of the utility service to the Real Property now or hereafter included within the Condominium; provided, that if said tie-ins cause an increase in the cost of delivering affected utility services to the Real Property within the Condominium, that cost shall be borne by the Declarant or by the Real Property served by such services until such time as such Real Property is included in the Condominium.

7.8.4 Any Real Property subject to a Development Right which is not developed as a Subsequent Phase of the Condominium and which utilized and benefits from General Common Elements or an easement described in this Section 7.8, or the utility, roadway easements and recreational facility reserved to Declarant hereunder, shall, pursuant to an irrevocable covenant running with the land, be obligated to pay a pro rata share (based on relative number of residential units) of the costs of subsequent repairs, maintenance and operation of said utilities, roadways, and easement. Such share shall be determined on the same basis upon which similar costs are allocated among Unit Owners in the Condominium.

7.8.5 Declarant (and Declarant's heirs, successors and assigns, including, without limitation, Dealer) shall have a non-exclusive easement to construct and maintain (at any time and at the sole cost and expense and at the sole discretion thereof at such locations which are now or hereafter within the Condominium such signs as may be necessary or appropriate for the identification of the name, location and direction, and for the sale or renting of Units, residences, or other improvements regardless of whether such Units, residences, or other improvements are located within the Condominium as long as such Real Property was located either within the Condominium or was subject to Development Rights before or at the time thereof.

7.9 **Declarant's Easements.** Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights or development rights, whether arising under the Act or reserved in the Declaration. Such easement shall run with the land and shall be in favor of any person who otherwise assumes Declarant's duties either in whole or part.

7.10 **Liens Arising in Connection with Phases.** At the time the amendment incorporating a Subsequent Phase into the Condominium is made, no lien arising in connection with the Declarant's ownership of, and construction of improvements upon any Real Property located in such Subsequent Phase will adversely affect the rights of Unit Owners or the priority of first mortgages on Units other than those retained by Declarant. All taxes, assessments, mechanics liens, and other charges affecting Real Property subject to Development Rights prior to

the incorporation thereof within the Condominium shall be paid by Declarant.

**7.11 Withdrawal of Subsequent Phases.** At any time prior to the conveyance of a Unit in any Phase which has been incorporated into the Condominium, Declarant shall have a Development Right to withdraw the Real Property within such Phase from the Condominium or to decline to record any amendments to the Declaration necessary to incorporate such Phase and the Real Property within such Phase into the Condominium. To effect the foregoing, Declarant, upon its sole signature and without further consent of any of the other Unit Owners, may file such amendment to this Declaration and to the Survey Map and Plans as is necessary to withdraw such Phase and the Real Property located therein. Such withdrawal shall not affect Declarant's Development Right thereafter to incorporate such Phase and the Real Property Located therein into the Condominium at any time and from time to time as Declarant may elect in the same manner as any Subsequent Phase and the Real Property located therein are otherwise incorporated into the Condominium or to incorporate other Subsequent Phases and the Real Property located therein. The Condominium and the Real Property located therein, as modified by exercise of the Declarant's Development Rights of incorporation or withdrawal of Units and Phases, shall from time to time constitute: a complete, fully operational Condominium; the Real Property within subject to the Development Right, including Real Property within a Phase which has been withdrawn pursuant hereto, may be used for any other lawful purposes in Declarant's discretion including, without limitation, the incorporation of all or part thereof as Subsequent Phases in the Condominium; and the easements provided for in this section shall continue for the benefit of the Real Property as provided in this Article VII whether or not such Real Property is ever incorporated into the Condominium.

**7.12 Limitation of Declarant's Rights.**

7.12.1 After completion of Units within the Condominium or on Real Property subject to Development Rights pursuant hereto, there shall be no more than sixty (60) Units in the Condominium.

7.12.2 Notwithstanding any other provisions herein, the Declarant's Development Right to incorporate or withdraw Phases or Units to the Condominium shall terminate on the seventh (7th) anniversary of the recording of the Declaration.

**7.13 Subdivision and Combination.** Subject to the term set forth in subsection 7.12.2 hereof, Declarant shall have a Development Right to combine Units or convert Units into Common Elements. Such Development Right shall apply to all Units

regardless when such Units are incorporated into the Condominium but only if Declarant owns same at the time such Development Right is exercised with respect thereto. Whenever Declarant exercises a Development Right to subdivide, combine or convert a Unit previously created into additional Units, Common Elements or both:

7.13.1 If Declarant converts the Unit entirely to common elements, the amendment to the Declaration must reallocate all the allocated interests of that Unit among the other Units as if that unit had been taken by condemnation under the provisions of this Declaration.

7.13.2 If Declarant combines Units, the amendment to the Declaration must reallocate to the new Unit all of the Allocated Interests formerly allocated to the Units so combined.

**7.14 Different Parcels; Different Times.**

7.14.1 Any Development Right may be exercised with respect to all or different parts of the Real Property subject thereto, at different times and from time to time.

7.14.2 No assurances are made as to final boundaries of any part of the Real Property as to which a Development Right is exercised or as to the order of exercise of any such Development Rights.

7.14.3 Even though a Development Right is exercised in any part of the Real Property subject thereto, that Development Right need not be exercised in all or any other portion of such Real Property.

7.15 **Exercise of Development Right.** To exercise any Development Right reserved under this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration as provided for hereunder and comply with RCW 64.34.232.

7.16 **Termination of Development Rights.** Except as provided in subsection 7.12.2 hereto, the Development Rights subject to this Article VII shall continue so long as Declarant owns one or more Units in the Condominium, provided, that Declarant may voluntarily terminate any or all of such rights at any time by recording an amendment to the Declaration, which amendment specifies which right is thereby terminated.

7.17 **Liability for Damage.** The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Condominium, of any Units or improvements of the Condominium physically damaged by the

exercise of Development Rights reserved by Declarant pursuant to or created by this Declaration or the Act.

7.18 **Model.** Declarant or its assign may maintain a sales office, management office or model in one or more Units and in the Common Elements, not to exceed one Unit in the condominium, as modified by exercise of Declarant's Development Rights. Such Unit is not included in Phase I but shall be entitled to use all Common Elements except Limited Common Elements allocated specifically to Units in Phase I, subject to the obligation to share on costs as provided in Section 7.8.4 hereof.

#### **ARTICLE VIII. DESCRIPTION OF RESIDENTIAL COMPONENTS OF UNITS**

A total of thirty (30) separate buildings, each containing the residential components of two units, may be constructed on the Real Property (including the Real Property included in Phase I or subject to a Development Right pursuant to Article VII hereof). Declarant plans but shall not be bound to construct five such buildings in each Phase. The residential component of each Unit is more properly described in Article IX hereto. This Article VIII shall not compel Declarant to include any Phase after Phase I within the Condominium as long as Declarant exercises its rights consistent with the Development Rights and Special Declarant Rights reserved to Declarant.

#### **ARTICLE IX. DESCRIPTION OF UNITS**

9.1 **Basic Units.** There are two (2) unit types having various layouts with the following particulars:

9.1.1 One such type of Unit, the Type A Unit, consists of a two story Town House. The Type A Unit will contain three (3) bedrooms, one (1) living room, a loft, a fireplace, one dining area, a kitchen, and two and one-half (2 1/2) baths. Each Type A Unit will contain approximately 1683 square feet of living space. Each Type A Unit will have forced air heat. A two (2) car garage will be attached to each Type A Unit.

9.1.2 The second such type of Unit, the Type B Unit, consists of a two story Town House. The Type B Unit will contain two (2) bedrooms, one (1) den, one (1) living room, a loft, a fireplace, one dining area, a kitchen, and two and one-half (2 1/2) baths. Each Type B Unit will be heated by forced air. Each Type B Unit will contain approximately 1629 gross square feet of living space. A two (2) car garage will be attached to each Type B Unit.

9.2 **Addresses of Units.** The address for each Unit in Phase I is set forth in Exhibit 9.2, which fully describes such Unit.

9.3 **Location.** The physical location of each Unit in Phase I is as shown on the Survey Map and Plan, as amended from time to time.

9.4 **Access.** Each Owner shall have an unrestricted right of ingress and egress to his Unit and to all the Common Elements other than Limited Common Elements not associated with such Unit. Such rights shall be perpetual and be transferable with the subject Unit.

9.5 **Boundaries.** The boundaries of a Unit shall be the Interior Surfaces of the following: the walls, floors, or ceilings. Accordingly, that portion of all lath, furring, wallboard, plaster board, plaster, paneling, tiles wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit. All other portions of the walls, floor or ceilings are a part of the Common Elements. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is designated as a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit and any portion of such Limited Common Elements is designated as Limited Common Elements allocated to all such Units. Subject to the above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of a Unit. Furthermore, any shutters, awnings, window bases, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designated to serve a single Unit, but which are located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Maintenance of those Limited Common Elements shall be as set forth under the terms of this Declaration. The pipes, wires, conduits, any attic crawl space, or other utility lines or commonly used space running through a Unit Owner's Unit which are utilized for, or serve more than one Unit are Common Elements which are not Limited Common Elements allocated to such Unit.

#### **ARTICLE X. DESCRIPTION OF COMMON ELEMENTS**

The Common Elements consist of the entire property, except the residential components and Limited Common Elements of the Units, including all portions of the walls, floors, or ceilings which are not part of or within the Unit Boundaries provided in Article IX. When reference is made to Common Elements in this Article X, such reference shall exclude Limited Common Elements



but shall include General Common Elements. The Common Elements include, but are not limited to, all access and interior roads, front back, and side yards, all easements for utilities, ingress and egress, designated mailbox area, any areas set aside for "open space" or playground/recreational/park purposes, landscaped entry area adjacent to entry, privacy gate, and all fences on the exterior boundaries of the entire property, as designated on the condominium survey map and plan. Also included in the Common Elements are the following:

10.1 **Structural.** All structural elements including, without limitation, the roofs, foundations, studding, joists, beams, supports, main walls (excluding non-bearing interior partitions of Units, if any), and all other structural parts of the buildings to the interior surfaces of the Unit's perimeter walls, floors, ceilings, windows, and doors are Common Elements.

10.2 **Fixtures and Equipment.** All electrical, heating, and mechanical elements including, without limitation, pipes, wires, conduits, pumps, sewer pumps, and, other fixtures and equipment for all utilities, but, excluding plumbing, electrical and similar fixtures, which fixtures are located within a Unit for the exclusive use thereof, are Common Elements.

10.3 **The Land.** The Real Property, exclusive of improvements, described in Exhibit 3.31 and as modified by addition of Subsequent Phases to the Condominium is a Common Element.

10.4 **Lawns, Sidewalks, Streets, and Gutters.** All lawns and sidewalks (except for certain areas described as Limited Common Elements below) and streets and gutters, except as dedicated to any municipal corporation of the State of Washington, which surround and provide access to the Units and Limited Common Elements associated therewith are Common Elements.

10.5 **Grounds and Facilities.** All grounds and improvements other than Units and Limited Common Elements, including, without limitation, the irrigation system and opens spaces whether improved with recreational area improvements, are Common Elements.

10.6 **Other.** All Common Elements (except Limited Common Elements), identified as such in any other Article hereof are Common Elements.

10.7 **Nature of Interest in Common Areas Identified on Plat.** The Association shall have and retain for the benefit of all Units an interest in the common areas identified in the

Plat whether owned by Declarant or owned by the Sorrento Home Owners Association. If such Common Areas are identified as owned by Declarant, then the Association's undivided interest therein shall be as tenant in common and such interest shall at all times equal the ratio of the number of lots identified in the Plat which are incorporated in the Condominium to the total number of lots identified in the Plat. If such Common Areas are identified as owned by the Sorrento Home Owners Association, then the Association's interest therein shall be as a member of such Association and such membership shall be equal in voting rights and interest to the number of lots identified in the Plat which are included in the Condominium from time to time. The balance of the undivided interest in the Common Areas identified in the Plat as owned by Declarant and the balance of the membership interest in the Sorrento Home Owners Association not owned by the Association shall be retained by Declarant or owned by its assigns. Each Unit Holder shall have a nonexclusive easement to the Common Areas which are part of the Common Elements whether owned by the Declarant and the Association or by the Sorrento Home Owners Association which shall be permanently associated with the respective Unit. If at any time all of the lots identified in the Plat are included in the Condominium, the Association may merge the real property held by it or by the Sorrento Home Owners Association with the Units and terminate the continuation of any specified parcels identified as Common Areas in such Plat.

#### **ARTICLE XI. DESCRIPTION OF LIMITED COMMON ELEMENTS**

Certain portions of the Common Elements, which are excepted from the definition thereof set forth in Article X, are reserved for use of certain Units to the exclusion of the other Units and are designated in this Declaration as "Limited Common Elements." A description of the Limited Common Elements, stating to which units their use is reserved, is as follows:

11.1 **Patio/Decks.** Each Unit has set aside as a Limited Common Element any patio, deck, or porch located immediately adjacent to the Unit, as more particularly shown on the Survey Map and Plans, boundaries of said patio/deck being defined by the Interior Surfaces of the walls, floor, ceiling, doors, windows, railings, or curb enclosing said patio/deck; but if there are no such Interior Surfaces, then the boundaries as delineated on the Survey Map and Plans; but if not such boundaries are so delineated, then the perimeter edge of any patio/deck is actually constructed by Declarant.

11.2 **Driveways/Porches.** Each Unit shall have set aside, as a Limited Common Element, the driveway leading to the Unit, the garage for that Unit, the porch attached to that Unit, and the walkway leading from the driveway to the porch for the use

of that Unit. The Limited Common Element driveway assigned to each Unit may be used for temporary parking of automobiles by the Unit Owner or his or her invitees subject to rules and regulations adopted by the Board.

11.3 **Mailboxes.** Each Unit shall have, as a Limited Common Element, an assigned mailbox located at the discretion of the U.S. Postal Service, in a group of mailboxes located as designated on the condominium survey map and plan. Designation of the mailboxes shall be made at the time of the initial sale of a unit. The mailbox assignments shall be permanent and may not be severed from the Units, but will be assigned and transferred with the Units and will follow any and all conveyances of a Unit as a Limited Common Element of such Unit.

11.4 **Sideyard/Backyard.** Each Unit shall have set aside as a Limited Common Element an area along the side of and across the back of such Unit, as more particularly shown on the Survey Map and Plans.

## **ARTICLE XII. ALLOCATED INTERESTS**

12.1 **Percentage of Undivided Interest in the Common Elements and in the Common Expenses of the Association.** The formula for determining the undivided interest in the Common Elements and in the Common Expenses shall be determined by dividing 100 by the total number of Units. Thus, when only Phase I is part of the Condominium, each Unit shall have a 10% interest in the Common Elements (100% divided by 10 units = 10%). If Phases II through VI are added, then as each Phase is added, each Unit shall have an interest in the Common Elements as determined by dividing 100% by the total number of Units of all Phases which have been added as provided for under the provisions of Article VII of this Declaration (i.e., if and upon the addition of Phase II, there would be a total of twenty (20) Units which when divided into 100%, each Unit would then have a percentage interest of 5% interest in the Common Elements subject to the same percentage of Common Expenses incurred after the date such Units become a part of the Condominium). This formula shall be used whenever the total number of Units in the Condominium change for any reason.

12.2 **Allocation of Votes.** Each Unit shall have one (1) vote in all matters affecting the Association including, without limitation, the election of Directors to the Board. The total number of votes, at any time shall be equal to the total number of Units in the Condominium as of any record date for the calling of a meeting at which Condominium matters are decided.

12.3 **Amendment of Percentages.** Subject to the rights of the Declarant to amend this Declaration in connection with the exercise of a Development Right or to exercise any Special

Declarant Rights reserved thereto, and except with respect to Declarant's exercise of rights during any period of Declarant Control, any change in the method by which voting rights are determined from that provided in this Article XII must be approved by amendment of the Declaration and is subject to the approval of two-thirds (2/3rds) of the Unit Owners or the mortgagees thereof, as the case may be. Such amendment shall be adopted and recorded in the manner provided in this Declaration. Amendments to the Declaration to change the number of votes which reflect changes in the number of Units or the exercise of rights in the Declarant shall be made without vote as such changes or such exercises occur.

#### **ARTICLE XIII. ASSOCIATION AND BY-LAWS**

**13.1 Association Membership.** A Unit Owner shall automatically be a member of the "Sorrento Condominium Association" (the "Association"), a Washington non-profit corporation consisting of all of the Unit Owners, and shall remain a member of the Association until such time as ownership ceases for any reason, at which time membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of each Unit. The Unit Owners covenant and agree that the administration of the Condominium shall be in accordance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws of the Association, and the Rules and Regulations. The Articles of Incorporation and By-Laws provide that the affairs of the Association shall be managed by a Board of Directors after any period of Declarant Control. The Articles of Incorporation and By-Laws, effective as of the date of the Declaration, are hereby adopted as the Articles of Incorporation and By-Laws of the Association. Such Articles of Incorporation and By-Laws may be amended as therein provided.

**13.2 Board.** After any period of Declarant Control provided in Section 13.3 hereof and except with respect to any Development Right retained by Declarant, the affairs of the Association shall be managed by a Board. Notwithstanding the preceding sentence, Declarant may at any time establish a Board consistent with the terms hereof. Until the end of the period of Declarant Control, the Board shall be advisory only with respect to authority reserved under Declarant Control but shall have all authority granted to it by this Article XIII with respect to any other matters affecting the Association. Notwithstanding the limitations of its authority, all decisions of Declarant made pursuant to its Declarant Control prior to the end thereof shall be made in the name of the Board for the Association. The number of directors which shall constitute the whole Board shall be no less than three (3), and no more than seven (7). At the first election of directors, a number of directors equal to half of all of the directors less one

shall be elected for a term of one year and the balance for a two year term. Thereafter, elections shall be held annually to replace directors whose terms have ended. At any time additional directors are added, half of such directors shall have initial terms of one year and the balance two years. Except as provided herein, the term of any director shall be two years. Directors shall serve until the end of the term thereof or until replaced. However, where a director serves beyond the end of such term, his replacement shall serve until the end of the normal term thereof, that is until two years after the time an election should have been last held to replace the holdover director. There shall always be an odd number of directors. The initial Board shall be composed of three (3) directors. Except as provided in Section 13.5 hereof, directors need not be Unit Owners.

13.3 **Declarant Control.** Subject to Section 13.5 hereof, and until the termination of Declarant Control as provided herein, the Declarant shall have the right to appoint all of the directors. Further, during such period of Declarant Control, Declarant shall be authorized to make all decisions which could be made by the Board after the end of the period of Declarant Control but shall execute such decisions as provided in Section 13.2 and may during such period cede all or part of the authority reserved hereby temporarily or permanently to the Board. Whenever reference is made to the exercise of control by the Board in this Declaration and at the time of the exercise, Declarant Control is continuing, the reference to the Board shall be understood to refer to Declarant to the extent Declarant has not actually ceded the exercise of such control to the Board at that time. Declarant Control shall end upon the earliest of:

13.3.1 Sixty (60) days after conveyance of seventy-five percent (75%) of the Units which may be created on any Real Property which may initially be included in the Condominium or which may be added by Declarant by exercise of a Development Right provided herein until the lapse thereof to Unit Owners other than the Declarant;

13.3.2 Two (2) years after the last Conveyance of record of a Unit from Declarant, except as security for a debt;

13.3.3 Two (2) years after any Development Right to add new Units was last exercised; or

13.3.4 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 directors.

**13.4 Transfer of Control to Member Elected Board.** On the happening of the earlier of the foregoing events, the terms of all of the directors shall end and a new Board shall be elected by the members as provided in Section 13.1. For purposes of Section 13.1, such Board shall be deemed the initial Board. At the time such new directors are impaneled, control of the Condominium shall thereafter pass from the Declarant to the Association of Unit Owners. Nonetheless, Declarant may require, for the duration of the period of Declarant Control to the extent such control has been voluntarily relinquished pursuant to subsection 13.3.4, that specified actions of the Board of Directors and Association, as described in the recorded instrument executed by the Declarant, be approved by the Declarant before those actions become effective until such time as the earliest of the events described in subsections 13.3.1 through 13.3.3, and, notwithstanding any lapse of Declarant Control, Declarant shall retain all rights essential to fulfilling its duties or to the exercise of Development Rights until the end of the term of such Development Rights.

**13.5 Directors from Unit Owners Appointed by Declarant.** Not later than sixty (60) days after Conveyance of twenty-five percent (25%) the Units, which may be created from the Real Property either within the Condominium or which may be added thereto pursuant to Development Right retained by Declarant, to Unit Owners other than a Declarant, at least one (1) member (and not less than twenty-five percent (25%)) of the Board of Directors must be elected by Unit Owners other than the Declarant. Further, no later than sixty (60) days after conveyance of fifty percent (50%) of such Units to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant. Notwithstanding membership on the Board elected by Unit Owners other than Declarant, such Board shall not be deemed the initial Board for purposes of Section 13.1 and the term of the directors elected pursuant to this Section 13.4 by the Unit Owners other than Declarant shall terminate simultaneous with the change of control affecting directors nominated by the Declarant pursuant to section 13.4 hereof.

**13.6 Election by Members of Directors.** Within thirty (30) days after the termination of any period of Declarant Control, the Unit Owners shall elect the initial Board in accordance with Section 13.1 hereof. A majority of the directors so elected must be Unit Owners. The Board shall then elect their officers in accordance with the By-Laws. The members of the Board and the officers shall take office upon election.

**13.7 Removal of a Director.** Prior to the election of the initial Board but subject to the rights vested in the Unit

Owners other than the Declarant pursuant to Section 13.5 hereof, the Declarant may remove all or any of the directors appointed by it at any time and the Unit Owners may remove any director elected by Unit Owners as provided in this Section 13.7. After the election of the initial Board as described in Section 13.1 hereof, the Unit Owners, by a two-thirds (2/3) vote of the voting power in the Association present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause. The Declarant may not remove any member of the Board of Directors elected by the Unit Owners, even if that Director was elected during the Declarant's period of control. Further, prior to the termination of the period of Declarant control, the Unit Owners, other than the Declarant, may remove by a two-thirds (2/3) vote any director elected by the unit owners.

**13.8 Standard of Care.** If a director is appointed by the Declarant pursuant to exercise of rights during any period of Declarant Control, the care required of that director shall be the care of a fiduciary to the Unit Owners; if a Director is elected by the Unit Owners, then the duty of care required shall be ordinary and reasonable care. However, if the statutory standard of care is, at any time, different than the standard of care set forth in the By-Laws, the By-Laws shall be deemed amended so that the standard of care shall be that standard set forth statutorily for condominiums in the State of Washington. This paragraph shall not apply where the consequences of such act, omission, error, or negligence are covered by the insurance obtained by the Board.

**13.9 Indemnification.** Each person who was or is made a party to or is threatened to be made party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit, or proceeding, whether civil, criminal, administrative, or investigative, shall be indemnified and held harmless by the Association if that person is or was a director or officer of the Association. Likewise, a person shall be indemnified if, being or having been such a director or officer, she or he is or was serving at the request of the Association as a director, officer, employee or agent of another Association or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans. The person shall be indemnified whether the basis of a proceeding is an alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while service as a director, officer, employee or agent or in any other capacity. The Association shall indemnify and hold harmless to the full extent permitted by applicable law as then in effect, against all expenses, liability and loss (including, without limitation, attorney's fees, judgments, fines ERISA, excise taxes, or penalties and

amount to be paid in settlement) actually or reasonably incurred or suffered by such person in connection therewith. Such indemnification shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of that person's heirs, executors, and administrators. However, no person shall be released from liability or indemnified (i) for acts or omissions which involve intentional misconduct by the director or a known violation of law by the Director, or (ii) for any transaction from which the Director will personally receive a benefit in money, property or services to which the Director is not legally entitled. Further, no indemnification shall be provided under this Section 13.9 to any such person if the Association is prohibited by the non-exclusive provisions of the Washington Non-Profit Corporation Act or other applicable law as is then in effect from paying such indemnification. The right to indemnification conferred in this Section 13.9 shall be a contract right and shall include the right to be paid by the Association the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of the proceeding shall be made to or on behalf of a director or officer only on delivery to the Association of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article or otherwise, which undertaking may be unsecured and may be accepted without reference to financial ability to make repayment.

**13.10 By-Laws.** Subject to the power of the initial Board as defined in Section 13.1 hereof or any subsequent Board to amend or adopt new Bylaws, either the Board or the Declarant shall adopt By-Laws 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.

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

13.11.1 Adopt and amend the By-Laws and the rules and regulations;

13.11.2 Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Common Expenses and special assessments from Owners;

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



13.11.4 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;

13.11.5 Make contracts and incur liabilities;

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

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

13.11.8 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:

(a) 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;

(b) 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;

(c) No structural changes shall be made to a building without the approval of Unit Owners holding at least seventy-five percent (75%) of the votes in the Association;

(d) No structural change shall be made to a Unit without the approval of the Unit Owner thereof;

(e) The beneficial interest in any property acquired by the Association pursuant to this Section shall be owned by the Unit Owners in the same proportion as their respective interests in the Common Elements;

(f) Any portion of the Common Elements not necessary to the habitability of any Unit may be conveyed or subject to lien by the Association upon approval by eighty percent (80%) of the votes held by persons who are neither the Declarant nor an Affiliates of the Declarant; and,

(g) Any portion of Limited Common Elements may be conveyed or subject to lien by the association only with the approval of the affected Units; and,

(h) Except as provided in paragraphs (f) and (g) hereof, the Association, acting through the Board, may acquire, hold, sell, lease, or lien any interest in property of the Association other than Units by action of the Board.

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

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

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

13.11.12 Impose and collect charges for late payment of assessments as further provided in Article XVIII and RCW 64.34.364(13) 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 By-Laws, 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 By-Laws and rules and regulations of the Association;

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

13.11.14 Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

13.11.15 Assign its right to future income, including the right to receive assessments;

13.11.16 Exercise any other powers conferred by this Declaration or the By-Laws;

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

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13.11.18 Represent, act on behalf of, and pay the costs of the Unit Owners in all matters involving or associated with the Sorrento Home Owners Association, exercise all of the voting rights associated with lots identified in the Plat which are included in the Condominium, and exercise the merger rights described in Section 10.7 hereof on behalf of the Units and Unit Owners; and

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

13.12 **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 Unit Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, 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 a Unit Owner unless owners holding at least sixty percent (60%) of the votes, excluding votes held by the Declarant, waive the audit for that fiscal year and the total number of Units in the Condominium is at the end of the year for which the accounting is required less than fifty (50). The financial statement shall be completed in time for the Association's annual meeting and in any event within ninety (90) days following the end of the fiscal year. Any mortgagee will, upon request, be entitled to receive the annual financial statement within ninety (90) days following the end of the fiscal year. The Board, or persons having thirty-five percent (35%) of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An owner, at his expense, may at any reasonable time conduct an audit of the books of the Board and Association. Upon written request of FHLMC, FNMA, HUD or VA, if it is a Mortgagee, the Association shall provide within a reasonable time the financial statement of the Association for the preceding fiscal year.

13.13 **Stormwater System.** The Association shall have the responsibility for maintaining the stormwater system, including the treatment and retention areas, that are located in the Stormwater/Open Space areas shown on the plat. The Association shall assume all of the Declarant's obligations. Such assumption shall be effective upon the formation of the Association regardless when Declarant's period of Declarant Control ends. A copy of the Storm Drainage Maintenance Plan is attached hereto as Exhibit 13.13. The responsibilities of the

Association shall further include or be subject to the following:

(a) Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision SARRETO. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the Association as established by covenant recorded under Auditor's file number 9501170184.

(b) In the event the Declarant (or successors of the Association), in the judgment of the Jurisdiction, fails to maintain drainage facilities within the plat, or if the Association or successors willfully or accidentally reduces the capacity of the drainage system or renders any part of the drainage system unusable, the Declarant or successors agree to the following remedy: After thirty (30) days notice by registered mail to the Declarant or successors, Jurisdiction may correct the problem or maintain facilities as necessary to restore the full design capacity of the drainage system. Jurisdiction will bill the Declarant or successors for all costs associated with the engineering and construction of the remedial work. Jurisdiction may charge interest as allowed by law from the date of completion of construction. Jurisdiction will place a lien on the property and/or on lots in the Property Owners Association for payment in arrears. Costs or fees incurred by the Jurisdiction, should legal action be required to collect such payments, shall be borne by the Declarant or successors.

Prior to the formation of the Association, Declarant shall have all obligations set forth in this Section 13.13.

**13.14 Inspection of Condominium Documents, Books and Records.** The Association shall make available to Unit Owners, mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the By-Laws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies.

**13.15 Voting.** Every Unit Owner, including, without limitation, the Declarant as to Units which it retains for its account for purposes other than sale, shall be a member of the

Association. Each Unit shall have one (1) vote as set forth in Article 1 above. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment. Natural persons, partnerships, corporations, trusts, or other lawful business entities may own or have an ownership interest in a Unit. There should be one voting owner or agent for each Unit. Such voting owner or agent shall be designated by the Unit Owner or Unit Owners by written notice signed by each party with an ownership interest, which notice shall be filed with the Secretary of the Board. The voting agent need not be a Unit Owner. Any designation of voting owner or agent may be revoked at any time by any one of the parties who are Unit Owners with respect to the Unit on written notice filed with the Secretary of the Board. Such designation shall be deemed revoked when the Secretary receives actual notice of the death or judicially declared incompetency of the Unit Owner or with respect to such Unit, or of the Conveyance of such Unit or interest therein. When no designation is made, or where designation has been made and revoked and no new designation has been made, the voting Unit Owner shall be the person or group composed of all Unit Owners of that Unit who attend any meeting or the Association; however, votes may not be split by multiple owners of a unit. Thus, if multiple Unit Owners of a Unit cannot agree on a vote, their vote will not be counted on a vote of the Association membership, even though those owners may be counted for purposes of a quorum (as if abstaining). As used in this Declaration, the term "total voting power" shall mean the total number of votes, as described above, which may be exercised at the time the vote is taken.

**ARTICLE XIII. RESTRICTIONS ON USE AND  
OCCUPANCY OF PROPERTY**

14.1 **Residential Use; Rules.** The buildings described in this Declaration and the Units therein are intended for residential purposes only, and their use is so restricted, subject to Section 29.5 below which allows for limited commercial use. In addition, the Declarant during the period of Declarant Control, and thereafter, the Board may, from time to time, by a vote of a majority of its members, make alter, or repeal rules and regulations covering details of the operation and use of the Property, reserving to the Unit Owners the right to change or repeal such rules and regulations on the approval of fifty-one percent (51%) of the total voting power of the Association. No such rule or regulation shall change the requirement that the Units and Property be used only for residential purposes. Furthermore, no Unit shall be used principally for agricultural or farming purposes under any circumstances.

14.2 **Leases.** With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, Unit Owners other than Declarant are prohibited from leasing their Units for less than seven (7) days. All leases required hereby shall be in writing and the lessee shall be subject to all of the provisions of this Declaration, the Articles of Incorporation, By-Laws, and Rules and Regulations. A copy of any such lease shall be delivered to the Secretary of the Association within seventy-two (72) hours of a lease being signed. A Unit Owner leasing a Unit must provide any lessee of that Owner's Unit a copy of the Declaration, Articles of Incorporation, By-Laws, and Rules and Regulations prior to the lessee signing the lease. Any failure by lessee to comply with the terms of such documents shall be a default under the lease. Any such lease shall provide that it terminates on sale of the Unit by the lessor, or upon foreclosure of a Unit by the holder of a mortgage constituting a first lien on such Unit. No Unit Owner shall be permitted to lease that Unit Owner's Unit for transient or hotel purposes. No Unit Owner may lease less than an entire Unit.

14.3 **Time Shares.** Time-sharing is prohibited.

14.4 **Signs.** Other than signs posted by the Declarant in connection with the development and sale of the project, all signs shall be subject to regulation by Declarant during the continuation of the period of Declarant Control and then by the Board.

#### **ARTICLE XV. MANAGEMENT**

During any period of Declarant Control, the Board shall act in an advisory capacity to the Declarant which shall retain sole control over the Association. Notwithstanding the limitation's of the Board's capacity during the period of Declarant Control, all decisions affecting the Association shall be made for the Association in the name of the Board. Except as provided in the preceding two sentences and matters affecting the execution of Development Rights of Declarant, the Board of the Association shall have exclusive authority over the Association, including, without limitation, the authority to enter into a contract for professional management of the Condominium for the benefit of the Association. If the Board enters into such a contract, the maximum term shall not exceed one (1) year, and the contract shall be terminable without cause or payment of a termination fee on thirty (30) days written notice. When the Board assumes exclusive control of the Association, as provided in Section 13.4 hereof, it is authorized to terminate all agreements and contracts of the Association with third parties entered by Declarant or the Board.

## ARTICLE XVI. EASEMENTS

16.1 **Common Elements.** Each Unit Owner shall have a non-exclusive easement for and may use the Common Elements (except Limited Common Elements) in accordance with the purpose for which they were intended, without hindering or encroaching on the lawful right of the other Unit Owners with respect to their interests in their Units or the Limited Common Elements associated therewith.

16.2 **Appurtenant.** The easement described above shall be appurtenant to and shall pass with the title to each Unit, subject to the following:

16.2.1 The right of the Association to assess and collect dues and assessments as defined in this Declaration;

16.2.2 The right of the Association to have reasonable entry into any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of Condominium;

16.2.3 The right of the Association to grant permits, licenses, and easements over such Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium;

16.2.4 Any right, license, or easement reserved in the Declarant pursuant hereto; and,

16.2.5 Any right, license, or easement reserved pursuant to this declaration to any Real Property which is part of any Development Right of the Declarant to add or withdraw Property from the Condominium.

16.3 **Encroachments.** In the event any portion of the Common Element encroaches on any Unit or any Unit encroaches on the Common Elements or another Unit or any Real Property which is part of any Development Right of Declarant to add or withdraw Property from the Condominium encroaches upon any Unit or Common Element or vice versa, as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist, so long as the encroachment exists.

16.4 **Declarant.** The Declarant, for itself, and for its successors and assigns, hereby reserves an easement over, under, and on the Common Elements, General Common Elements and Limited Common Elements for the purposes of improving the Real

Property over which Declarant retains Development Rights to withdraw or add such Property to the Condominium whether such Property is in fact added or withdrawn, and to the extent such Property is not ultimately included within the Condominium, for purposes for which a Unit Owner could use such Common Elements and General Common Elements and Limited Common Elements if such Unit Owner were not one of the Unit Owners with which the Limited Common Element, if any, is associated. To the extent any such Property contains improvements which would be Common Elements or General Common Elements if included in the Condominium, the Declarant hereby grants a reciprocal easement to the Association and to the Unit Owners for the same purpose as that for which the easement in favor of Declarant is hereby reserved. All such easements shall run with the Real Property.

16.5 **Open Spaces.** Subject to the rules and regulations adopted by the Association, Unit Owners, guests, and lessees thereof, may have the right to use the Open Spaces, whether developed with recreational facilities, if any, and the other Common Elements located within the Condominium or which are subject to an easement in favor of the Association and the Unit Owners pursuant to Section 16.4 hereof; provided that the Unit's assessments and fees are current. Such right shall extend to the Property for which easements are reserved to Declarant pursuant to Section 16.4 subject to the currency of the payment of assessments upon such Property permitted by this Declaration which are for the purpose of maintaining such Property's share of the expenses of such Common Elements, General Common Elements, and Limited Common Elements, where applicable. The Association shall be under a similar duty to pay assessments with respect to the easement granted to the Association and Unit Owners for improvements located upon such Property which would be Common Elements, General Common Elements, or Limited Common Elements affecting a Unit Owner.

#### **ARTICLE XVII. REGISTERED AGENT**

The name and address of the person to receive service of process in the cases provided for in the Act is James R. Steepy, 5501 34th S.E., Lacey, Washington, 98503. The Association may from time to time change the person to receive service of process as provided by law. Such change shall be effective when written notice of such action, signed and acknowledged by the President of the Association, is filed with the Secretary of State.

#### **ARTICLE XVIII. ASSESSMENTS**

18.1 **Assessments for Common Expenses.** During the period of Declarant Control, the Declarant, and thereafter, the Board, shall from time to time, and at least annually prepare a budget for the Association and determine the amounts necessary to meet

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the Common Expenses of the Association. All regular, special, and emergency Assessments must be fixed at a uniform rate for all Units, and shall be based on Allocated Interests as determined pursuant to Section 12.1 hereof. Subject to Section 18.2 hereof, the Common Expenses shall include:

18.1.1 All Common Expenses defined in the Act;

18.1.2 All charges for all utilities used in connection with maintaining the Common Elements including, but not limited to, the irrigation system, the sewer system serving the Units, maintaining the Open Spaces whether improved with recreational facilities, lighting used in connection with the Common Elements, maintaining the privacy gate, and landscaping and lawn care with respect to Common Elements;

18.1.3 Any shared expenses not defined in the Act, nor listed above, but which are approved by the Board as Common Expenses; and

18.1.4 All such other amounts as the Board may deem necessary or advisable for the lawful exercise of its power and duties.

18.2 **Modifications to Common Expenses.** Common Expenses, however, do not include the following, which are to be allocated and paid as hereinafter set forth:

18.2.1 Except as provided in subsection 18.1.2 hereof with respect to normal costs of landscaping and lawn care, any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element, shall be paid by the Unit Owner or Unit Owners of, or assessed against, the Unit or Units to which that Limited Common Element is assigned.

18.2.2 Assessments to pay a judgment against the Association may be made only against the Units in the condominium at the time of the last act giving rise to the liability for which judgment was granted in proportion to their Allocated Interests as determined pursuant to Section 12.1 as of that time;

18.2.3 To the extent that any Common Expenses are caused by negligent or intentional misconduct of any Unit Owner or a lessee, guest or member of the household thereof, the such Common Expense shall be assessed such Unit Owner's Unit; and,

18.2.4 All other utilities except those provided in subsection 18.1.2 including the payment for cable television shall be the responsibility of the Unit Owner using and enjoying said utilities and cable television.

**18.3 Increases in Assessments.** The assessments for each year shall be included in the budget adopted by the Board. A summary of the budget shall be provided to each unit owner within thirty (30) days of the Board's adoption of the budget. The Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget (including assessments) not less than fourteen (14) days nor more than sixty (60) days after mailing the summary. Unless at such meeting, the Unit Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified. In the event the proposed budget is rejected or the required notice is not given, the periodic budget shall be the periodic budget last ratified by the Unit Owners multiplied by a fraction equal to one (1) plus the increase in the National Consumer Price Index as published by the United States Department of Labor, or comparable index should it not be so published for the one year period beginning upon the last adoption date of a budget and ending upon the date when the Unit Owners last failed to adopt a budget. Such fraction shall be adjusted monthly after the anniversary of the last adopted budget. As adjusted thereafter, such budget shall continue on a month to month basis until a new budget is actually ratified by the Unit Owners.

**18.4 Declarant's Payment Prior to Association Assessment.** Until the Association makes a Common Expense assessment, the Declarant shall pay all Common Expenses. After such Assessment, Declarant or its assigns shall be liable for a pro rata portion of the calculated assessment based upon the relative value of the portion of the Real Property which is not in the Condominium to the entire value of the Real Property. Such amount shall be offset, but not below zero, by amounts due from the Association for improvements upon the Real Property retained by Declarant over which the Condominium has an easement and which, if included in the Condominium, would be General Common Elements. The offset shall be computed in the same manner as Common Element assessments except Declarant and not the Association shall establish the amount.

**18.5 Excess in Assessments.** The Board may, but shall not be required to, return excess Assessments for any year over and above actual expenses paid or incurred, or apply such excess against the following year's Assessment. The Board shall advise all Unit Owners promptly, in writing, of the amount of the Assessments payable by each of them, respectively, as determined by the Board. The Board shall furnish copies of each budget on which such estimates are based to all unit owners and to their mortgagees who have requested copies of such budget.

18.6 **Reserves.** There shall be established an adequate reserve fund for the periodic maintenance, repair and replacement of those Common Elements that must be replaced on a periodic basis, which fund shall be maintained out of regular Assessments for Common Expenses. Furthermore, reserve funds shall be collected when a Unit is sold or when control is transferred, whichever is earlier.

18.7 **Working Capital.** Working capital fund shall be established for the initial months of the project operations equal to at least a two (2) months estimated Common Elements charge for each Unit. Each Unit's contribution to working capital shall be collected and transferred to the Association at the time the sale of the Unit is closed or when Declarant's control is transferred to the Association pursuant to Section 13.4 hereof, whichever is earlier. When control is transferred, the working capital fund shall also be transferred to the Association for deposit in a segregated fund. Declarant must pay, at that time, each unsold Unit's share to the working capital fund. However, Declarant shall be reimbursed when the sale of the Unit closes for which Declarant had previously paid into the reserve fund together with statutory interest from date of payment thereby. Amounts paid into this fund should not be considered as advance payments of regular Assessments as the working capital fund is a separate fund.

18.8 **Commencement of Assessments.** The regular Assessments provided for herein shall commence on the making of an Assessment by the Association, or within sixty (60) days after the conveyance of the first Unit, whichever is earlier. Although a two (2) month Assessment shall be collected at any closing or on transfer of Declarant's Rights, whichever is earlier, for the working capital fund, regular commencements shall be due no later than sixty (60) days after the first Unit is Conveyed. Until such time, Declarant shall pay all Common Expenses. Once a Common Expense Assessment has been made, all Units must pay the regular monthly Assessment.

18.9 **Payment of Assessments; Personal Obligation.** Assessments are payable monthly, in advance, or at such other time or times as the Board shall determine. Each Assessment, in addition to constituting a lien as provided for in the Act and this Declaration, shall also be, together with interest, costs, and reasonable attorney's fees as hereinafter provided, the personal obligation of the person who was the Unit Owner of the Unit against which the Assessment is made at the time the Assessment fell due.

18.10 **Collection of Assessments.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate allowed by law under RCW 19.52.020. The Board of Directors may initiate an action to

enforce payment of any delinquent Assessment, and, in such event, the owner liable therefor shall pay all of the costs and expenses incurred incident thereto, including a reasonable sum as attorneys' fees (including those for appeals), all of which shall be secured by the lien provided for the Act and herein. In addition thereto, the Board may enforce collection of delinquent Assessments in any one or more of the following methods:

18.10.1 After ten (10) days prior written notice to the Unit Owner of intent to sever utilities for delinquent Assessments, the utilities to the Unit on which the Assessment remains delinquent may be severed and disconnected in whole or in part until the Assessments are paid, or otherwise provided for, to the satisfaction of the Board of Directors.

18.10.2 On ten (10) days prior written notice to the owner, the Association may suspend the Unit Owner's right of use of any Common Elements for any period during which any Assessment against the Unit Owner's Unit remains unpaid.

18.10.3 An action may be commenced to foreclose the lien for Assessments.

18.11 **Liability of Mortgagee or Purchaser.** Where the mortgagee of a mortgage of record or other lender against a Unit obtains possession of the Unit as the result of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, such possessor, and that possessor's successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which become due prior to such possession. Such unpaid share of Common Expenses or Assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including such possessor, and that possessor's successors and assigns.

18.12 **Conveyance; Liability of Grantor and Grantee for Unpaid Common Expenses.** In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for his share of the Common Expenses 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. Any such grantee shall be entitled to a statement from the Board setting forth the amount of the unpaid Assessments against the grantor and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth in this Board's statement.

18.13 **Capital Improvements.** Anything in this Declaration to the contrary notwithstanding, the Board shall not make capital improvements to the Common Elements having a cost of more than Ten Thousand Dollars (\$10,000.00) in the aggregate, during any calendar year, other than for repairing or restoring the Common Elements as may be provided for in this Declaration or the By-Laws, without the prior approval of Unit Owners holding a majority of the total voting power in the Association.

18.14 **Non-Use.** No Unit Owner may exempt itself from liability for contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit.

#### **ARTICLE XIX. LIENS FOR ASSESSMENTS**

19.1 **Right of Association.** The Association has a lien on a Unit for any unpaid Assessments levied against a Unit from the time the Assessment is due.

19.2 **Priority/Exceptions.** A lien under this Article XIX is not subject to the provisions of RCW 6.13. A lien under this Section 19.2 shall be prior to all other liens and encumbrances on a Unit except:

19.2.1 Liens and encumbrances recorded before the recording of the Declaration;

19.2.2 A mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and,

19.2.3 Liens for real property taxes and other governmental assessments or charges against the Unit.

19.3 **Priority/Mortgages.** Except as provided in Section 19.4 hereof, the lien shall also be prior to the mortgages described in subsection 19.2.2 hereof to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to the Act which would have become due during the six (6) 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 non judicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the seller/vendor under a real estate contract.

19.4 **Reduction of Priority Period.** 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 (3) months if and to the extent that the lien priority under Section 19.3 hereof includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or has given such notice and before the Association gives the holder a written notice of delinquency. This Section 19.4 does not affect the priority of mechanic's or materialmen's liens, or the priority of liens for other Assessments made by the Association.

**19.5 Priority/Nonjudicial Foreclosure.** If the Association forecloses its lien under this paragraph nonjudicially pursuant to RCW 61.24, as provided by Section 19.9 hereof, the Association shall not be entitled to the lien priority provided for under Section 19.3 hereof.

**19.6 Notice and Perfection.** Recording the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessments under this Article shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this Article with the Thurston County Auditor. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in Section 19.2 hereof.

**19.7 Three-Year Time Limit.** 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 (3) years after the amount of the Assessments sought to be recovered becomes due.

**19.8 Foreclosure Options.** The lien arising under this paragraph may be enforced judicially by the Association or its authorized representative in the manner set forth in RCW 61.12. The lien arising under this Article XIX may also be enforced nonjudicially in the manner set forth in RCW 61.24 for nonjudicial foreclosure of deeds of trust. The Declarant hereby grants to Thurston County Title Company, a corporation, whose address is 105 E. 8th Ave., Olympia, Washington 98501, as Trustee, all Units in the condominium and all property of which the Condominium is a part. This grant is for the sole purpose of securing the obligations of the Unit Owners to the Association for the payment of Assessments. Thurston County Title Company shall act as Trustee for the benefit of Sorrento Condominium Association, as beneficiary. On default by any Unit owner in the payment of any Assessments, and on the written request of the beneficiary, Trustee shall sell the trust property in accordance with the Deed of Trust Act of the State of Washington at a public auction to the highest bidder. Any person, including 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, except that the Trustee may not bid at the Trustee's sale. The Trustee shall apply the proceeds of the sale, first, to the expense of the sale, including a reasonable Trustee's fee and attorney's fees and costs, second, to the obligation owed by the defaulting Unit Owner, and, third, the surplus, if any, shall be distributed to the beneficiary to be added to the general Assessments fund of the Association. On 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 (8) months. Nothing in this Article shall prohibit an Association from taking a deed in lieu of foreclosure. This power of sale is not an exclusive remedy. The Association may pursue any other remedy available under the terms of the Declaration or at law.

**19.9 Receivers.** 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 of the Unit, the Association shall be entitled to the appointment of a receiver to collect from the lessee the rent for the Unit as and when due. If the rental is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of condominium; rent the Unit or permit its rental to others; and, apply the rents first to the cost of the receivership and attorney's 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 ninety (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.

**19.10 Assessments/Foreclosure.** Except as provided in Section 19.3 hereof, the holder of a first mortgage or other lender against a Unit who obtains the right of possession of the Unit through foreclosure of a first mortgage shall not be liable for Assessments of 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 Unit 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 as provided in this Section 19.10.

**19.11 Joint and Several Liability.** In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Unit Owner or Unit 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.

19.12 **Late Charges and Default Interest.** 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. Delinquent Assessments shall bear interest from the date of delinquency at the rate of twelve percent (12%) or the highest rate allowed by law on the date on which the Assessments become delinquent, whichever is lower.

19.13 **Attorney Fees.** 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.

19.14 **Assessment Statements.** The Association on written request shall furnish to a Unit Owner or a mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen (15) days (ten (10) days for a resale certificate) after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent known by the recipient to be false.

19.15 **Remedies Cumulative.** The remedies provided are cumulative, and the Board may pursue them concurrently, as well as any other remedies which may be available under law or equity although not expressed herein.

#### **ARTICLE XX. DAMAGE OR DESTRUCTION**

20.1 **Association as Attorney-in-Fact.** In the event of damage or destruction of all or part of the Condominium or its Property, the Association shall act as representative of the Unit Owners and mortgagees in any proceeding, negotiations, or settlements. Each Unit Owner appoints the Association as its attorney-in-fact for this purpose. The insurance proceeds



shall be paid to the Association for the benefit of the Unit Owners and mortgagees, and shall be used and distributed as set forth below. If sufficient, the proceeds shall be applied to repair, reconstruct, or rebuild the affected improvement in accordance with the original plans. Such repair, reconstruction, or rebuilding shall be arranged for promptly by the Board. Furthermore, should a decision be made to not repair, reconstruct, or rebuild such improvement, or should there be additional insurance funds available, the Association shall determine the allocation of those insurance funds. For purposes of such an allocation, the Association shall look primarily to a combination of fair market value and replacement costs.

20.2 **Less Than \$3,500.** If the insurance proceeds are insufficient and the cost to repair, replace, or reconstruct in accordance with the original plans for the improvement which is destroyed, but, the replacement cost will not exceed such insurance proceeds by more than Three Thousand Five Hundred Dollars (\$3,500) per Unit, the Board shall be authorized to make such repairs, apply the insurance proceeds, and Assess the member for the cost of such repairs in excess of the insurance. The Board shall promptly arrange for such repair, reconstruction, or rebuilding without a vote of the unit owners. In any case, however, use of hazard insurance proceeds for other than repair, replacement, or reconstruction in accordance with the original plan shall not be permitted without the prior written approval of holders of at least two-thirds (2/3rds) of the votes held by Unit Owners.

20.3 **More Than \$3,500.** If the insurance proceeds are insufficient and the cost to repair will exceed such insurance proceeds by more than Three Thousand Five Hundred Dollars (\$3,500) per Unit, the Board shall promptly, but in no event later than ninety (90) days after the date of damage or destruction, give notice to and conduct a special meeting of the Unit Owners to review the proposed repairs, replacement, and reconstruction, as well as the projected cost of such repairs, replacement, or reconstruction. The Unit Owners shall be deemed to have approved the proposed repairs, replacements, and reconstruction as proposed by the Board at that meeting, unless the Unit Owners decide, by an affirmative vote of a majority of the total voting power, to repair, replace or reconstruct the premises in accordance with the original plan in a different manner than proposed by the Board. In any case, however, use of hazard insurance proceeds for other than repair, replacement, or reconstruction of the improvement in accordance with the original plan shall not be permitted without the prior written approval of holders of at least two-thirds (2/3rds) of the votes held by Unit Owners.

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20.4 **In Accordance with Act.** In the event of any damage or destruction to all or any part of the property, a decision by the Unit Owners to do anything other than repair, reconstruct, or rebuild in accordance with the original plan shall be made in accordance with those requirements of the Act as then in effect. Nothing contained in this Article XX shall be construed to give a Unit Owner or other party priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of distribution to such Unit Owner of insurance proceeds or condemnation awards.

20.5 **Rights of Unit Owner.** Anything in this Article XX to the contrary notwithstanding, any Unit Owner, the Unit of which has been damaged or destroyed, shall have the right to repair, reconstruct, or rebuild that Unit, together with that portion of the Common Element immediately surrounding the Unit, without a vote of the Association, so long as the Unit Owner obtains the written consent of the Board within ninety (90) days from the date of damage or destruction and causes the work to be performed in accordance with the original Condominium plans and specifications and in a manner satisfactory to the Board. Such consent shall not be unreasonably withheld; however, such Unit Owner must make arrangements, satisfactory to the Board, for payment by such Unit Owner of that portion of the costs of repair, reconstruction, or rebuilding not covered by insurance proceeds, which insurance proceeds shall be made available for the work if consent is given by the Board.

20.6 **Emergency Work.** Declarant during any period of Declarant Control, and thereafter, the Board shall need no approval from the Association or a Unit Owner for emergency work. Such emergency work shall mean that work which the Board determines is reasonably necessary to avoid further damage, destruction, or substantial diminution in value to improvements and to reasonable protect the owners from liability resulting from the condition of the site of any Unit or other improvement in the Condominium.

#### **ARTICLE XXI. INSURANCE**

21.1 **General Requirements for Property Insurance.** Commencing not later than the time of the first Conveyance of a Unit to a person other than the Declarant or Dealer, Declarant, and after the end of any period of Declarant Control, the Association, shall be required to obtain and maintain, paying the premiums as a common expense, a "master" or "blanket" type of property insurance policy. During any period of Declarant Control, Declarant may cause the policy to cover any property or risk which is either within the Condominium or subject to Declarant's Development Rights but shall pay a pro rata portion of the cost thereof based on the relative values of the properties which are within the Condominium to those which are

not within the Condominium but remain subject to a Development Right. After the end of the period of Declarant Control, the Board may continue such policy with respect to the insurance covered hereby as long as Declarant agrees and Declarant continues to hold Development Rights over Property which is not then included within the Condominium. The master policy shall cover all of the common elements and any fixtures within the Units, together with such equipment and other property within the Units as is customarily covered by mortgage instruments. All property covered by the policy shall be insured in an amount equal to one hundred percent (100%) of current replacement cost at the time the policy is purchased and at each renewal date. The blanket policy shall contain a standard mortgagee clause in favor of each mortgagee of a Unit, which clause shall provide the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payments provisions in favor of, the Association. The insurance carried pursuant to the Article shall provide that:

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

21.1.2 The insurer waives its right to subrogation under the policy against any Unit Owner, member of such Unit Owner's household, or lessee of such Unit Owner.

21.1.3 No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

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

**21.2 Perils Covered by Property Insurance.** The property insurance policy shall afford, at a minimum, protection against the following:

21.2.1 Loss or damage by fire and other perils covered by the standard extended coverage endorsement; and

21.2.2 All other perils which are customarily covered in projects similar in construction, location, and use, including all perils normally covered by the standard "all risk" endorsement where that is available. (The insurance shall include earthquake insurance if a majority of the Board approves such coverage which approval shall be absolutely

discretionary, and if such coverage is available at a reasonable cost but in the absence of such approval, such risk shall be allocated exclusively to the Unit Owner.)

**21.3 Adjustment of Loss.** Subject to the authority of Declarant during any period of Declarant Control, the master policy shall provide that adjustment of loss shall be made by the Board and that the net proceeds thereof shall be payable to the Board, as Trustees, for the purpose of promptly repairing or rebuilding the damaged or destroyed property in conformance with the Condominium plans and specifications unless:

21.3.1 The Condominium is terminated;

21.3.2 Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

21.3.3 Eighty percent (80%) of the Unit Owners, including every one thereof which owns a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild.

**21.4 Application of Surplus Insurance Proceeds.** Subject to the rights of Declarant in any proceeds paid with respect to any Property which at the time of the loss was not Property of the Condominium, the insurance proceeds not used for the purpose of repairing or rebuilding any Unit or improvement which is damaged or destroyed by insured casualty shall be paid to the Unit Owners, mortgagees, or Declarant with respect to damage to Property subject to Development Rights which is not yet a part of the Condominium as their interests may appear. However, any mortgagee of any of the Units may require that insurance proceeds be disbursed to or through the Board of Directors only as reconstruction progresses in the manner normally followed by construction lenders in disbursing construction loans to their borrowers. If eighty percent (80%) of the Unit Owners, including every Unit Owner of a Unit which will not be rebuilt, vote not to rebuild, that Unit's allocated interests are automatically reallocated as if the Unit had been condemned, and an amendment to this Declaration shall be recorded setting forth the reallocation.

**21.5 Failure to Repair or Replace.** If all of the damaged or destroyed portions of the Condominium are not repaired or replaced:

21.5.1 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;

21.5.2 The insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements were allocated, or to lien holder, as their interests may appear; and,

21.5.3 Subject to the rights of Declarant in any proceeds payable on account of losses to Property which is not a part of the Condominium at the time of loss, the remainder of the proceeds shall be distributed to all the Unit Owners or lien holder, as their interests may appear, in proportion to the Common Element interests of all the Units as provided in Section 12.1 hereof.

21.6 **Waiver and Subrogation.** All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction or pro rata liability of the insurer as a result of any insurance carried by Unit Owners or of invalidity arising from any acts of the insured or any Unit Owners, and shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all of the insureds, including all mortgagees of Units. Each Unit Owner and mortgagee shall be furnished, on written request, with a copy of the master policy, certificate of insurance, or memoranda of insurance.

21.7 **Liability Insurance.** The Board shall be required to obtain and maintain, paying the premiums as common expenses, comprehensive general liability insurance, including medical payments insurance covering all the Common Elements. Such insurance shall be not less than One Million Dollars (\$1,000,000) for each single accident or occurrence and shall cover bodily injury, death of persons, and property damage, including water damage. The liability insurance policy shall cover each director, and each Unit, with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. The amount of coverage can be increased at the discretion of the Board. During any period of Declarant Control, Declarant may include itself and any Property subject to Development Rights but not yet part of the Condominium subject to a duty to pay a pro rata share of the cost thereof. Such coverage may, at the election of the Board be continued after the end of Declarant Control while any Property remains outside the Condominium but subject to Development Rights in Declarant. Such insurance shall be treated similar to the manner that casualty insurance is treated pursuant to Section 21.1 hereof.

21.8 **Fidelity Bonds.** The Declarant, during any period of Declarant Control, may and the Board, thereafter, shall maintain blanket fidelity bonds in an amount determined by the

Declarant or Board as the case may be, for all officers, directors, trustees, management agents, employees of the Association, and all other persons handling or responsible for funds of or administered by the Association.

**21.9 Compliance with Federal Mortgage Agency Requirements.** Notwithstanding the foregoing, or any other provisions contained in this Declaration, the Declarant may and the Board shall continuously maintain in effect such casualty, flood, liability insurance, and fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by the Veterans Administration, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation, so long as any one of those organizations is a mortgagee or Unit Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by the organization.

**21.10 Additional Insurance.** Unless exempted by the Board, all Unit Owners may carry additional insurance for their own benefit insuring their carpeting, wall coverings, fixtures, furniture, furnishings, and other personal property. All Unit Owners may carry insurance for and shall be responsible for their own personal property stored in the Common Element or Limited Common Element including attic areas. Any such policies shall contain waivers of subrogation and the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

**21.11 If Insurance is Unavailable.** If the insurance described in this insurance Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Unit owners, to each Eligible Mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**21.12 Actions of Unit Owners.** Nothing shall be done or kept in any Unit or in any Common Element or Limited Common Element which will increase the rate of insurance on the Common Element or Units without the prior written consent of the Board. No Unit Owner or lessee thereof shall permit anything to be done or kept in a Unit or in a Common Element or Limited Common Element which would result in the cancellation of insurance on any Unit or any part of a Common Element or Limited Common Elements, or which would be a violation of any law.

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**ARTICLE XXII. MAINTENANCE AND REPAIR**

**22.1 Unit Owner Responsibility.** Each Unit Owner, at that Unit Owner's own expense, shall perform promptly all cleaning, maintenance, repair, and replacement work:

22.1.1 Within that Unit Owner's Unit which, if omitted, would affect the Common Element;

22.1.2 On both the interior and exterior of all doors (exterior doors, however, of a building shall be repainted or re-stained by the Association when the exterior of the building is repainted or re-stained by the Association), windows (the Association may, however, clean the exterior of windows in any year at the discretion of the Board), and screens bounding that Unit Owner's Unit;

22.1.3 Repair of sidewalk, parking and other improvements and areas allocated to such Unit as a Limited Common Element; and,

22.1.4 Landscaping and irrigation within the Limited Common Element allocated to such Unit.

**22.2 Failure to Perform.** In the event a Unit Owner fails or refuses to perform the cleaning, maintenance, repair, and replacement work required by that Unit Owner under the provisions of Section 22.1 hereof, then the Association may perform such work and the cost thereof shall be the personal obligation of the Unit Owner of such Unit and shall constitute a lien on such Unit and its interest in the Common Elements and may be foreclosed in the same manner as the lien for Assessments for Common Expenses.

**22.3 Association Responsibility.** All other maintenance and repairs are to be performed by the Association. The cost thereof is to be a Common Expense of all the Unit Owners. However, each Owner shall be responsible for the cleaning and general maintenance of decks, patios, porches, fireplaces, if any, flues, and interior of chimneys. (The Board may vote to have chimneys cleaned from Assessment funds in any year.) All structural repair, painting and staining, landscaping in Common Elements (excepting Limited Common Elements), maintenance of landscaping and yard, and replacement shall be the responsibility of the Association.

**22.4 Right of Entry.** The Association shall have the irrevocable right, to be exercised by the Board and its agents, to have access to each Unit and Limited Common Element from time to time during reasonable hours and with reasonable notice as may be necessary for the maintenance, repair, or replacement of any of the Common Elements or other improvements or Property

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which it is required to maintain or repair pursuant to Section 22.3 hereof located therein or accessible therefrom, and from making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units, or to do any cleaning, maintenance, repair, and replacement work which the Unit Owner is required to do but has failed or refused to do.

**22.5 Exterior Appearance.** In order to preserve a uniform exterior appearance to the buildings, improvements, and Common Elements and Limited Common Elements, the Board shall require and provide for the painting and other decorative finish of the buildings, patios, decks, and yard areas, or other Common Elements or Limited Common Elements, and to prescribe the type and color of such decorative finishes. The Board may prohibit, require, or regulate any modification or decoration of the buildings, decks, patios, and yard areas of other Common Elements or Limited Common Elements undertaken or proposed by any Unit Owner. This power of the Board extends to screens, doors, awnings, rails, or other visible portions of each Unit, improvement, and each building.

#### **ARTICLE XXIII. PROCEDURES FOR SUBDIVIDING OR ALTERING UNITS**

**23.1 Submission of Proposal to Subdivide Unit.** No unit or Units shall be subdivided either by agreement or legal proceedings.

**23.2 Minor Alterations.** No Unit may be altered in any way except in accordance with this Article XXIII. A Unit Owner may make any improvements or alterations to the Unit 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. A Unit Owner may not change the appearance of the Common Elements, Limited Common Element, or the exterior appearance of a unit without permission of the Association pursuant to the procedures of Section 23.4.

**23.3 Adjoining Units.** After acquiring an adjoining Unit or an adjoining part of any adjoining Unit, a Unit Owner may, with approval of the Board pursuant to Section 23.4, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element or Limited 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 Section 23.3 is not a relocation of boundaries. The Unit Owner's proposal to act under this Section 23.3 shall be submitted to the Board and shall include the plans and specifications for the proposed removal or alteration.



**23.4 Substantial Alteration.** A proposal that contemplates substantial alteration of one or more Units is subject to approval by the Board. The Board shall approve the and Unit Owner's request under this Section 23.4 within thirty (30) days, unless the proposed alteration does not comply with Section 23.3 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.

**23.5 Procedure After Approval.** Upon approval of a proposal under this Article XXIII, the Unit 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, Limited Common Elements 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 and Plans and the Declaration shall be placed of record as amendments thereto.

**23.6 Relocation of Boundaries--Adjoining Units.** The boundaries between adjoining Units may only be relocated by an amendment to the Declaration, pursuant to Article XXXI, upon application to the Board by Unit Owners of those Units. If the Unit Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interest, the application must state the proposed reallocations. Unless the Board determines within thirty (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 and 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 Unit Owner or Unit 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 XXIV. CONDEMNATION**

**24.1 Association as Attorney-in-Fact.** If the Property is partially or completely condemned, the Association shall act as the representative of the Unit Owners and mortgagees in any proceedings, negotiations, or settlements. Each Unit Owner appoints the Association as its attorney-in-fact for this purpose. Any proceeds shall be paid to the Association for the benefit of the Unit Owners and the mortgagees and shall be used and distributed as set forth below.

24.2 **Unit Not Unlivable.** In the event of partial condemnation which does not result in any Unit becoming unlivable, the proceeds shall be used:

24.2.1 To restore the remaining Common Elements;

24.2.2 For payment to Unit Owners and their mortgagees specially damaged by the condemnation, which damage was an element of the condemnation award; and

24.2.3 The balance shall be distributed pro rata among the Unit Owners and their mortgagees in proportion to their percentage interest in the Common Elements as determined under Section 12.1 hereof.

24.3 **Partial Condemnation.** In the event of partial condemnation which does result in some, but not all, of the Units becoming unlivable, the elimination of Units and reallocation of percentage interest, and the condemnation proceeds shall be used:

24.3.1 For payment to Unit Owners and their mortgagees eliminated in the revised document, to the extent the value of the entire Unit including Limited Common Elements allocated thereto was an element of the condemnation award;

24.3.2 Toward restoration of the remaining Common Element;

24.3.3 For payment to Unit Owners and their mortgagees specially damaged by the condemnation, but which remain in the Condominium, which damages were an element of the condemnation award; and

24.3.4 The balance shall be distributed pro rata to the remaining Unit Owners and their mortgagees in proportion to their percentage interest in the Common Element as determined under Section 12.1 hereof.

24.4 **Condemnation Disposition.** In the event that the entire Property of the Condominium is taken or condemned, or sold, or otherwise disposed of in lieu of, or in avoidance thereof, the Condominium ownership pursuant thereto shall terminate. The condemnation award shall be apportioned among the Unit Owners in shares proportionate to the respective undivided interest in the Common Element as determined under Section 12.1 hereof. If a standard different from the value of the property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable. On the basis of

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the foregoing principle, the Board shall, as soon as practicable, determine the share of the condemnation award to which each Unit Owner is entitled. After first paying the respective share of each Unit Owner, and all mortgages and liens on the interest of such Unit Owner, the balance remaining in each share shall then be distributed to each Unit Owner, respectively.

#### **ARTICLE XXV. MORTGAGEE'S PROTECTION**

25.1 **Amendment to Declaration or By-Laws.** Subject to any Development Right of the Declarant, the prior written approval of holders of at least eighty percent (80%) of the first mortgages (based on one (1) vote for each first mortgage owned) of the Units shall be required for any amendment of a material nature to this Declaration, the Declaration of Protective Covenants, Easements, Conditions and Restrictions, the Articles of Association or the By-Laws of the Association. Any amendment to the Declaration or By-Laws which changes any of the following shall constitute a material change:

25.1.1 Voting rights;

25.1.2 An increase in assessments by more than 25% over the prior year, assessment lien rights, or subordination of such liens;

25.1.3 Reduction in reserves for maintenance, repair, or replacement of the Common Elements;

25.1.4 Responsibility for maintenance and repairs;

25.1.5 Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use, except as otherwise provided in this Declaration;

25.1.6 Reduction of the boundaries of any Unit;

25.1.7 Convertibility of Units into Common Elements or of Common Elements into Units;

25.1.8 Expansion or contraction of the Condominium or facilities, or of Common Elements into Units;

25.1.9 Insurance or fidelity bonds;

25.1.10 The leasing of Units other than by Declarant;

25.1.11 Imposition of any restriction on the right of a Unit Owner to sell or transfer his or her Unit other than a restriction resulting from any lien thereon by the Association arising pursuant hereto;

25.1.12 A decision by the Association to establish self-management when professional management had been required previously by the project document or an Eligible Mortgagee;

25.1.13 Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than specified in this Declaration or the By-Laws;

25.1.14 Any action to terminate the legal status of the Condominium or Units therein after substantial destruction or condemnation occurs; or,

25.1.15 Any provisions that expressly benefit mortgagees, insurers, or guarantors (i.e. mortgagee priority).

**25.2 No Modification of Mortgagee's Contract.** No amendment of this Declaration shall be effective to modify, change, limit, or alter the rights expressly conferred upon mortgagees in this instrument with respect to any unsatisfied mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such mortgage. Any provision of this Declaration conferring rights upon mortgagees which is inconsistent with any other provision of this Declaration or the By-Laws shall control over such other inconsistent provisions.

**25.3 Request to Association.** On written request to the Association, an Eligible Mortgagee of a first mortgage on a unit shall be entitled to timely written notice of:

25.3.1 Any significant damage or destruction to the Common Elements, or to the Unit to which the mortgage appertains (for purposes of this subparagraph, the term "significant damage or destruction" shall mean damage having a cost to repair of One Thousand Dollars (\$1,000) or more to the mortgaged Unit or Ten Thousand Dollars (\$10,000) or more to the Common Element);

25.3.2 Any condemnation or eminent domain proceeding affecting either a material portion of Condominium or the Unit securing its mortgage;

25.3.3 Any default under this Declaration or the Articles of Incorporation or By-Laws which gives rise to a cause of action against the Unit Owner of a Unit subject to the mortgage of such holder or insurer, where the default has not been cured in thirty (30) days if the default involves payment of sums owing or, otherwise, where has not been commenced within such thirty (30) days or is not being diligently pursued by the affected Unit Owner;

25.3.4 Any proposed termination of the Condominium as a legal entity;

25.3.5 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association unless the Association obtains an alternate policy or bond within sixty (60) days thereafter;

25.3.6 Any proposed amendment of the condominium instruments affecting a change in:

(a) the boundaries of any Unit;

(b) the undivided interest in the Common Elements or Limited Common Elements allocated to any Unit or the liability for Common Expenses allocated thereto;

(c) the allocation of voting rights to any Unit in the Association; or,

(d) any restrictions on the use of a Unit or the Limited Common Elements associated therewith or the Common Elements; and,

25.3.7 Any sixty (60) day delinquency in the payment of assessments or charges owed by the Unit Owner of any Unit on which the mortgagee holds the mortgage; and,

25.3.8 Any participation by a Unit Owner in a proposed vote which requires the consent of a specified percentage of the vote of mortgagees or of the vote in other than a simple majority of the votes cast at a duly called meeting of the Association with a quorum present (except votes on matters described in Section 29.4) without the consent of such mortgage holder to the vote of such Unit Owner.

25.4 **Holder or Insurer of First Mortgage.** An Eligible Mortgagee of a first mortgage on a Unit shall be entitled, upon request, to:

25.4.1 Inspect the books and records of the Association during normal business hours;

25.4.2 Require the preparation of and, if preparation is required, receive an annual audited financial statement of the Association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than ninety (90) days following the end of such fiscal year; and

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25.4.3 Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

**ARTICLE XXVI. SURVEY MAP AND BUILDING PLAN**

Simultaneously with the recording of this Declaration there has been recorded (as shown in Article VI of this Declaration) a Survey Map and Plan, jointly styled "Sorrento Condominiums, A Condominium," containing the information required by the Act.

**ARTICLE XXVII. UNITS SUBMIT TO DECLARATION, ARTICLES OF INCORPORATION, BY-LAWS AND RULES AND REGULATIONS**

All present and future Unit Owners or occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, By-Laws, and Rules and Regulations of the Association, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, By-Laws, and Rules and Regulations of the Association, as they may be amended from time to time, are accepted and ratified by such Unit Owner or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. Failure of a Unit Owner, an occupant, or the Association to comply with this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations, or documents made by the Association under authority granted in those documents shall be grounds for an action to recover sums due for damages and/or other relief. Such an action may be maintained by the Association or by an aggrieved Unit Owner.

**ARTICLE XXVIII. FEE TRANSFERABILITY**

Allocated Interests with respect to any Unit may be encumbered or transferred only with such Unit. Subject to liens for unpaid assessments and upon leasing, a Unit Holder shall be entitled to sell, transfer, or cause or mortgage the Unit thereof without restriction.

**ARTICLE XXIX. PROTECTIVE COVENANTS**

29.1 **Antennas.** No dish or other type of exterior antenna or receiver shall be allowed on any Unit or other improvement in any manner unless approved by the Board.

**29.2 Garbage and Refuse.** All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and shall be screened from view. Disposal of waste, yard rakings, such as rocks, lawn and shrubbery clippings, garbage, dirt or other materials onto any adjoining premises or Common Element shall be subject to a Five Hundred Dollar (\$500) fine per occurrence by the Association and payable to the Association. Except as provided by the Association, the removal and disposal of all such materials shall be the sole responsibility of the Unit Owner.

**29.3 Nuisance.** No noxious or undesirable thing, or noxious or undesirable use, shall be permitted or maintained within any Unit, the associated Limited Common Element, or any portion of the Property. If the Board determines that a thing or use is undesirable or noxious, that determination shall be conclusive. Likewise, all Unit Owners shall be considerate of all other Unit Owners and shall limit noise from radios, televisions, sound and video systems, lawn mowers, etc., according to any rules and regulations established by the Association. Violation of any such rule or regulation shall be deemed a nuisance.

**29.4 Pets, Livestock, and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit except that dogs, cats, or other indoor household pets which do not cause other neighbors concern may be kept, provided that they are not kept, bred or maintained for any commercial purpose. (Examples of unacceptable pets are poisonous or large snakes or reptiles, such as boa constrictors or alligators.) No individual Unit Owner(s) shall keep more than two (2) dogs, or two (2) cats, or one dog and one cat, for a period longer than five (5) months. All dogs must be leashed when outside the Limited Common Element allocated to each Unit. Unless leashed, pets are to be kept within the Unit or within the Limited Common Element allocated to the Unit. Pets may also be restrained or removed by the Association in the following manner:

**29.4.1** Any Unit Owner who feels that another Owner's pet is creating a nuisance or damaging property may request to the Board that the Owner of the pet be notified to restrain the household pet. For purposes of this Article, nuisance shall include barking or obnoxious noises. If the Board determines the request is reasonable, the Board shall then give written notice to the pet's owner by certified mail.

**29.4.2** After a Unit Owner has been notified by the Board that he or she is to restrain a household pet, that Unit Owner must immediately and thereafter restrain the pet in accordance with this Section 29.4 and the Rules and Regulations for the Association.

29.4.3 If the Board determines that the Unit Owner who received notice has failed to restrain the pet properly, the Board may remove the pet permanently after thirty (30) days have lapsed from the time the written notice was sent by certified mail.

29.4.4 If any Unit Owner believes that a pet of another Unit Owner is a danger due to viciousness, temperament, or ill health, the Board shall call a special meeting of the Unit Owners no sooner than forty-eight (48) hours after notice is given to the pet's owner, but not later than thirty (30) days from such notice. At the special meeting, the Unit Owners must decide, by a vote of seventy-five percent (75%) of the Unit Owners, whether or not the pet is dangerous and must be permanently removed from the premises. If the Unit Owners vote to have the pet removed, the Board shall take reasonable efforts to see that the pet is removed within one (1) week.

29.4.5 Should the action of a Unit Owner's pet cause damage to another Unit Owner's property or Common Elements or Limited Common Elements, the Unit Owner whose occupant's pet caused the damage must repair and replace the damaged property or reimburse the Unit Owner of the damaged Unit or Unit associated with the Limited Common Element which is damaged for the damage. Also, such Unit Owner is responsible for removal of any excrement left by a pet owned by the occupant of his or her Unit on another Unit Owner's property or any common or limited common element. This subsection 29.4.5 is to protect the physical property and the personal well-being of Unit Owners.

**29.5 Business and Commercial Use of Property Prohibited.** No trade, craft, business, or manufacturing enterprise, or business or commercial activity of any kind shall be conducted or carried out in any house, garage, RV unit, or with the property itself, unless the following conditions are met:

29.5.1 The Unit associated with the business or commercial use must serve as the primary residence for that Unit's Unit Owner or a permitted tenant thereof who occupies such Unit as such tenant's principal residence;

29.5.2 No vehicle associated with a business or commercial use shall be parked outside of the associated Unit's garage or the driveway thereto;

29.5.3 No goods, equipment, vehicles, and/or materials or supplies used in connection with any trade, service, or business shall be kept, parked, or stored outside of a Unit or the garage allocated thereto; and,

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29.5.4 No more than five invitees of such business or trade shall park their vehicles on the Common Elements during any twenty-four (24) hour period.

**29.6 Common Element and Limited Common Element Alterations.** Nothing shall be altered or constructed in or removed from the Common Elements and Limited Common Elements except on the written consent of the Board and after procedures required herein or by law. However, this Section 29.6 shall not supersede any other section of this Declaration or prohibit personal property being used on the Limited Common Elements consistent with the use and design of the Condominium (i.e. patio and deck furniture, planters on decks and patios, portable barbecues, etc.).

**29.7 Rules and Regulations.** The Association is empowered to pass, amend, and revoke detailed administrative rules and regulations which are deemed to be necessary or convenient from time to time to insure compliance with the general guidelines of the Declaration and to insure enforcement of these protective covenants and to insure the peaceful habitation by all Unit Owners and lessees of Units.

**29.8 Sales Facilities of Declarant.** Notwithstanding any provisions of this Declaration, Declarant, and its agents, employees, and contractor shall be permitted to maintain, during the period of sale of the Condominium, on such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction and sale of Units. Under this paragraph, the Declarant may maintain a business office, storage area, signs, model units, sales office, construction office, and parking areas for all prospective purchasers from Declarant. The rights reserved hereby are Development Rights for purposes of this Declaration which shall continue for such time as such Development Rights continue.

**29.9 Common Drive and Walks.** Common drives and walks and other like Common Elements shall be used exclusively for normal transit, and no obstructions and/or decorations or other items shall be placed on or within such areas except by the written consent of the Board.

**29.10 Vehicle, Boat and Trailer Parking Restrictions.** No vehicle, boat or trailer may be parked or placed outside of garages in driveways or roadways for more than three (3) days. For any vehicle, boat or trailer that will be parked in a driveway for a period longer than three (3) days, written notice must be given to the Board for the reason for such vehicle, boat or trailer needing to be parked for a period in an excess of three (3) days. The Board shall not require

removal of the vehicle, boat or trailer for any reasonable time necessary for such Unit Owner to comply with the requirements hereof. The Board shall require removal of any inoperative or improperly licensed vehicle or trailer or any unsightly vehicle, boat or trailer and any other equipment or item improperly parked, at the Unit Owner's expense. This Section 29.10 expressly prohibits any Unit Owner from parking any such vehicles on any Common Element for a period in excess of twenty-four (24) hours. Rules substantially similar to those which apply to parking restrictions in driveways shall apply.

#### **ARTICLE XXX. ARBITRATION**

Should any dispute arise between the Unit Owners (including Declarant), as to the terms of this Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations for Sorrento Condominium Association, or decisions made by the Association under authority granted in those documents, the dispute shall be resolved through binding arbitration according to the rules of the Thurston County Mandatory Arbitration Program for the Superior Court of Thurston County. The parties shall agree to one (1) arbitrator mutually acceptable to both parties. Further, for any dispute, the prevailing party shall recover costs and reasonable attorneys' fees, including those for appeals.

#### **ARTICLE XXXI. ASSOCIATION AMENDMENTS**

31.1 **Approval.** Except as provided in certain Articles of this Declaration and the Act, the Declaration, including Survey Maps and Plans, may be amended only by vote of Unit Owners holding eighty percent (80%) of the votes allocable to Unit Owners pursuant to Section 12.1 hereof. Furthermore, the vote or written agreement of all Unit Owners of any Unit particularly affected and the Unit Owners of Units to which at least ninety percent (90%) of such votes are allocated, are required for any amendment of the Declaration affecting the following:

31.1.1 The boundaries of any Unit;

31.1.2 The means by which a Units interest in Common Elements and Common Expenses is computed;

31.1.3 The means by which votes are allocated to Units;

31.1.4 Any increase in the number of Units other than that provided under Declarant's Development Rights;

31.1.5 The creation or expansion of Declarant Rights beyond those provided in the Declaration; or,

31.1.6 The restrictions applicable to the purpose or use to which any Unit, Limited Common Elements, or the Common Elements.

31.2 **Recording.** When an amendment has been approved by the owners, then the Declarant or President of the Association shall forthwith cause a written instrument to be prepared, acknowledged, and recorded in Thurston County, Washington, setting forth the amendment and certifying when the amendment shall become effective. No amendment shall be effective until recorded.

**ARTICLE XXXII. TRANSFER OF DECLARANT'S RIGHTS**

If Declarant shall transfer Declarant's rights prior to termination of Declarant's rights, Declarant shall record a transfer document with the Thurston County Auditor.

**ARTICLE XXXIII. POWER OF ATTORNEY TO AMEND TO MEET FINANCING REQUIREMENTS**

During any period Declarant is entitled to exercise Declarant Control, Declarant may, without the consent of any Unit Owner amend this Declaration and the Survey Map and Plan by an instrument signed by Declarant alone in order to satisfy lending requirements of the Veterans Administration, Federal National Mortgage Association, or the Mortgage Corporation (also known as Federal Home Loan Mortgage Association); however, if at such time a Unit is subject to a mortgage insured by the Veterans Administration, then the prior written approval of the Veterans Administration shall be required before recording such amendment.

**ARTICLE XXXIV. ENFORCEMENT**

Each Unit Owner and the Association shall comply strictly with the provisions of this Declaration, the By-Laws, the Rules and Regulations for Sorrento Condominiums (and as the same may be lawfully amended from time to time), and with all decisions adopted pursuant to this Declaration, the By-Laws and Rules and Regulations. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintained by the Association, or by an aggrieved Unit Owner based on a failure to comply. Further, if any dispute should arise regarding the terms of this Declaration, the Articles of Incorporation, the By-Laws, or any Rules or Regulations of the Association, the prevailing party shall recover reasonable attorney's fees and costs, including those for appeals. This Article XXXIV shall be subject to Article XXX requiring arbitration of disputes.

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**ARTICLE XXXIV. SPECIAL DECLARANT'S RIGHTS**

During any period Declarant retains Declarant Rights, this Declaration cannot be amended by the Association in a manner without Declarant's consent. Thereafter, this Declaration cannot be amended in any manner which affects Declarant's Development Rights as long as such Development Rights continue. Declarant shall continue to have the authority without the consent of any other person to amend the Declaration and the Survey Map and Plans to the extent necessary or appropriate to exercise the rights useful for the execution of such Development Rights. Such retained rights shall include, without limitation, the following:

35.1.1 The completion of improvements indicated on Survey Map and Plans filed with the Declaration;

35.1.2 The maintenance of sales offices, management offices, signs advertising the condominium, and models;

35.1.3 The use of easements through the Common Elements for the purpose of making improvements for the Condominium or within Real Property which may be added to the Condominium by exercise of Development Rights; and,

35.1.4 The appointment or removal of any officer of the Association or any master association of any director appointed by the Declarant during any period of Declarant control.

**ARTICLE XXXVI. COVENANT RUNNING WITH LAND**

This Declaration shall deem to be a set of covenants running with the land which shall be binding on the Declarant, its successors and assigns, the Association and all subsequent Unit Owners and lessees of Property in the Condominium or in Real Property which was at any time subject to Development Rights but is not in the Condominium, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns. It shall be interpreted pursuant to the Act and shall operate independently of the Act, should the Act be inapplicable in any manner. Further, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the condominium under the provisions of Washington law.

**ARTICLE XXXVII. CUMULATIVE REMEDIES**

All remedies available to the Unit Owners or the Association under the terms of this Declaration are cumulative, and nothing in this Declaration shall be construed to limit any

remedy available to any Unit Owner, lessee or the Association provided for under the laws of the State of Washington.

**ARTICLE XXVIII. NO WAIVER OF STRICT PERFORMANCE**

The failure of the Association in any one or more instances to insist on strict performance of this Declaration, the By-Laws or any rules and regulations promulgated thereunder, or to exercise any right or option 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 such term, covenant, condition, restriction, rule or regulation but such shall remain in full force and effect.

**ARTICLE XXIX. TERMINATION OF CONDOMINIUM TITLE**

A Condominium may be terminated only by agreement of Unit Owners of units to which ninety percent (90%) of the votes in the Association are allocated pursuant to Section 12.1 hereof. The procedures for termination must comply with the Act and as it is amended. That, furthermore, for purposes of a Declaration, each unit owner by acceptance of that owner's deed, irrevocably constitutes and appoints Declarant during any period of Declarant Control or the President of the Board thereafter its true and lawful attorney in that Unit Owner's name, place and stead, with the power to execute, acknowledge or verify, file or record any and all documents to affect such termination. Each Unit Owner gives and grants unto such attorney in fact full power and authority to do and perform each and every act whatsoever requisite and necessary to be done in and about the premises for such purposes and wholly and to all intents and purposes and he/she might or could do if personally present with respect thereto. Each Unit Owner also hereby ratifies and confirms that all that the attorney shall do or cause to be done, it being expressly understood, that the foregoing powers coupled with an interest and shall survive that conveyance by an owner of that Unit Owner's interest in the Unit. Nothing herein contained shall require any person to investigate the authority of Declarant or the Board, to execute an instrument under the authority of this power of attorney.

**ARTICLE XL. SAVINGS CLAUSE**

This Declaration shall be construed consistent with the requirements of Chapter 64.34 of the Revised Code of Washington. Any provision required thereby shall be deemed added by this Article XL to the extent not a part hereof and any provision inconsistent herewith is hereby modified to adopt the requirements thereof in lieu of such provision. Further, to the extent the Federal National Mortgage Association (Fannie Mae) provides or guarantees financing for any mortgage

granted by a Unit Holder, the Project Standards and Legal Requirements thereof incorporated and set forth in Article VIII, Chapter 6 of the Fannie Mae Selling Guide last issued prior to any such mortgage, as amended are incorporated hereby with the same effect as that applicable to Chapter 64.34 of the Revised Code of Washington, by operation of the first sentence of this Article XL.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed this 6 day of June, 19 95.

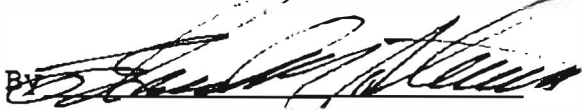
SELLARONDA ASSOCIATES

SYSS ENTERPRISES, INC.,  
General Partner

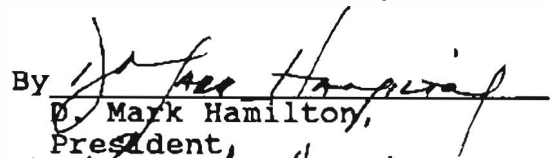
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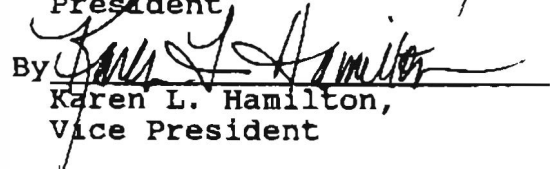
The undersigned hereby concur in and agree to be bound by the terms and conditions of this Declaration.

SORRENTO HOME OWNERS ASSOCIATION

By 

HAMILTON PROPERTIES, L.L.C.

By   
D. Mark Hamilton,  
President

By   
Karen L. Hamilton,  
Vice President

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EXHIBIT I

Lots 1 through 30 of the Plat of Sorrento as recorded in Vol. 2365 of Plats, Page 839 under Thurston County Auditors Fee No. 9501170119, together with and subject to easements, restrictions and reservations of record.

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EXHIBIT 3.31

Description of Real Property Included in Condominium Phase I.

Phase I:

Lots 16, 19, 24, 25 and 26 of the Plat of Sorrento as recorded in Vol. 2365 of Plats, Page 839 under Thurston County Auditors Fee No. 9501170119, together with an undivided interest as tenant in common in the common areas identified on the plat records as parcels A - D and roads, with the Sorrento Condominium and the residential unit holders therein, together with and subject to easements, restrictions and reservations of record.

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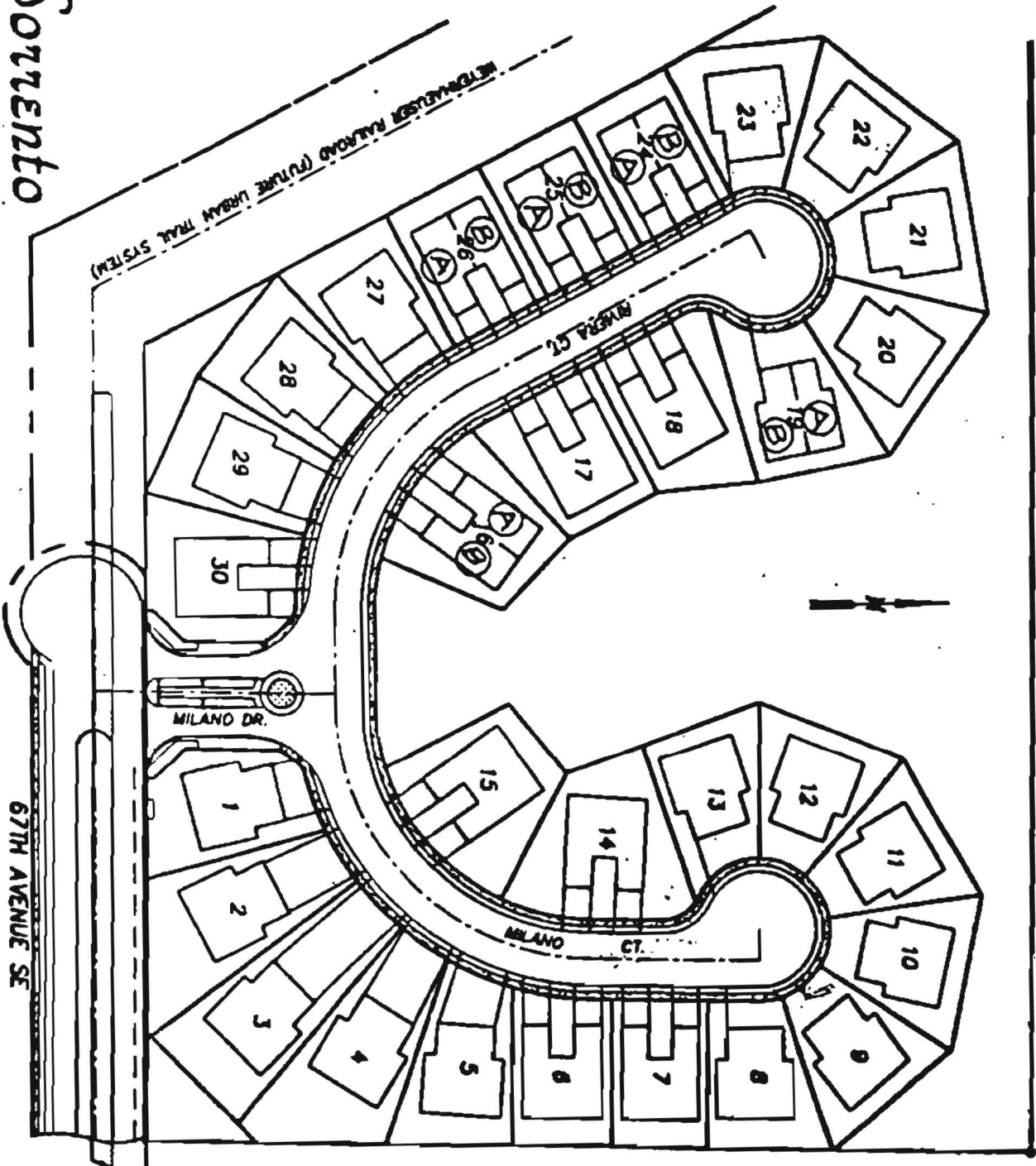
EXHIBIT 3.40

Description of Real Property to be included in "Subsequent Phase Property".

Lots 1 through 15; lots 17, 18; lots 20 through 23; lots 27 through 30 of the Plat of Sorrento as recorded in Vol. 2365 of Plats, Page 839 under Thurston County Auditors Fee No. 9501170119, together with undivided interest as tenant in common in the common areas identified on the plat as parcels A - D and roads, with declarant and all owners of residential units in the Sorrento Condominiums, together with and subject to easements, restrictions and reservations of record.

File No: 9506368136

Sorrento



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EXHIBIT 9.2

Phase I

<u>Number</u>	<u>Address</u>	<u>Building Type</u>	<u>% Interest of Common Element</u>	<u>Double Car Garage</u>
16A	6626 Riviera Ct.	B	10%	1
16B	6628 Riviera Ct.	B	10%	1
19A	6614 Riviera Ct.	A	10%	1
19B	6616 Riviera Ct.	A	10%	1
24A	6611 Riviera Ct.	B	10%	1
24B	6609 Riviera Ct.	B	10%	1
25A	6617 Riviera Ct.	B	10%	1
25B	6615 Riviera Ct.	B	10%	1
26A	6621 Riviera Ct.	B	10%	1
26B	6619 Riviera Ct.	B	10%	1

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**EXHIBIT 13.13**

**STORM DRAINAGE MAINTENANCE PLAN  
FOR  
SORRENTO**

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## SECTION 1 -REQUIRED MAINTENANCE

The drainage facilities will require routine maintenance. The following is based on minimum requirements as set forth in the Drainage Design and Erosion Control Manual of Thurston County, Washington. The required maintenance and frequency of maintenance are as follows:

### Maintenance Checklist for Conveyance Systems (Pipes and Swales)

Frequency	Drainage System Feature	✓	Problem	Conditions to Check For	Conditions That Should Exist
M.S.	Pipes	✓	Sediment & debris	Accumulated sediment that exceeds 20% of the diameter of the pipe.	Pipe cleaned of all sediment and debris.
M		✓	Vegetation	Vegetation that reduces free movement of water through pipes.	All vegetation removed so water flows freely.
A		✓	Damaged (rusted, bent or crushed)	Protective coating is damaged, rust is causing more than 50% deterioration to any part of pipe.	Pipe repaired or replaced.
M		✓		Any dent that significantly impedes flow (i.e., decreases the cross section area of pipe by more than 20%).	Pipe repaired or replaced.
M		✓		Pipe has major cracks or tears allowing groundwater leakage.	Pipe repaired or replaced.
M.S.	Grass filter strip (swale)	✓	Trash & debris	Dumping of yard wastes such as grass clippings and branches into swale. Unsightly accumulation of non-degradable materials such as glass, plastic, metal, foam and coated paper.	Remove trash and debris and dispose as prescribed by County Waste Management Section.
M		✓	Sediment buildup	Accumulated sediment that exceeds 20% of the design depth.	Swale cleaned of all sediment and debris so that it matches design.

**Maintenance Checklist for Catch Basins and Inlets**

<b>Frequency</b>	<b>Drainage System Feature</b>	<b>✓</b>	<b>Problem</b>	<b>Conditions to Check For</b>	<b>Conditions That Should Exist</b>
M.S.	Catch basins	✓	Trash, debris and sediment in or on basin	Trash or debris in front of the catch basin opening is blocking capacity by more than 10%.	No trash or debris located immediately in front of catch basin opening. Grate is kept clean and allows water to enter.
M		✓		Sediment or debris (in the basin) that exceeds 1/3 the depth from the bottom of basin to invert of the lowest pipe into or out of the basin.	No sediment or debris in the catch basin. Catch basin is dug out and clean.
M.S.		✓		Trash or debris in any inlet or pipe blocking more than 1/3 of it's height.	Inlet and outlet pipes free of trash or debris.
M		✓	Structural damage to frame and/or top slab	Corner of frame extends more than 3/4" past curb face into the street (if applicable).	Frame is even with curb.
M		✓		Top slab has holes larger than 2 inches or cracks wider than 1/4" (intent is to make sure all material is running into the basin).	Top slab is free of holes and cracks.
M		✓		Frame not sitting flush on top slab, i.e., separation of more than 3/4" of the frame from the top slab.	Frame is sitting flush on top slab.
A		✓	Cracks in basin walls/bottom	Cracks wider than 1/2" and longer than 3', any evidence of soil particles entering catch basin through cracks or maintenance person judges that structure is unsound.	Basin replaced or repaired to design standards. Contact a professional engineer for evaluation.

A		✓		Cracks wider than 1/2" and longer than 1' at the joint of any inlet/outlet pipe or any evidence of soil particles entering catch basin through cracks.	No cracks more than 1/4" wide at the joint of inlet/outlet pipe.
A		✓	Settlement/ mis-alignment	Basin has settled more than 1" or has rotated more than 2" out of alignment.	Basin replaced or repaired to design standards. Contact a professional engineer for evaluation.
M.S.		✓	Fire hazard or other pollution	Presence of chemicals such as natural gas, oil and gasoline. Obnoxious color, odor or sludge noted.	No color, odor or sludge. Basin is dug out and clean.
M.S.		✓	Outlet is clogged with vegetation	Vegetation or roots growing in inlet/outlet pipe joints that is more than 6" tall and less than 6" apart.	No vegetation or root growth present.

If you are unsure whether a problem exists, please contact the Jurisdiction and ask for technical assistance.

Comments:

Key-A = Annual (March or April preferred)  
M = Monthly (see schedule)  
S = After major storms

**Maintenance Checklist for Grounds (Landscaping)**

<b>Frequency</b>	<b>Drainage System Feature</b>	<b>✓</b>	<b>Problem</b>	<b>Conditions to Check For</b>	<b>Conditions That Should Exist</b>
M	Grounds	✓	Weeds	Weeds growing in more than 20% of the landscaped area (trees and shrubs only).	Weeds present in less than 5% of the landscaped area.
M		✓	Safety hazard	Any presence of poison ivy or other poisonous vegetation or insect nests.	No poisonous vegetation or insect nests present in landscaped area.
M.S.		✓	Trash & debris buildup in open space	Dumping of yard wastes such as grass clippings and branches. Unsightly accumulation of non-degradable materials such as glass, plastic, metal, foam and coated paper.	Remove trash and debris and dispose as prescribed by County Waste Management Section.
M		✓	Missing or broken parts/dead shrubbery	Any defect in the fence or screen that permits easy entry to a facility.	Fence is mended or shrubs replaced to form a solid barrier to entry.
M.S.		✓	Erosion	Erosion has resulted in an opening under a fence that allows entry by people or pets.	Replace soil under fence so that no opening exceeds 4" in height.
M		✓	Unruly vegetation	Shrubbery is growing out of control or is infested with weeds.	Shrubbery is trimmed and weeded to provide appealing aesthetics. Do not use chemicals to control weeds.
A	Trees and shrubs	✓	Damage	Limbs or parts of trees or shrubs that are split or broken which affect more than 25% of the total foliage of the tree or shrub.	Trim trees/shrubs to restore shape. Replace trees/shrubs with severe damage.

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M		✓		Trees or shrubs that have been blown down or knocked over.	Replant tree, inspecting for injury to stem or roots. Replace if severely damaged.
A		✓		Trees or shrubs which are not adequately supported or are leaning over, causing exposure of the roots.	Place stakes and rubber-coated ties around young trees/shrubs for support.

If you are unsure whether a problem exists, please contact the Jurisdiction and ask for technical assistance.

Comments:

Key-A = Annual (March or April preferred)  
M = Monthly (see schedule)  
S = After major storms

### Maintenance Checklist for Infiltration Systems

Frequency	Drainage System Feature	✓	Problem	Conditions to Check For	Conditions That Should Exist
A	Retention pond	✓	Sediment buildup in pond	A soil texture test indicates facility is not working as it's designed capabilities or was incorrectly designed.	Sediment is removed and/or facility is cleaned so that infiltration system works according to design. A sediment trapping area is installed to reduce sediment transport into infiltration area.
A		✓	Pond drains slowly (more than 48 hours) or overflows	A soil texture test indicates facility is not working at it's designed capabilities or was incorrectly designed.	Additional volume is added through excavation to provide needed storage. Soil is aerated and rototilled to improve drainage. Contact the County for information on it's requirements regarding excavation.
M		✓	Sediment trapping area	Any sediment and debris filling area to 10% of depth from pond bottom to overflow catch basin rim.	Clean out sump to design depth.
One Time		✓	Sediment trapping area not present	Roadway stormwater enters infiltration area directly without treatment.	Add a trapping area by constructing a sump for settling of solids. Segregate settling area from rest of facility. Contact County for guidance.

If you are unsure whether a problem exists, please contact the Jurisdiction and ask for technical assistance.

Comments:

Key: A = Annual (March or April preferred)  
M = Monthly (see schedule)  
S = After major storms

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M		✓		Trees or shrubs that have been blown down or knocked over.	Replant tree, inspecting for injury to stem or roots. Replace if severely damaged.
A		✓		Trees or shrubs which are not adequately supported or are leaning over, causing exposure of the roots.	Place stakes and rubber-coated ties around young trees/shrubs for support.

If you are unsure whether a problem exists, please contact the Jurisdiction and ask for technical assistance.

**Comments:**

**Key-A = Annual (March or April preferred)**

**M = Monthly (see schedule)**

**S = After major storms**

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Sorrento Condominium Association  
Anne Solwick  
6634 Milano Court SE  
Olympia, WA 98513

AMENDMENT TO DECLARATION FOR SORRENTO CONDOMINIUMS

Originally recorded January 17, 1995 under recording number 9501170184, et. seq.

Abbreviated Legal Description: Section 05  
Township 17 N  
Range 1 W

Tax Parcel Number: various in series 7536-01-0XXXXX

AMENDMENT:

Paragraph 13.2 states in pertinent part as follows:

Except as provided herein, the term of any director shall be two years.

Amend to read as follows:

Except as provided herein, the term of any director shall be three years.

Effect: The term of a director will be three years.

4084570

05/26/2009 11:47 AM

Thurston County Washington

SORRENTO CONDO ASSOC

Miscellaneous

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