

# Kilbirnie Homeowners Association

## Association Documents

May 2024

# Kilbirnie

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Homeowners Association Rules and Regulations  
Established June 2024

# OBJECTIVE AND PURPOSE



All Owners, tenants, guests and pets are subject to the Kilbirnie Homeowners Association Rules and Regulations, hereinafter referred to as Rules and Regulations. It is the responsibility of the Owner(s) to notify tenants and guests of these rules, and the Board of Directors shall hold the Owner responsible for actions of the residents/guests in violation of these Rules and Regulations.



These Rules and Regulations apply to all owners, residents, tenants and guests, and must be complied with by all.



If there is any conflict between these Rules and Regulations and the original "Declarations, Covenants, Conditions and Restrictions" for Kilbirnie, the Declaration shall take precedence.



The following Rules are for the purpose of promoting harmonious living at Kilbirnie Homeowners Association.



All homeowners of Kilbirnie Homeowners Association have an investment in the entire property. In order to protect that investment and to promote the welfare of all owners and occupants of a safe, attractive, and pleasant residential living area, the Board of Directors of the Homeowners Association have adopted the following Rules and Regulations under the authority and provisions of the Declaration and Bylaws of the Association for the Kilbirnie Homeowners Association.



Some of these rules and regulations are taken from the Declaration and Bylaws while others are not. These rules and regulations are meant to clarify and supplement the Declaration, bylaws, and Articles of Incorporation of Kilbirnie Homeowners Association and are not to be construed to supersede or replace any part of those documents. It is the legal responsibility of all owners and individuals occupying a unit who are not the legal owner (hereinafter occupants) to know and abide by the provisions of the Declaration, Bylaws, and these Rules and Regulations.



The Board of Directors and/or the Managing Agent will work to enforce these Rules and Regulations, but the participation and cooperation of every owner and occupant is essential to our success in maintaining a desirable residential area.



# RULES & REGULATIONS

## 1. Parking

(Declarations, Section 6)

- a. Right of way/sidewalks - No vehicles parked on a driveway may extend over the sidewalk and/or into the right-of-way.
- b. Proper access for emergency vehicles/personnel - No parking within 20 feet of the entrance, no blocking of any driveway or public right-of-way (sidewalks).
- c. Repairs/Inoperable Vehicles - No goods, equipment or vehicle (including buses or trailers of any description) shall be dismantled or repaired outside any building or residential Unit in view from any street, another Unit or Common Area. In addition, no Owner shall permit any vehicle that is in a state of disrepair to remain parked in the street or in view from the street, another Unit or Common Area for a period in excess of forty-eight (48) hours. A vehicle that has not moved for a period of forty-eight (48) hours and is not operable in its then present condition shall be deemed to be in a state of disrepair. Vehicles shall be adequately maintained to ensure that leaking fluids from the vehicles will not occur on street or driveways.
- d. Guest Parking - no vehicle may be parked in guest parking for more than 24 hours, without written approval from the HOA board. This applies to homeowners, tenants and their guests.
- e. Subject to Tow - Parking illegally or in a non-authorized designated spot

### 3. Residential Use (Declarations, Section 7.1-2)

- a. Single family residential use only.
- b. No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be permitted.
- c. No external signage for any goods or services shall be permitted. For sale and rental signs are not permitted. Additionally, no sign shall be erected on any exterior except for political signs allowed under Washington Statue during the timeframes of an election.
- d. No temporary structures, including basketball hoops, or other structural changes shall be placed or used on any lot.
- e. No cloths lines shall be hung from the exterior of any structure as to be visible from the streets.
- f. Exterior Changes are not permitted without prior written approval by the Board.
- g. Article 8 of the Declaration provides directions on ACC process for exterior changes.
- h. No activity may occur that could risk loss in Insurance coverage.
- i. There may be no noise, vibration, smoke, dust, odors, heat or glare produced as a result of activity beyond that is produced by a single family home.
- j. No fences may be places on the homeowner's lot.
- k. Each owner at their sole expense is responsible for maintaining, repairing, and restoring their lot while keeping it in a good, clean, attractive, and safe condition in full compliance with community standards.
- l. No barbeques, grills, storage, bicycles, dog houses, or other items may be kept on the front porch of the home.
- m. Antennas, dishes, and other receiving devices are not permitted to be installed on any portion of the common area or exterior of the home/lot.

### 4. Rentals (Declarations, Section 7.3)

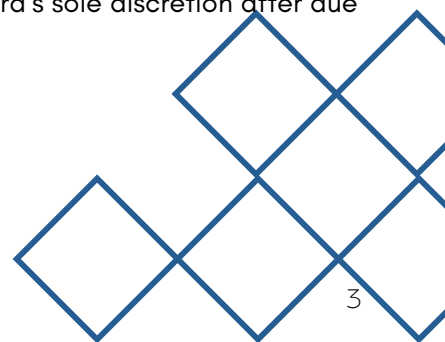
- a. No timesharing or Airbnb.
- b. No leasing or renting of the lot for any term less than 30 days.
- c. The lot is considered 1 residence and cannot be split for tenancy. Additionally, the garage may not be used for residency.
- d. All leasing or rental agreements must be in writing and provided to the Board at request.
- e. A copy of the signed acknowledgement of the Rules and Regulations is required from any tenants.
- f. Owners are solely responsible for their tenant's compliance with community standards.

### 5. Landscaping (Declarations, Section 4)

- a. Landscaping is considered a common element. There shall be no right to remove trees, shrubs or similar vegetation from this area without written prior approval.

### 6. Pets (Declarations, Section 7.10)

- a. Owners shall be responsible for the removal of their animal's waste wherever it is deposited within the property and common areas.
- b. Pets must comply with all City Regulations.
- c. No animals, livestock, poultry, or reptiles of any kinds shall be raised, bred, or kept onsite except domestic indoor household pets. These pets can not also be used for breeding or commercial purposes.
- d. Pets must not exceed two dogs and two cats, per lot.
- e. Any pet found disturbing owners may be removed at the Board's sole discretion after due process.





## COMMON AREA USE

All owners and residences may have full rights to use the common areas spaces as designed. Any guests must be accompanied by an owner(s) in the common or limited common areas.

### 7. Dog Run/Park Use:

- a. All dogs must be leashed while in the Common or Limited Common areas with exception to being inside the dog run/park area.
- b. Total dogs within the run area not to exceed 8 at a time to prevent crowding.
- c. Dog waste stations are provided by the HOA. Owners must dispose of dog waste bags properly in any community garbage can.
- d. Any dog acting aggressively towards another must be immediately removed from the dog run.

### 8. Playground

- a. All children must have an adult while at the playground facility.
- b. Playground capacity is capped out at 10 children at a time for safety reasons.
- c. Any slips or falls resulting in injuries must be reported to the Board immediately for insurance liability reasons.

# IMPOSITION OF FINES AND HEARING

1. **Late Fee.** There is a \$25.00 late fee for any Home Owners' account that is not paid in full by the 15th of the month following the due date. A Home Owners' account includes, but is not limited to, home owners' dues, special assessments, fines, penalties, special charges and late fees. Assessment fines shall be collectable the same as assessments.

2. **Fine Schedule.** The Board of Directors may impose on any unit owner and/or tenant or other person residing in a unit such fines for violation of the Declaration, the Bylaws of the Association, any rule or regulation adopted pursuant to the Declaration or the Bylaws, or of any decision of the Board made pursuant to such documents, as it deems reasonably necessary to cure such violation. Except for emergencies, fines shall be in accordance with the following schedule:

a. First violation	Written Notice
b. Second violation	\$50.00
c. Third violation	\$100.00
d. Fourth and subsequent violations	\$150.00 each

3. **Fines shall be reasonable.** In emergencies, the Board may impose fines which are more or less than the fines set forth in the above schedule. Fines may be imposed due to a violation by the tenants or any other person residing in a unit shall be the responsibility of the unit owner.

4. **Notice of Violations.** The Board shall give written Notice and Opportunity to be heard to a unit owner of any violation. The notice shall state the nature of the violation, the amount of the fine and shall include a copy of the section of the Association's rules and regulations regarding imposition of fines and the right of an Owner to request a hearing to contest the fine. Failure to include a copy of the rules and regulations shall not invalidate the fine.

5. **Subsequent Violations.** Failure to cure a violation within 15 days of initial written notice shall be deemed to be an additional violation, and subsequent additional violations shall accrue for each 5-day period thereafter during which the violation is not cured. No additional notice shall be required to impose additional fines based on the failure to cure the initial violation. Any violations within 12 months of a prior violation, whether or not related to the prior violation, shall be deemed an additional violation for purposes of the fine schedule.

6. **Payment.** Fines shall be paid within 30 days of the date written notice of the fine is delivered to the affected unit owner.

7. **Lien.** Any fines imposed pursuant to these Rules and Regulations shall be a lien against an owner's unit.

8. **Not Exclusive Remedy.** The imposition of a fine by the Board shall not limit the Association's right to pursue any other remedy permitted by the Declaration, Bylaws or applicable law for the violation.

# ASSESSMENT & COLLECTION POLICY

The board has adopted the following policy to ensure that assessments are imposed and collected in a fair, systematic and impartial manner. This Assessment Payment and Collection Policy affirms how important it is that all owners timely pay their assessments and plainly states the serious consequences a unit owner will experience in the event of a delinquency. It establishes a fair and effective way to promote regular payment of assessments, protect the Association's financial position and properly carry out its responsibilities to all owners.

1. **Assessments.** The term "assessments" refers to any and all amounts a unit owner must pay to the Association. Among the charges it includes are regular assessments, special assessments, administrative fees, rules violation fines, late fees, collection costs and any other fees, interest, or charges imposed under the governing documents and this policy.

## 2. **When Assessments Are Due.**

- a. **Regular Assessments.** The Board of Directors shall determine annual, quarterly or monthly dues assessments. Assessments are due on the first day of each month. For billing, the Association will mail the owner a "Billing Statement". However, all owners must pay their regular assessment on the first day of the month even if they have not received a billing statement.
- b. **Special Assessments.** Special assessments are due on the date stated in the notice of the special assessments, and if no date is stated, then within 10 days following delivery of the notice stating the unit owners' obligation to pay.
- c. **Other Assessments.** All other assessments, including but not limited to fees, fines and charges, are due on the date stated in the notice of the assessments, and if no date is stated, then within 10 days following delivery of the notice stating the unit owners' obligation to pay.
- d. **Where to Send Payments.** All checks for assessments should be made payable to Kilbirnie Home Owners Association, unless the owner is instructed otherwise by the Board, the Association's attorney or the Association's collection agency.
  - i. Checks should be sent to the address listed on the billing statement:

**Kilbirnie Home Owners Association  
c/o T Square Property Management  
PO Box 1731,  
Woodinville, WA 98072**

3. **Notices.** Unless otherwise required by law, all notices will be sent by first-class mail, postage prepaid, to the unit owner's address as shown in the Association's books and records on the date the notice goes out.
4. **Withholding Payment.** Assessments are due on the date set forth in Paragraph 2, above, even if an owner disputes his or her obligation to pay. Washington law does not allow owners to withhold timely payment of an assessment for any reason. Any disputes regarding assessments must be submitted in writing to the Board.



- 5. Late Payments.** If an owner does not pay any assessment in full on or before its due date, that assessment is delinquent. Once an assessment is delinquent, the Board may, in its discretion, take any or all of the following actions:
- a. Late fees. Impose a late fee of \$25.00 for each assessment which is not paid in full on or before the 30th day after it becomes due. The late fee compensates the Association for its time, inconvenience and overhead in collecting the late payment.
  - b. Interest. Charge interest at 12% percent annually from the original due date until the date of payment for any delinquent assessment.
  - c. Returned check fees and bank charges. In addition to any late fee that may be applicable, for each check to the Association that is returned by a bank for non-sufficient funds (a "bounced check") or any other reason, impose the following charges:
    - i. An administrative processing fee in the amount of \$25.00; and
    - ii. Any related bank charges that the Association incurs because of the returned check.
  - d. Waiver of Charges. Compromise or waive late fees, interest and/or other charges, in an appropriate circumstance. All charges are assessments.
  - e. Collection by attorney or third-party collection agency. Refer a delinquent account to an attorney or a licensed and bonded collection agent for further action to collect the assessments. Typically, delinquent accounts will be referred to an attorney or a licensed and bonded collection agent after the balance due exceeds \$500. Following referral, the attorney or collection agency is hereby authorized to do any or all of the following:
    - i. Obtain investigative consumer credit reports on an individual owner(s) for purposes of assisting in collecting the delinquent assessments. Any information gained by the attorney or collection agency must be kept confidential to the extent permitted by law.
    - ii. Report the status of the owner's account to the national credit bureaus.
    - iii. Record a Notice of Claim of Lien against the unit in the County's official real property records in accordance with state law and the Association's governing documents;
    - iv. File a personal lawsuit against the unit owner to collect the amount owed;
    - v. Foreclose on the unit;
    - vi. Enter into a payment plan with the owner; or
    - vii. Take any and all other appropriate legal actions.
  - f. After an account is referred to an attorney or a collection agency, the delinquent owner must communicate solely with the attorney or the collection agency, respectively, until the account is paid in full or until otherwise directed by the Board or the attorney or collection agency. The delinquent unit owner shall be responsible for all of the Association's attorney's fees, collection agency fees and costs of collection. These charges are assessments.
- 6. Crediting Late Payments.** All delinquent accounts remain delinquent until paid in full. No partial payments will waive the Association's right to pursue full payment and/or to enforce the provisions of this policy. The Association will apply partial payments to the outstanding balance in the following order:
- a. Regular assessments, with payment being applied to the oldest balance first;
  - b. Special assessments;
  - c. Late fees;
  - d. Interest;
  - e. Fines; and
  - f. Costs of collection, including but not limited to attorney's fees and costs.

**After recording return to:**

Randy M. Boyer  
Attorney at Law  
7017 196th St. S.W.  
Lynnwood, WA 98036

**Document Title:** Declaration of Covenants, Conditions and Restrictions for Kilbirnie

**Reference Number(s) of Document assigned or released:** Not Applicable

**Grantor(s) (Last name first, then first name and initials):** 211-WLD Kilbirnie LLC, A Washington  
Limited Liability Company

**Grantee(s) (Last name first, then first name and initials):** Kilbirnie Homeowners Association

**Legal Description**

**(abbreviated: i.e., lot, block, plat or section, township, range):**

Additional legal on page \_\_\_\_ of document(s)

Lot 1, 2, 3, SP Rec No. 7801200278, PTN of Lot 6, Alderwood Manor No. 07, B. 6, V. 9, pg 100

Situate in the County of Snohomish, State of Washington

**Assessor's Property Tax Parcel/Account Number(s):** 00373300600604, 00373300600603,  
00373300600602

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**This Project is a Common Interest Community subject to the provisions of RCW 64.90.**

## NOTICE TO RECORDER

**AS REQUIRED BY RCW CHAPTER 64.90, AT THE TIME OF RECORDING OF THIS DECLARATION INSERT DATA FOR THE SURVEY MAP AND PLANS RECORDED IN CONNECTION HEREWITH. The Survey Map and Plans of the Condominium referred to herein is filed with the Recorder of Snohomish County, Washington simultaneously with the recording of the Declaration under Snohomish County Auditors File Number 202402095001**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**KILBIRNIE**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR KILBIRNIE**

The parties signed as Declarants at the end hereof make **THIS DECLARATION**, to submit the property hereinafter described to the Washington Uniform Common Interest Ownership Act (Revised Code of Washington, Chapter 64.90) may be referred to herein as the "Act"). The name of the Unit Lot Subdivision shall be KILBIRNIE. The interest of the Declarant in the Real Property included in the Subdivision Plat is fee simple.

**SECTION 1. INTERPRETATION.**

**1.1. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Unit Lot Subdivision Plat under the provisions of Washington law. Insofar as it affects this Declaration and Subdivision Plat, the provisions of the Act under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration.

**1.2. Consistent with Act.** The terms used herein are intended to have the same meaning as given in the Act unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

**1.3. Covenant Running with Land.** This Declaration shall operate as a set of covenants running with the land, or equitable servitudes, binding on Declarant, its heirs, successors and assigns, all subsequent Owners of the Property or a Unit Lot, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, supplementing and interpreting the Act, and operating independently of the Act, should the Act or any part thereof be, in any respect, inapplicable. For the benefit and protection of the Subdivision, to enhance its value and attractiveness, and as inducement to lenders to make and purchase loans by lots within the Subdivision, Declarant agrees to provide herein for a method of use and architectural control within the Subdivision.

**1.4. Captions and Exhibits.** Captions given to the various sections and sections herein are for convenience only and are not intended to modify or affect the meaning of any substantive provisions of this Declaration. The various Exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference.

**1.5. Percentage of Owners.** For purposes of determining the percentage of Owners, or percentage of voting power for approving a proposed decision or course of action in cases where an Owner owns, more than one Unit Lot, such Owner shall be deemed a separate Owner for each such Unit so owned.

**1.6. Inflationary Increase in Dollar Limits.** Any dollar amounts specified in the Declaration in connection with any proposed action or decision of the Board or Association shall be increased proportionately by the increase in the consumer price index for the City

of Seattle, Washington for All Urban Consumers ("Index"), prepared by the United States Department of Labor over the base index of January 1 of the calendar year following the year in which the Declaration is recorded, to adjust for any deflation in the value of the dollar. In the event the index is discontinued, the Board shall select a comparable index for this purpose.

#### **1.7. Definitions.**

**"The Act"** means the Washington Uniform Common Interest Ownership Act (Revised Code of Washington, Chapter 64.90), as amended from time to time.

**"Allocated Interests"** means the undivided interest in the Common Elements, the Common expense liability, and votes in the Association allocated to each Unit Lot.

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

**"Association"** means the Unit Lot Owner's Association organized in accordance with The Act, the Bylaws and with this Declaration as it is recorded, or as they may be amended.

**"Board of Directors"** and **"Board"** means the body with primary authority to manage the affairs of the Association.

**"Bylaws"** means the Bylaws of the Association as initially promulgated by the Declarants, and as amended from time to time which, with this Declaration, provide for the organization of the Association and for the administration of the property.

**"Common Elements"** means all portions of this Subdivision Plat other than the Units.

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

**"Common Expense Liability"** means the liability for Common expenses allocated to each Unit Lot pursuant to this Declaration and the Act.

**"Declarants"** means the person or group of persons acting in concert who (a) executes as Declarant this Declaration of Subdivision Plat, or (b) reserves or succeeds to any special Declarant right under the Declaration or who acquires more than one Unit Lot from

the Declarant for the purpose of development and by written instrument in recordable form be specifically assigned the rights and duties of Declarant. Upon such assignment, said assignee shall perform and be entitled to any and all rights, powers and reservations held by the original Declarant and shall be subject to any and all duties, obligations and responsibilities of the original Declarant. Any such reference made in this Declaration to "Declarant" shall hereinafter also mean the Declarant's assignee as referred to under this section.

**"Declaration"** means this instrument, as amended from time to time, by which the property is submitted to provisions of The Act.

**"Eligible Mortgagee"** means the holder of a mortgage on a Unit Lot that has filed with the secretary of the Association a written request that it be given copies of Notices of any action by the Association that requires consent of Mortgagees. For the purposes of this Declaration the term "Eligible Mortgagee" includes insurers and guarantors of mortgages. With respect to any action requiring the consent of a specified number or percentage of mortgages, the consent of only Eligible Mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to the Units with respect to which eligible mortgages have an interest.

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

**"Identifying Number"** means the number, letter, or combination thereof, designating only one Unit Lot in this Declaration as it is recorded or as it may be amended.

**"Limited Common Elements"** means a portion of the Common Elements allocated by this Declaration or by operation of the act for the exclusive use of one or more but less than all of the Units.

**"Lot"** means a Unit Lot as defined in this Declaration. If a survey or plat map labels the Units created as "Lots" then under RCW 64.90 that will have the same meaning as Unit Lot. The term Lots and Unit Lots can be used herein interchangeably.

**"Home"** shall mean and refer to any structure or portion of a structure, located on a Lot, which structure is designed and intended for use and occupancy as a residence by a single family or which is intended for use in connection with such residence.

**"Majority"** or **"Majority of Unit Lot Owners"** means, for the purposes of this Declaration, the Unit Lot Owners with fifty-one percent (51%) or more of the votes in accordance with the allocated interests assigned to the Units by this Declaration.

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

**"Mortgagee"** means the secured party under a mortgage, deed of trust, or other real property security interest covering a Unit Lot. For the purposes of this Declaration the term "mortgagee" includes the vendor under a real estate contract.

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

**"Real Property"** means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereof which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real Property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

**"Subdivision Map"** shall mean the KILBIRNIE Unit Lot Subdivision recorded for the property described on Exhibit A to this Declaration recorded with the Recorder's Office of Snohomish County, Washington as cross-referenced on the cover sheet of these Covenants.

**"Unit Lot"** means a part of the property intended for residential use and occupancy, as provided herein, referred to as a "Unit" in The Act.

**"Unit Lot Owner"** means the Declarant or other person or persons owning a Unit Lot in fee simple but does not include a person who has an interest in a Unit Lot solely as security for an obligation. "Unit Lot Owner" means the vendee, not the vendor, of a Unit Lot under a real estate contract. This definition shall not include persons who, on a month-to-month or other basis, rent or lease their Unit Lot from a Unit Lot Owner.

## **SECTION 2 - DESCRIPTION OF REAL PROPERTY**

**2.1. Legal Description.** The Real Property included in the Unit Lot Subdivision Plat is described on Exhibit A hereto which by this referenced is incorporated herein.

**2.2. Legal Description of Phases.** Declarant does not reserve the right to phase the development. Declarant may construct the townhome buildings and homes at different time.

**2.3. Description of Real Property (except Real Property subject to Development Rights) that may be allocated subsequently as Limited Common Elements (other than Limited Common Elements described in this Declaration).** None at present, however Declarant reserves the right under Section 22.3 to create Limited Common Elements on the land described in Section 2.1 above.

**2.4. Description of Real Property to which any Development Right or Special Declarant Right applies:** The land described in Section 2.1 above.

### SECTION 3 - DESCRIPTION OF UNITS

**3.1. Number of Units.** There are sixty-five (65) Townhouse Units to be developed in one phase. Each Unit Lot is identified by a number between 1 and 65 (for example Lot 55).

**3.2. Additional Units to be Created.** Declarant does not reserve the right to add additional units.

**3.3. Unit Lot Description.** Exhibit C sets forth the approximate square footage of each Lot (the Lot and not the Home) and the identifying number or letter of the Lot. Because the Lot is a lot demarcated on the Subdivision Map (which may in the future, but not necessarily on the Declaration's recording date, contain a dwelling structure) the Declaration does not contain information about the buildings thereon.

Unless otherwise stated in the Declaration on Exhibit C, there are no recreational facilities, assigned parking spaces or moorage slips.

#### **3.4. Unit Lot Boundaries.**

**3.4.1.** Units shall consist of a Lot (Unit Lot) demarcated on the Unit Lot Subdivision Map. A Unit Lot shall include all structures, improvements, and fixtures now or hereafter located within said space.

**3.4.2.** The physical boundaries of the Unit Lot as they actually exist, either as originally constructed or as reconstructed in substantial accordance with the original plans shall be conclusively presumed to be the Unit Lot's boundaries rather than metes and bounds expressed or depicted in this Declaration, or the boundaries as so described or as depicted in the Planned Residential Development Plat Map, regardless of settling or lateral movement of the building, or minor variances between boundaries shown in the Declaration, survey map or plans.

**3.5. Access to Common Ways.** Each Unit Lot has access directly to Common Elements including walkways, parking areas and/or driveways.

**3.6. Access to Public Streets.** The Common Elements have direct access to a public street.

### SECTION 4 - COMMON ELEMENTS

**4.1. Description.** Common Elements means all portions of the Subdivision Plat other than the Units. The following items are illustrative of Common Elements but are not all inclusive:

**4.1.1.** The real property described in Section 2.1 not included within a Unit Lot.

**4.1.2.** Any fence constructed by Declarant along the outside perimeter of the Units or the Property. Home Owners shall maintain at their own expense fences except that portion maintained by the Association.

**4.1.3.** The Common Elements shown on the Subdivision Plat Map as courtyards, open space, recreational area, private roads, easements or other Common Elements which shall be maintained for the benefit of all Unit Lot Owners. These Common Elements include but are not limited to the following items:

Tract 995 - Open Space/Drainage  
Tract 996 - Open Space/Drainage  
Tract 997 - Critical Area Protection Area (CAPA)/Drainage  
Tract 998 - Open Space/Drainage  
Tract 999 - Access/Utilities

**4.1.4.** The Common Elements shown on the Subdivision Plat Map as walkways or roadway.

**4.1.5.** Any utility lines providing service to more than one Unit Lot, including the drainage facilities and private sewer main within the project.

**4.1.6.** The storm drainage, drainage system and drain lines.

**4.1.7.** All other parts of the property shall be Common Elements to be owned and maintained by the Association.

**4.2. Use.** Each Owner shall have the right to use the Common Elements (except Limited Common Elements reserved for other Units) in common with all other Owners. The right to use the Common Elements shall extend not only to each Owner, but also to his agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements, including the Limited Common Elements, shall be governed by and subject to the provisions of the Act, this Declaration, the Bylaws and the Rules and Regulations of the Association and County Ordinances. The Common Elements are subject to the conditions of approval of the site plan for the project. Provided that the use of the Common Elements is limited to the uses established in the subdivision and conditions of approval of the project.

**4.3. Maintenance.** The Common Areas and lots shall be maintained by the Association in accordance with any and all Subdivision conditions imposed by Snohomish County, County Code Provisions that restrict and any conditions imposed hereunder by Declarant or by the Association and conditions of these Covenants as they may be amended. Lot owners shall not fence or otherwise exert dominion or control over any Common Elements.

All development and landscaping must be consistent with the site and landscaping plans submitted under File Number 21-110539 PSD. This includes the landscape/open space/tree plan approved by the Snohomish County.

Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the Subdivision Plat Map (if any). No encroachment will be placed within the easements shown on the Subdivision Plat Map 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 herein.

In accordance with the terms and conditions of the Subdivision Plat Map the Association is required to also maintain the landscaped areas in the public road right of way.

**4.4. Mandatory Association Maintenance.** In accordance with and in compliance to the Snohomish County conditions of approval delineated in its file with the County under Subdivision file for the Subdivision, the Association, as a common expense, shall have the ongoing responsibility, in perpetuity, to maintain, replace and restore the landscaping and vegetation located within the Common Area Tracts. In addition, the Association shall maintain the landscaping in the adjacent right of way landscaping, including irrigation. In accordance with and in compliance to the above-mentioned plans and conditions, the Association shall also have the ongoing responsibility, in perpetuity, to maintain, replace and restore the Drainage System.

In addition, the Association as a common expense shall maintain as a common expense the landscaping and lawns within Unit Lots and the irrigation system located therein, except the fenced back yards of Unit Lots. The Association shall pay the expense as a common expense shared equally. The Lot Owners shall maintain their back yards and fences at their own expense.

**4.5. Construction Work - Common Elements.** The Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board, or as and in the manner the Association acting by the Board may authorize, and such action and authorization must also be in accordance with The Act, this Declaration, and the Bylaws.

**4.6. Governmentally Required Maintenance, etc.** Any insurance, maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one Owner, shall be the sole and exclusive



responsibility of the Association (not the Declarant) and any cost incurred in connection therewith shall be a Common Expense. In the event the Association, in the judgment of a governmental authority, fails to maintain drainage facilities within the Common Elements or other Common Elements, or if the Unit Lot Owners willfully or accidentally reduce the capacity of the drainage system or render any part of the drainage system unusable, or damage or destroy any part of the Common Elements (including NGPA areas, if any) the Unit Lot Owners and the Association agree to be responsible for any costs or fees incurred from sanctions imposed by the governmental authority, including attorney's fees and expert's fees should legal action be required to collect monies owed. In furtherance of the generality of the foregoing, and not by way of limitation, such work shall include: maintenance of any grass-lined swales and proper disposal of clippings; replacement of landscape plantings that die during any required maintenance period; maintenance of public and private storm sewer and retention systems and maintenance and/or non-disturbance of Native Growth Protection Areas/Easements. Declarant shall have the right, but not the obligation, to perform any such work if the Association fails to do so. The Association shall promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by Declarant as a result of the Declarant performing, or the Association's failure to perform, such work (including any work necessary to obtain a release, or avoid a forfeiture, or any cash deposit or other bond made by Declarant).

**4.7. Significant/Canopy Trees.** The subdivision approval designated significant trees on the property and canopy trees as indicated on the approved Landscape Plan pursuant to SCC 30.23A.090. These shall not be removed except when determined in writing by a certified arborist to constitute a hazard. Any replacement or significant trees removed without proper documentation from a certified arborist shall be subject to a fine under Chapter 30.85 SCC. Unit Owners are subject to this condition. The Association is required to maintain the trees appropriately in a healthy condition as a common expense

**4.8. Drainage/Retention Facility.** Snohomish County, its successors and assigns, shall have the right of entry to and from Common Areas across the adjacent property in this Subdivision for the purpose of inspecting, auditing or conducting required maintenance of the drainage facility in accordance with the Subdivision conditions. The Owners Association shall have the primary maintenance responsibility for the drainage facility within the Plat in accordance with the drainage system maintenance manual.

## **SECTION 5 - ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES**

**5.1. General.** The allocated interests in (a) the Common Elements and (b) in the common expenses of the Association and (c) the portion of votes in the Association are allocated to each Unit Lot as set forth below in Exhibit C hereto. The established allocated interests are not separate from the Unit Lot and shall be deemed to be conveyed and encumbered with the Unit Lot, although not mentioned in the instrument evidencing the encumbrance or conveyance.

**5.2. Formula.** The Allocated Interests of each Unit Lot in (a) Common Elements, (b) Common expenses of the Association and (c) votes in the Association is determined as follows: Each Unit Lot shall have a percentage vote and an Allocated Interest in the Common Elements and Common Expense Liability equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then in the Subdivision Plat. This formula is used solely to establish the required allocated interests. The formula is not based upon the respective values or sizes of the Units.

Provided that the detached home unit lots in the subdivision shall not share in the expense of the property insurance on the townhome unit buildings or contributed to reserves for the townhome roofs and building painting. The owners of the detached home unit lots shall provide their own insurance on their homes and maintain their own roofs and painting of their homes.

## **SECTION 6 - PARKING**

**6.1. Parking.** Unit Lot Owners shall park within their Unit Lot in the garage. Parking in or blocking the drive aisle is not allowed. The drive aisle are designated fire lanes under County approval. Parking in those areas shall not extend into the common drive aisle or sidewalk.

The Board of Directors may require removal of any inoperative or unsightly vehicle, and any other equipment or item not stored in outside parking spaces, either within Lots or in Common Elements in accordance with this provision. The Board may adopt such Rules and Regulations as it deems appropriate to govern the use of the parking areas. The Board may adopt rules limiting parking in the Common Elements to guest parking, prohibiting a Unit Owner from using such guest parking and/or prohibiting a Unit Owner from making regular use of guest parking for his or her own parking. The Board may prohibit overnight parking in the Common Elements or set hours for parking therein. Except as hereinafter expressly provided, the Units and Common Elements located on the Properties shall not be used for the storage and/or overnight parking of any vehicle other than private family automobiles, trucks, motorcycles and commercial vehicles operated by a person residing at the Unit Lot (provided that such commercial vehicles contain only a single rear axle). Boats, boat trailers, house trailers, campers, trucks, trucks with a camper, or other recreational vehicles or similar object may not be stored and/or parked overnight on any part of the Properties except inside the garage. No inoperable vehicles of any kind shall be parked, stored, maintained, or constructed on any Unit Lot or street unless stored in a garage.

No goods, equipment or vehicle (including buses, trailers, recreational vehicles, etc.) shall be dismantled or repaired outside any building or residential Unit Lot.

## **SECTION 7 - USES, MAINTENANCE, ALTERATIONS - COVENANTS, AND RESTRICTIONS**

**7.1. Residential Use.** The buildings and Units shall be used for and restricted to use as single-family residences only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use not inconsistent with the provisions of this Declaration nor applicable zoning and for the purposes of operating the Association and managing the Subdivision Plat if required.

**7.2 Business Use.** No trade, craft business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted upon any Lot or within any building located upon a Lot in the plat which makes apparent to residents of the plat that any premises are not used solely for residential purposes. None of the above-mentioned activities shall be permitted unless it falls within the above definition and complies with the following:

1. The activity must be carried out wholly within the building.
2. No one who is not a member of the Lot Owner's immediate family may be employed.
3. There can be no exterior alteration of the property including expansion of parking or storage or other indication of a use other than of a residential nature.
4. No structural alterations may be made which change the residential character of the premises.
5. There may be no use of electrical or mechanical equipment that would change the fire rating of the structure or create visible or audible interference in radio or television receivers or cause fluctuations in line voltage outside the building.
6. There may be no noise, vibration, smoke, dust, odors, heat or glare produced as a result of the activity beyond that produced by a single residence when used as a residence.
7. There can be no demand for parking beyond that which is normal to the neighborhood and no visual or excessive traffic to and from the premises.
8. The activity shall not involve the use of commercial vehicles.

The Association shall be the sole judge as to whether any activity complies with the requirements herein.

**7.3. Rental Lots.** With respect to the leasing, renting, or creation of any kind of tenancy of a Lot and improvements thereon by its Owners, such Owners shall be prohibited from leasing or renting the Lot or improvements thereon for a term of less than thirty (30) days (with the exception of a lender in possession of a Lot and improvements thereon following a default in a first mortgage, a foreclosure proceeding or any deed of trust sale or

other arrangement in lieu of a foreclosure). All leasing or rental agreements shall be in writing and be subject to the Declaration and Bylaws (with a default of the tenant in complying with the Declaration and Bylaws constituting a default under the lease or rental agreement). The lot may contain only one residence. There is no prohibition of unrelated persons sharing the residence, provided that there cannot be separate cooking facilities or entrances.

The Association may adopt rental restrictions on the number of Units that may be leased by vote or agreement of the Unit Lot Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Timesharing (as defined in RCW 64.36.010(11) and Airbnb rentals are prohibited.

#### **7.4. Maintenance and Repair of Units**

**7.4.1. Owners Duties.** Each Owner, at said Owner's sole cost and expense, except as indicated in Sections 4.4 and 7.4.1, 7.4.2 or elsewhere in this Declaration, shall promptly and continuously maintain, repair, and restore said Owner's Lot and Home and other Improvements located thereon, and also such other areas as may be required pursuant to the provisions of this Declarant, in a good, clean, attractive, safe and sanitary condition and in full compliance with all applicable governmental laws, rules and regulations and the provisions of this Declaration.

Each Unit Lot Owner must maintain the exterior lighting on their home and keep the lights functioning. The Association is responsible for maintaining the Street lighting. The cleaning of catch basins, if any, on individual Lots shall be carried out a least once prior to September 15 of each calendar year by the Association. Each home is required that roof drains be installed drain into the drainage facility through drainage pipes installed by Declarant. The Association shall clean and maintain the roof gutters and drain lines in good working order.

The use of the Lots is restricted to uses specified in the approved preliminary plat for the Subdivision.

On front entries of a Home, no storage of belongings, materials, equipment, bicycles or other items may be kept thereon. Gas barbeques and gas firepits may only be used in the back yard. Gas barbeques must have a cover when not in use. In addition, no barbeque shall be placed on deck or patio unless there is a metal tray to catch any drippings. The surfaces are subject to damage from heat. Each Unit Lot Owner must protect the front entries, decks and patio surface from damage. Each Unit Lot Owner or Occupant is responsible for any damage to front entries, decks and patios resulting from their usage.

**7.4.2. Repair or Replacement.** On the Townhome Units the Association shall supervise and cause to be performed any repairs resulting from an insured loss using

available Association insurance proceeds. On detached home units the Unit Lot Owner shall perform the repairs.

Such work shall be completed within six (6) months from the date of damage unless the work is delayed for reasons beyond the control of the Association.

**7.4.3. Roofing and Exterior Painting.** Replacement roofing and siding material shall be the same, as far as possible, in color and style as the original roofing and siding materials, including the metal canopy and brick veneer on residences within the development. Any change in the color of the exterior of the building including the roof must be approved by the ACC. Building exteriors shall be painted at least once every ten years. Utilization of different exterior materials including, without limitation, roofing materials, building siding materials and fencing must be approved by the ACC before installation.

**7.4.4. Common Assessments.** The Association is authorized and empowered to (but in its discretion is not required to) assess monies for the maintenance, repair and replacement of the roof(s) and for exterior painting of the buildings. This includes the right to establish reserve accounts for said work. The Association shall supervise and manage all work on the roofs and all exterior painting.

**7.4.5. Failure to Maintain.** If a Unit Lot Owner fails, in the reasonable judgment of the Board, to adequately perform the above-described maintenance work, then the Association may itself perform (or arrange to have performed) such work after the Board has issued a written demand to the Unit Lot Owner and following a reasonable period of time following delivery of the demand. In such event, after notice and an opportunity to be heard to the Unit Lot Owner, the entire cost of such maintenance and/or repair work shall be specially charged to the Unit Lot for which such maintenance and/or repair work was performed in the manner provided under Section 12.

**7.5. Party Walls.** Each Unit Lot within the Subdivision Plat contain a common Party Wall with an adjacent Unit Lot. For purposes of this Declaration, a "Party Wall" shall mean any wall which is located on a Unit Lot boundary line and which serves as a common wall between residences located within the Building. Included in this definition is any fence separating said Units. Each of the Unit Lot Owners shall be deemed to own the one-half of the Party Wall the exterior surface of which forms the interior surface of their residence located within the Building (the "Living Unit Lot"), whether or not the actual center of the Party Wall corresponds exactly to the common Unit Lot Boundary.

**7.5.1. Use.** Each Owner may use the Party Wall for any and all purposes that do not interfere with the use of the Party Wall by the other Owner. Notwithstanding the foregoing, neither Owner may cut openings through the Party Wall, do anything to impair the structural integrity or strength of the Party Wall, or do anything to alter, damage, or deface the exterior surface of the Party Wall located on the other Owner's Unit Lot (whether such exterior surface is on the inside or outside of the Unit Lot).

**7.5.2. Repair; Maintenance.** Each Owner shall maintain the exterior surface of the Party Wall located on their Unit Lot and shall maintain all utilities serving their Unit Lot, which are located within the Party Wall, if any. In the event that the structural components of the Party Wall are damaged or destroyed, each Owner shall pay for one-half of the cost of the repair or rebuilding of such structural components; provided that if the damage or destruction occurs as a result of the negligence or willful misconduct of one Owner or the invitee of an Owner then such Owner shall pay all of the costs of the repair or rebuilding of the Party Wall. In the event that the Party Wall needs to be repaired or rebuilt, it shall be repaired or rebuilt using the same standards or construction and shall be the same size and configuration of the Party Wall that exists immediately prior to the repair or rebuilding except as provided in Section 7.5.3 hereof.

**7.5.3. Change of Size or Configuration.** In the event that the Party Wall needs to be repaired or rebuilt, the size, configuration, or standards of construction of the Party Wall may be changed upon the request of one Owner and the prior written approval of the other Owner, which approval shall not be unreasonably withheld. In the event that any such change in size, configuration, or standards of construction results in a higher cost than a repair or rebuilding of the Party Wall based upon the size, configuration, and standards of construction that existed as of the date of this Declaration, then the Owner requesting the change shall be responsible to pay all of the increased costs associated with any such change. In the event that either Owner wishes to change the size, configuration, or standards of construction of the Party Wall when the Party Wall is not in need of repair or rebuilding, such Owner may do so at its sole cost and expense with the prior written approval of the other Owner, which approval shall not be unreasonably withheld.

Changes to the Unit size where the Lot/Unit Line is modified a Formal Boundary Line Adjustment will be required and formal County approvals will be required.

**7.5.4. Payment.** In the event that the Party Wall is in need of repair or rebuilding, the Owners shall attempt to agree on all aspects of the repair and rebuilding, including the contractor to be used, the timing of the repair and rebuilding, and the allocation of costs pursuant to Sections 7.5.2 and 7.5.3 hereof. In the event that the Owners cannot reach agreement within 10 days from the date of the damage or destruction to the Party Wall resulting in the need for repair or rebuilding, then either Owner may cause the repair or rebuilding to be done and shall have the right to reimbursement from the other Owner for such Owner's proportionate share of the costs of the repair and rebuilding, together with interest at a floating rate of interest equal to the prime rate of U.S. Bank of Washington plus 3 percent per annum until such costs are reimbursed in full. Either Owner may submit a dispute regarding payment or any other dispute with respect to the Party Wall to the Board, whose decision shall be binding on the Owners in dispute.

**7.5.5. Cross-Easement.** Declarant hereby reserves for the benefit of each Owner an easement in the Unit Lot of the other Owner upon which any portion of the Party Wall is

located for each Owner's use of the Party Wall as provided for in this Section 7.5 of this Declaration.

**7.6. Owner Caused Damage.** If any Owner shall damage a Unit Lot, Limited Common Element or Common Element by its negligence or willful misconduct and does not repair the damage within 30 days following receipt from the Board of notification to repair or, where the damage cannot be repaired within the 30-day period the Owner does not commence repair of the damage within the 30 day period and thereafter diligently prosecute the same, the Board may repair the damage and specially assess the Owner for the costs of such repair. Any disputes between Owners arising from this Section 7.6 shall be decided by Mediation/Arbitration pursuant to Section 11 of this Declaration that shall be binding upon the Owners in dispute.

**7.7. Maintenance, Repair and Replacement of Common Element and Enforcement of Maintenance, Repairs and Replacement Obligations of Unit Lot Owners.** The Association shall be responsible for the maintenance, repair and replacement of all Common Elements. Subject to Section 7.6 and as otherwise provided in this Declaration, the Association shall have the right to enforce the obligations of the Unit Lot Owners to maintain and repair the Unit Lot Structures, and other improvements in their respective Units as required by this Declaration, in the event any Unit Lot Owner fails to perform said obligations. In the event of a dispute by Owner over the requirement for and scope of work, the dispute shall be decided by Mediation/Arbitration pursuant to Section 11 of this Declaration that shall be binding upon the Owners in dispute. If the Unit Owner fails to pay said expense, any financial award shall constitute a lien against the Unit in the same manner as an Assessment pursuant to Section 12 of this Declaration.

**7.8. Effect on Insurance.** The Unit Lot Owners shall not permit anything to be done or kept in the Units or in the Common Elements which will increase the fire insurance premiums thereon or result in the cancellation of such insurance on any Unit Lot or any part of the Common Elements, without the consent of the Board or pursuant to rules and regulations adopted thereby.

**7.9. Signs.** No signs of any kind, nor for any uses shall be erected, painted, or displayed on any building site in this Subdivision whatsoever, except: political that must be allowed under Washington statute for such times allowed by the statute, public notice by a political division of the State or County or as required by law; any builder or the builder's agent may erect and display signs during the period the builder is building and selling property in the Subdivision, and any Lot Owner or the Lot Owner's agent wishing to sell that Owner's Lot may place a sign not larger than 900 square inches on the property itself; provided, that this section shall not apply to sales or rental activities of the Declarant permitted pursuant to Section 22.

**7.10. Pets.** The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, is prohibited within any unit or upon

the common elements, except that the keeping of orderly domestic pets (e.g., dogs, cats or caged birds) not to exceed two per unit without the approval of the Board of Directors, and guard dogs, service animals (typically dogs), emotional support animals and aquarium fish (and other limited species of animals that do not normally leave the unit and that do not make noise) is permitted, subject to the rules and regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding; and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten days written notice from the Board of Directors. Such pets shall not be permitted upon the common elements unless accompanied by someone who can control the pet and unless carried or leashed. Any unit owner who keeps or maintains any pet upon any portion of the Property shall defend, indemnify and hold the Association, each unit owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the subdivision. All pets that may leave the unit shall be registered with the Board of Directors and shall otherwise be registered and inoculated as required by law. The Board of Directors may establish reasonable fees for registration of pets not to exceed the additional costs incurred by the Association resulting from the presence of such pets.

**7.11. Offensive Activity.** No noxious or offensive activity shall be carried on in any Unit Lot, Common Elements or Limited Common Elements nor shall anything be done therein which may be or become an annoyance or nuisance to other Unit Lot Owners, or which would be in violation of any laws. Owners shall not permit any condition to exist that will induce, breed or harbor infectious plant diseases, or noxious insects or vermin.

**7.12. Oil and Mining Requirements.** No oil drilling, oil development, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Unit Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Unit Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Unit Lot.

**7.13. Mobile or Manufactured Housing.** There shall be no mobile or manufactured housing.

**7.14. Utilities.** All utilities shall be installed underground. No fuel tank shall be maintained above ground unless properly screened in a manner acceptable to the ACC. Unless otherwise approved by the Association, the cost of restoration of any yard landscaped area(s) disturbed by private utility work shall be borne solely by the Unit Lot Owner(s) so benefited by the utility work. In the event the Unit Lot Owner(s) does not restore the yard landscaping within a reasonable time, upon due notice to the non-complying Unit Lot Owner(s), the Association shall have the authority to complete the restoration on behalf of the Unit Lot Owner(s) and to specially assess them for the cost.

**7.15. Games and Play Structures.** No platform, doghouse, playhouse or structure of



a similar kind or nature shall be constructed on any part of a Unit Lot or Common Elements without the express written prior approval of the ACC. Basketball hoops shall not be allowed on the Units or Common Elements. No portable basketball hoops shall be used, stored or located on any Unit Lot or common area or upon the public streets adjacent thereto.

**7.16. Construction of Significant Recreation Facilities.** The construction or placement of any significant recreational facilities on any Unit Lot including, but not limited to, such items as Hot tubs, tennis, badminton or pickle ball courts shall require the approval of the ACC and shall be subject to the requirements adopted by the ACC.

**7.17. Clothes Lines, Basketball Hoops, Other Structures.** No clotheslines, basketball hoops or other structures of a similar nature shall be visible from the Common Elements or other Units.

**7.18. Garbage and Refuse.** No garbage, refuse, rubbish, cuttings, debris, inoperable vehicles, equipment or waste of any kind shall be deposited on or left upon any Unit Lot unless placed in an attractive container suitably located and screened from the view of any other Unit Lot Owners. The Board/Association has the right to place garbage cans back to Owners Unit if Unit Lot Owner doesn't do so. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No building material of any kind shall be placed or stored on any property within the development until the Unit Lot Owner is ready to commence construction, and then such materials shall be placed within the boundary lines of the Unit Lot upon which it is intended. Garbage cans may only be placed in public view on the day of garbage pickup. The proper removal and disposal of all such materials shall be the sole responsibility of the individual Unit Lot Owners. Upon Notice and an Opportunity to be Heard, the Association, acting by and through the Board, shall have the authority to assess any Unit Owner responsible for disposing of such materials upon the Common Elements with said assessment equal to the costs of clean up, restoration, repair and replacement of any and all damaged or affected Common Elements or facilities.

**7.19. Alterations of Buildings.** A Unit Lot Owner:

**7.19.1.** In order to preserve the uniform appearance of the buildings, and the Common and Limited Common Areas, particularly those visible to the public, the Board may require and provide for the painting and finishing of the buildings within the Lots or other Common or Limited Common Areas, and prescribe the type and color of the surfaces and finishes. It may prohibit, require or regulate any modification or decoration of the buildings, outdoor lighting, balconies, decks or other Common or Limited Common Areas, including any such items as screens, doors, awnings, rails or other portions of each Lot and the building visible from the exterior. The Board of Directors may regulate and control the items stored in or used on the Lots in order to preserve the good appearance and condition of the entire development. In addition, this regulatory power extends to the control of the color of draperies and under-drapes or drape linings of each building within a Lot. Except as provided herein, an owner may not change the glass of his/her Unit Lot without prior

agreement of the Board. No air conditioning equipment or fans shall be installed in any of the windows in the homes.

**7.19.2.** May not convert the garage or any portion thereof to living area.

**7.19.3.** Shall submit each request to make any alteration or improvement to his Unit Lot Structure to the ACC, in writing, as provided in Section 8 of this Declaration.

**7.19.4.** Owners may not install any antennas, dishes or other receiving devices in or on any portion of the Common Areas or exterior of their home or lot, except as provided in this Section. Each Owner shall have the right to install a Protected Antenna (as defined by the provisions of 47 C.F.R. § 1.4000 (“FCC Rule”) as it now exists or is hereafter amended or replaced, or any other federal, state or local law, code, rule or regulation that preempts, prohibits or limits restrictions on, or conditions to, the installation, maintenance or repair of telecommunications equipment desired by an Owner) (but no other kind of antenna, dish or receiving device) within Owner's Lot, subject to such reasonable Rules and Regulations as the Board may adopt. If the provisions of this Section conflict with any applicable federal, state or local law, ordinance, rule or regulation, the terms of such law, ordinance, rule or regulation shall prevail, but the conditions and limitations set forth in this Section shall be enforced to the maximum extent permitted by law.

**7.20. Additional Structures Outside Any Buildings.** No decks, patio, hot tub, children's play equipment, fence, dog houses, or any other structure shall be constructed or installed outside any Building without the prior written approval of its location, design, materials color and appearance by the ACC with due regard for the appearance of the proposed improvement and the impact upon surrounding Units, the Common Elements and the entire Subdivision Plat.

**7.21. Bylaws and Rules and Regulations.** The Association may from time to time amend the Bylaws or create and amend rules and regulations of the Association as may be necessary or advisable to ensure compliance with or to supplement the covenants, conditions and restrictions in this Declaration or its amendments, and the Unit Lot Owners shall comply in all respects therewith.

**7.22. Invalidation Not Affecting Remaining Provisions.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions that shall remain in full force and effect.

**7.23. Conveyances; Notice Required.** The right of an Owner to sell, transfer, or otherwise convey a Unit Lot shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or Board, or anyone acting on their behalf. An Owner intending to sell a Unit Lot shall deliver a written notice to the Board, at least two weeks before closing, specifying the Unit Lot being sold; the name and address of the purchaser, of the closing agent, of the title insurance company insuring the purchaser's

interest; and the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit Lot, whether or not such information is requested.

**7.24. Noise and Offensive Activity.** Owners, or any Occupants of the Property, shall refrain from making loud noises or playing musical instruments, radios, televisions, electronic music or using amplifiers as noise levels that may disturb other Occupants of the Property or disturb surrounding property owners in the neighborhood. No Owner shall mount any speakers or equipment containing speakers on any Party Wall; provided that Owners may mount flat screen televisions with stock speakers on Party Walls. Any disputes regarding such matters between Owners may at the request of any Owner be resolved by the Board under such rules and regulations adopted by the Board. Owners are advised that living in a town home necessarily involves some compromise in acoustical privacy. Certain of the Lots are adjacent to an arterial road, which also could create noise issues. In no event, shall the Association or Declarant have any liability to any Owner with respect to noise issues.

**7.25. Hazardous Substances.** The Owner of each Unit Lot shall not permit any Hazardous Substance to be generated, processed, stored, transported, handled or disposed of on, under, in or through the Owner's Unit Lot or the Property, and each Owner shall indemnify, defend and hold harmless the other Owner or Owners and the Association from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit Lot or Property by the Owner or the tenants or invitees of the Unit Lot. As used herein, the terms "Hazardous Substances" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), or any local or state rule or regulation; without limiting the foregoing, Hazardous Substance shall include, but not be limited to, any substance which after being released into the environment or indirectly by ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities.

**7.26. Fencing.** No fences, hedges or solid screen plantings or site-screening improvements shall be erected without the written approval of the ACC. Fences shall not exceed 6 feet in height and under no circumstances may obstruct the view from any other lot, must be constructed of wood or other material approved by the ACC, must be constructed with a proper Snohomish County building permit and must be of a design consistent with the overall character of the Subdivision as approved by the ACC.

**7.27. Fire Sprinkler Systems.** All Townhome dwelling units shall be equipped with NFPA 13D automatic fire sprinkler systems. Such systems shall be maintained in good working order in accordance with county and state regulations and codes. Each Unit owner is required at their own expense to have an annual inspection of Backflow systems.

## **SECTION 8 – ARCHITECTURAL CONTROL COMMITTEE**

### **8.1. Construction and Exterior Alteration or Repair**

**8.1.1.** Before any building and structures are erected, placed or altered upon any Unit Lot, notice of intent to build or locate such building or structures shall be filed with the Architectural Control Committee (ACC). All buildings and structures (including, without limitations, concrete or masonry walls, rockeries, fences, swimming pools, if any, or other structures) to be constructed within the property, and all exterior alterations and repairs (including, but not limited to, reroofing or repainting) of any buildings or structures on the Property and visible from any public street, or other Unit Lot must be approved by an ACC composed of three (3) or more Unit Lot Owners designated from time to time in writing by the Board; provided, that so long as Declarant owns any Units within the Subdivision Plat, Declarant at its option may exercise all of the rights and powers of the ACC under Section 8 including without limitation the appointment of members of the ACC. References in this Section 8 to the ACC shall be deemed to include the ACC, or the Declarant, as circumstances may dictate. Complete plans and specifications of all such proposed buildings, structures, and exterior alterations and repairs together with detailed plans showing the proposed location of the same on the particular building site and other data requested by the ACC, shall be submitted to the ACC before construction, alteration or repair is started. Construction, alteration or repair shall not be started until written approval thereof is given by the ACC. Any exterior modifications in accordance with plans and specifications developed by the Declarant will be deemed approved exterior modifications.

**8.1.2.** Within five (5) days from receipt of such notice, the ACC will review submittals as to the quality of workmanship and materials planned and for conformity and harmony of the external design with proposed or existing structures on neighborhood residential Units or building sites, and as to location of the building with respect to topography, finish grade elevation and building setback restrictions.

**8.1.3.** In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required.

**8.1.4.** All plans and specifications for approval by the ACC must be submitted in duplicate, at least thirty (30) days prior to the proposed construction or exterior alteration or repair starting date. The maximum height of any building shall be established by the ACC as part of the plan approval and shall be given in writing together with the approval.

**8.1.5.** The ACC may require that said plans or specifications shall be prepared by an architect or a competent house-designer, approved by the ACC. One complete set of said plans and specifications shall in each case be delivered to and permanently left with the ACC. All buildings or structures shall be erected or constructed, and all exterior alterations or repairs made, by a contractor, house builder or other person or entity approved by the ACC. The ACC shall have the right to refuse to approve any design, plan or color for such improvements, construction, or exterior alteration or repair visible from a public street, Common Area or other Unit Lot which is not suitable or desirable, in the ACC's reasonable opinion, aesthetic or otherwise.

**8.1.6.** In so passing upon such design, the ACC shall have the right to take into consideration the suitability of the proposed building or other structure, and the material of which it is to be built, and the exterior color scheme, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect or impairment that said structures will have on the view or outlook of surrounding building sites, and any and all factors, which, in the ACC's opinion, shall affect the desirability or suitability to such proposed structure, improvements, or exterior alteration or repair.

**8.1.7.** The ACC shall have the right to disapprove the design or installation of a swimming pool or any other recreational structure or equipment desirable, in the ACC's reasonable opinion, aesthetic or otherwise. In so passing upon such design or proposed installation, the ACC shall have the right to take into consideration the visual impact of the structure and the noise impact of the related activities upon all of the properties located in close proximity. Any enclosure or cover used in connection with such a recreational structure or equipment, whether temporary, collapsible, seasonal, or whatever, shall be treated as a permanent structure for the purpose of these covenants, and shall be subject to all the conditions, restrictions, and requirements as set forth herein for all buildings and structures. Unless approved by the ACC in writing, swimming pools and hot tubs shall not be nearer than ten (10) feet to any lot line and shall not project with their coping more than four (4) feet above the established grade.

**8.1.8.** The ACC shall have the right to require, at a Unit Lot Owner's expense, the trimming or topping (or, if deemed necessary by the ACC, removal) of any tree, hedge, or shrub within a Unit Lot which the ACC determines is unreasonably blocking or interfering with the view or access to sunlight to or from another Unit Lot or is dangerous.

**8.1.9.** The ACC shall have the right to specify precisely the size, color and style of replacement mailboxes, and of the post or support on which such mailboxes are affixed, and their location within the Subdivision Plat. Individual mail boxes or newspaper receptacles are not permitted.

**8.1.10.** Notwithstanding any provision contained in this Section, under no circumstance shall the ACC approve any action to construct, alter, restore or repair any structure, improvement, landscaped or native growth vegetation area, etc., which would be

contrary to any condition of approval of the development.

**8.1.11.** The ACC may charge a fee for the review of any matter submitted to it. Any fee schedule adopted by the ACC must be approved by the Board. The ACC may retain and consult with persons or entities to assist in the evaluation of plans submitted for review.

**8.1.12.** Any Unit Lot Owner feeling aggrieved by a decision of the ACC may appeal to the Board. Any appeal must be filed within 30 days of the written decision by the ACC. The Board may adopt rules and regulations for hearing such appeals.

**8.2. Minimum Requirements.** Without limiting the foregoing or any other authority designated in this Declaration to the ACC under Section 8 or otherwise, the ACC and all Unit Lot Owners shall adhere to the following minimum standards:

**8.2.1. Zoning Regulations.** Zoning regulations, building regulations and codes, environmental regulations, and other similar governmental regulations applicable to the Properties subject to this Declaration shall be observed. In the event of any conflict between any provision of such governmental regulations and restrictions of this Declaration, the more restrictive provisions shall apply.

**8.2.2. Building Setback Requirements.** All building and other Unit Lot improvements shall comply with all applicable governmental requirements, including without limitation minimum setback requirements.

**8.2.3. Driveway Standards.** All driveways shall be constructed of concrete, or such other hard surface material approved by ACC and shall be completed prior to final building inspection.

**8.2.4. Roofing.** Roofing materials shall be the same as the original construction and the color shall be a muted earth tone approved by the ACC, subject to the condition that the ACC in its discretion upon request may permit substitutions of any brand name providing the same quality and color match. In addition, any other roofing material shall be permitted only by approval of the ACC.

**8.2.5. Building Materials and Colors.** All residences constructed on each Unit Lot shall be built of new materials, with the exception of "decor" items such as used brick and similar items. The ACC will determine if a used material is a "decor" item. In making this determination the ACC will consider whether the material harmonizes with the aesthetic character of the other residences within the Subdivision Plat and whether the material would add to the attractive development of the Subdivision Plat.

The exterior of all construction of any Unit Lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings and landscaping within the Subdivision Plat. Exterior colors must be approved by the ACC. Exterior trim,

fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built, and maintained to be compatible with the exterior of the structure they adjoin. Generally, colors shall be muted earth tones, grays, beiges, and similar shades.

**8.2.6. Exterior Finish.** The front elevation of each home shall be finished with the same materials as original construction. "T-111" or the equivalent is specifically prohibited on the front elevation. All colors and any other type material shall be approved by the ACC.

**8.2.7. Excavations.** Except with the permission of the ACC, or except as may be necessary in connection with the construction of any approved improvement, no excavation shall be made nor shall any dirt be removed from or added to any Unit Lot herein.

**8.2.8. Permits.** No construction or exterior addition or change or alteration of any structure may be started on any portion of the properties without the Unit Lot Owner first obtaining a building permit and other necessary permits from the proper governmental authority and written approval of such permits from the ACC as well as a plan check approval as required by this Declaration.

**8.2.9. Time Limit for Completion of Construction.** The construction of any building on any Unit Lot, including painting and all exterior finish, shall be completed within six months of beginning of construction so as to present a finished appearance when viewed from any angle. The building area shall be kept in a reasonably clean and workman-like manner during construction. All Units shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris. The grass thereon shall be cut and mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

**8.3. Entry for Inspection.** Any agent or member of the Declarant or any member of the ACC may at any reasonable predetermined hour upon 24 hours' notice during construction or exterior remodeling, enter and inspect the structure to determine if there has been compliance with the provisions of this Declaration. The above-recited individuals shall not be guilty of trespass for such entry or inspection. There is created an easement over, under, and across, residential Units for the purpose of making and carrying out such inspections.

## **SECTION 9 - OWNERS ASSOCIATION - MEMBERSHIP - VOTING - BYLAWS**

**9.1. Owners Association.** Management of the Subdivision Plat and maintenance, repair and replacement of the Common Elements is vested in Kilbirnie Homeowners Association ("the Owners Association") a nonprofit corporation. The following provisions govern membership in and voting and Bylaws for the Owners Association. The Association shall administer the Subdivision Plat, through actions of its Board and officers.

### **9.2. Membership.**

**9.2.1. Qualification.** Each Unit Lot Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit Lot so owned. Ownership of a Unit Lot shall be the sole qualification for membership in the Association.

**9.2.2. Transfer of Membership.** The Association membership of each Unit Lot Owner (including Declarant) shall be appurtenant to the Unit Lot giving rise to such membership, and shall not be assigned, pledged, hypothecated, conveyed or alienated in any way except upon transfer of title to said Unit Lot and then only to the transferee of title to such Unit Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

### **9.3. Voting.**

**9.3.1. Number of Votes.** The total voting power of all Owners shall equal one hundred percent (100%) and the fraction/percentage voting power allotted to each Unit is set forth in Exhibit C hereto.

**9.3.2. Persons Authorized to Vote.** The voting representative of each Unit Lot shall be the group composed of all of its Owners. The Association may recognize the vote of any one or more of such Owners present in person or by proxy at any meetings of the Association as the vote of all such Owners.

**9.3.3. Pledge of Power to Designate Voting Representative.** The power to designate a voting representative may be pledged to the holder of a security interest in a Unit Lot. If the power is so pledged, and if a copy of the instrument is filed with the Board, and if the secured party's designee attends the meeting and requests to exercise the vote, then the vote of such designee shall be recognized as to the issues respecting which the pledge was given.

**9.3.4. Pledge of Votes for or Ownership of More Than One Unit Lot - Voting.** A person who owns more than one Unit Lot (including Declarants and any mortgagee) or to whom voting rights have been pledged for more than one Unit Lot is entitled to exercise the combined total voting power of all such Units.

**9.3.5. Quorum - Majority for Action.** A quorum of Unit Lot Owners at any annual or special meeting of the Association shall be the presence, in person or by proxy, of persons holding thirty-five percent (35%) or more of the total votes, unless otherwise expressly provided herein or in the Bylaws. If the quorum is present at any such meeting, any action may be taken by an affirmative vote of a majority of the total votes present at the meeting, except as otherwise expressly provided in The Act, this Declaration or the Bylaws.

**9.3.6. Units owned by the Association.** No votes allocated to a Unit Lot owned by the Association may be cast, and in determining the percentage of votes required to act on



any matter, the votes allocated to Units owned by the Association shall be disregarded.

**9.4. Powers of the Owners' Association.** The powers of the Association shall include and be governed by the following provisions:

**9.4.1.** The Association shall have all the powers at common law and statutory powers of an Association not for profit, which are not in conflict with the terms of this Declaration or the Articles of Incorporation.

**9.4.2.** The Association shall have all of the powers and duties set forth in the Act except as limited by the Articles and this Declaration and all the powers and duties reasonably necessary to operate the Subdivision Plat as set forth in this Declaration and as it may be amended from time to time.

**9.5. Bylaws.** The Declarants shall adopt the initial Bylaws of the Association. The Bylaws shall specify the procedures for timing and the holding of annual and special meetings of the Association and may include any other matters or specify other procedures applicable to the organization and administration of the Association not inconsistent with this Declaration. The Declarants alone may amend the Bylaws at any time prior to the election of directors by the Unit Lot Owners and relinquishment by Declarants of managing authority. Thereafter, the Bylaws may be amended, in whole or in part by a Fifty-One (51%) percent vote of the Unit Lot Owners at a meeting of the Association held for that purpose, or in such other manner as the Bylaws themselves may prescribe.

**9.6. Meetings, Audits, Notices of Meetings.**

**9.6.1. Annual Meetings, Audits.** There shall be an annual meeting of the Owners in the first quarter of each calendar year, or such other fiscal year as the Board may by resolution adopt, at such reasonable place and time as set by the Board. At the annual meeting, there shall be presented an accounting of the common expenses, itemizing receipts and disbursements for the preceding fiscal year, and the allocation thereof to each Owner, and the estimated common expenses for the coming fiscal year. A Unit Lot Owner, at his own expense, may at any reasonable time have a CPA conduct an audit of the books of the Board and Association.

**9.6.2. Special Meetings.** Special meetings of the Owners may be called at any time for the purpose of considering matters, which by the terms of The Act or of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Such meetings shall be called by the president of the Association upon the decision of the president, or after request signed by a majority of the Board, or by written request by the Owners having at least twenty (20%) percent of the total votes.

**9.6.3. Notice of Meetings.** Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be

hand delivered or sent prepaid by first class United States mail to the mailing address of each Unit Lot or to any other mailing address designated in writing by the Unit Lot Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the Declaration or Bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer.

## **SECTION 10 - MANAGEMENT OF SUBDIVISION PLAT**

**10.1. Administration of the Subdivision Plat.** The Unit Lot Owners covenant and agree that the administration of the Subdivision Plat shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association which are incorporated herein by reference and made a part hereof.

### **10.2. Election and Removal of Board and Officers.**

**10.2.1. Declarant Control Until Transition Date.** Until the Transition Date, the Declarant shall have the right to appoint and remove all members of the board and to veto or approve a proposed action by the board or association, except as provided, in Section 10.2.2.

(a) **Transition Date.** Declarant Control of the Association shall terminate on the Transition Date. The Transition Date shall be no later than the earlier of (a) sixty (60) days after conveyance of 75% of the Units that may be created to Owners other than the Declarant, (b) two (2) years after the last conveyance of a Unit Lot to Owners other than a dealer, (c) two (2) years after the last exercise of a Development Right to create units, or (d) the date on which the Declarant records an amendment to this Declaration pursuant to which the Declarant voluntarily surrenders the right to further appoint and remove officers and members of the Board. If the Declarant voluntarily surrenders control pursuant to (d) above, the Declarant may require that for the duration of the period of Declarant Control, specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) **Audit of Records Upon Transfer.** Upon termination of the period of Declarant Control, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the Owners, other than the Declarant, by two-thirds vote, elect to waive the audit. The costs of the audit shall be a Common Expense.

### **10.2.2. Election by Owners, Other Than Declarant.**

(a) The affairs of the Association shall initially be governed by a Board composed of at least one (1) but not more than three (3) members as determined by Declarant.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Lot Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board may be elected by Unit Lot Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Lot Owners other than a Declarant, not less than thirty-three and one-third percent of the members of the Board must be elected by Unit Lot Owners other than the Declarant. Within 30 days after the termination of any period of declarant control or, the absence of such period, not later than a date that is sixty days after the conveyance of seventy-five percent of the Units that may be created to Unit Lot Owners than Declarant, the Board must schedule a transition meeting and provide notice to the Unit Lot Owners in accordance of RCW 64.90.445(1)(c). In any event, the period of Declarant Control shall terminate no later than seven years from the conveyance of the first Unit in the Subdivision.

(c) Commencing with the first Association meeting at which the Unit Lot Owners are to elect the entire Board (other than a meeting held when Declarant still owned all of the units), and unless the Bylaws are amended at that meeting, the Board shall be composed of three (3) Members (not including a Board member designated by Declarant), a majority of whom must be Owners of Units in the Subdivision Plat; provided, the Declarant (or a representative of Declarant) shall have the right (which may not be terminated by amendment to the Declaration or Bylaws, and which shall continue so long as any Special Declarant Rights or Developments remain in effect or Declarant has any obligation or liability of any express or implied warranty) to serve as a full non-voting member of the Association Board (with all of the rights and powers of a Board member except for the right to vote).

**10.2.3. Taking Office; Officers.** The Board shall elect the officers of the Association. Such members of the Board and officers shall take office upon election.

**10.2.4. Removal.** The Unit Lot Owners, by a two-thirds vote of the voting power in the Association present and entitled to vote at any meeting of the Unit Lot Owners at which a quorum is present, may remove any member of the Board with or without cause.

### **10.3. Management by Board.**

**10.3.1. On Behalf of Association.** Except as otherwise provided in the Declaration, the Bylaws, Section 10.3.2 or the Act, the Board shall act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise ordinary and reasonable care.

**10.3.2. Not on Behalf of Association.** The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Lot Owners under this Declaration, to terminate the Subdivision Plat pursuant to RCW64.90.290, or to elect members of the Board or determine the qualifications, powers,

and duties, or terms of office of members of the Board pursuant to section 10.2; but the Board may fill vacancies in its membership for the unexpired portion of any term.

#### **10.4. Authority of the Association.**

**10.4.1** The Association acting by and through the Board, or a Managing Agent appointed by the Board, for the benefit of the Subdivision Plat and the Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have all powers, authority and duties permitted to or required of the Association under the Act and this Declaration. The provisions of the Act (as it may be amended) are set forth on Exhibit B hereto.

**10.4.2.** The Board's power hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Association funds a capital addition or improvement (other than for purposes of restoring, repairing or replacing portions of the Common Elements) having a total cost in excess of Five Thousand Dollars (\$5,000), without first obtaining the affirmative vote of a majority of Owners at a meeting called for such purpose, or if no such meeting is held, then the written consent of a majority of Owners; provided that any expenditure or contract for each capital addition or improvement in excess of Twenty-Five Thousand Dollars (\$25,000) must be approved by Owners having not less than sixty-seven percent (67%) of the voting power.

**10.4.3.** Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all of the Owners or any of them.

**10.4.4.** The Board and its agents or employees, may enter any Unit Lot or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board paid for as a Common Expense if the entry was due to an emergency, or for the purpose of maintenance or repairs to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board; provided, if the repairs or maintenance were necessitated by or for the Unit Lot entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit Lot. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Limited Common Elements.

**10.5. Borrowing by Association.** In the discharge of its duties and the exercise of its powers as set forth above, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and to secure the repayment of such funds, assess each Unit Lot (and the Owner thereof) for said Unit Lot's pro rata share of said borrowed funds and the obligation to pay said pro rata share shall be a lien against said Unit Lot and the undivided interest in the Common Elements appurtenant to said Unit Lot.

Provided, that the Owner of a Unit Lot may remove said Unit Lot and the Allocated Interest in the Common Elements appurtenant to such Unit Lot from the lien of such assessment by payment of the Allocated Interest in Common Expense Liability attributable to such Unit Lot. Subsequent to any such payment, discharge, or satisfaction, the Unit Lot and the Allocated Interest in the Common Elements appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit Lot and the Allocated Interest in the Common Elements appurtenant thereto not so paid, satisfied, or discharged.

#### **10.6. Association Records and Funds**

**10.6.1. Records and Audits.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with RCW 64.90.640 in providing resale certificates. All Books and Records of the Association shall be made reasonably available (at all reasonable hours of weekdays or under other reasonable circumstances) for examination and copying by Declarant, and any Owner, Mortgagee, insurer and guarantor of any Mortgage on any Unit Lot, or their agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. If this Subdivision Plat consists of fifty or more Units, the financial statements of the Subdivision Plat shall be audited at least annually by a certified public accountant. If this Subdivision Plat consists of fewer than fifty Units, an annual audit is also required but may be waived annually by Owners (other than the Declarant) of Units to which fifty-one percent of the votes are allocated, excluding the votes allocated to Units owned by the Declarant.

**10.6.2. Fund Commingling.** The funds of the Association shall be kept in accounts in the name of the Association and shall not be commingled with the funds of any other Association, or with the funds of any Managing Agent of the Association or any other person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require documentation of the majority approval by the Board of Directors.

**10.7. Association as Trustee.** With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

#### **10.8. Common Elements, Conveyance, Encumbrance.**

**10.8.1. In General.** Portions of the Common Elements which are not necessary for the habitability of a Unit Lot may be conveyed or subjected to a security interest by the Association if the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, including eighty percent (80%) of the votes allocated to Units not owned by Declarant or an Affiliate of Declarant, agree to that action; but all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the sale or financing are an asset of the Association.

**10.8.2. Agreement.** An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Lot Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Subdivision Plat is situated and is effective only upon recording.

**10.8.3. Conditions Precedent.** The Association, on behalf of the Unit Lot Owners, may contract to convey Common Elements or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 10.8.1 and 10.8.2. Thereafter, the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, including the power to execute deeds or other instruments.

**10.8.4. Void Transactions.** Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

**10.8.5. Support Right.** A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit Lot of its rights of access and support.

**10.8.6. Prior Encumbrances.** A conveyance or encumbrance of Common Elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances either on Units (and their Allocated Interest in Common Elements) or on Common Elements.

**10.9. Termination of Contracts and Leases.** If entered into before the Board elected by the Unit Lot Owners pursuant to Section 10.2.1 takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an Affiliate of a Declaration, or (3) any contract or lease that is not bona fide or was unconscionable to the Unit Lot Owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after the Board elected by the Unit Lot Owners pursuant to Section 10.2.2 takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This Section does not apply to any lease, the termination of which would terminate the Subdivision Plat or reduce its size, unless the real property subject to that lease was

included in the Subdivision Plat for the purpose of avoiding the right of the Association to terminate a lease under this Section.

**10.10. Maintenance, Repair, Inspection and Warranty Procedure.** The Association and Unit Lot Owners shall defend, indemnify and hold Declarant harmless from any expense or claim arising from or relating to any Association's or Owner's failure to promptly and properly maintain, repair or inspect the improvements in the Subdivision Plat (or any part thereof), or the Association's failure to promptly and properly make a claim (or comply with dispute resolution procedures) under any warranty obtained or issued by Declarant. Declarant shall not be liable under any express or implied warranty for loss or damage which the Association or Owners have not taken timely action to minimize, or which is caused or made worse by a failure to properly and promptly maintain, repair, or inspect (including without limitation failure to fully comply with any inspection, monitoring, maintenance or repair checklist, manual or recommendation provided by Declarant (or a contractor, subcontractor or manufacturer) to the Association or Owners.

**10.11. Right to Notice and Opportunity to Be Heard.** Whenever this Declaration or The Act requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, tenants, or occupants of the Units whose interest would be significantly affected by the proposed action. The notice must contain a general statement of the proposed action as well as the date, time, and place of the hearing. The Board shall deliver notice at least five (5) days before a hearing. At the hearing, the affected person shall have the right, personally or by representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. The Board shall consider such evidence in making a decision, but such evidence does not bind the Board. The Board shall notify the affected person of the Board's decision in the same manner that notice of the hearing was given.

**10.12. Association Litigation.** The term "Legal Proceedings" as used herein shall include litigation, administrative, mediation, arbitration or other proceedings in the name of the Association on behalf of itself or two or more Unit Lot Owners on matters affecting the Subdivision Plat.

(a) The provisions of this Section 10.12 shall not apply to Legal Proceedings, as a result of which the Association could not be held responsible for costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) in an aggregate amount of not more than \$5,000 (including without limitation fees contingent on a result), and which involve:

(i) collection of delinquent regular or special Assessments, the enforcement of any Assessment lien, and interest and penalties in connection therewith;

(ii) collection of monies owed to the Association, or recovery of damages caused to the Association or Subdivision Plat (or any part thereof), when the principal amount to be recovered involves less than \$25,000;

(iii) enforcement of the provisions of the Declaration, Articles, Bylaws or rules and regulations of the Association;

(iv) defense of a claim against the Association, when the principal amount to be recovered involves less than \$25,000; or

(v) the filing of a complaint, answer or other pleading for the limited purpose satisfying a statute of limitation deadline, avoiding entry of a default order or judgment, or preventing personal injury or serious harm to the Subdivision Plat (if such purpose is certified in good faith by the Association's attorney), but except for this limited purpose the other conditions of Section 10.12 must be satisfied.

(b) In order for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in Legal Proceedings, and in order for the Association to become obligated in the aggregate sum in excess of \$5,000, to professionals, consultants or other experts in connection with Legal Proceedings, the following conditions must first be satisfied:

(vi) the Board has received a detailed written summary ("Litigation Summary") concerning the substance of the proceeding, including: (i) agreements with lawyers, experts and consultants; issues involved; (ii) legal and factual basis of anticipated allegations on behalf of and against the Association; (iii) remedies to be sought on behalf of and against the Association; (iv) estimated amount to be sought on behalf of (and that could be sought from) the Association; (v) Association's estimated costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) and any third-party costs of suit that the Association would pay if the Association does not prevail; (vi) reports and recommendations by any professionals or consultants retained by the Association (and by any opposing party, if available); (vii) any written demands or settlements offers made by an opposing party (the Board shall request that an opposing party make such demand and settlement offer); and (viii) any negative consequences that the Association, Subdivision Plat or Owners could suffer during such proceedings including required disclosures to prospective purchasers, impediments to Unit Lot refinancing, or diminishment of Unit Lot value.

(vii) if the proceeding will involve a claim against the Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) concerning construction defects or other condition of the Subdivision Plat, the Litigation Summary will also include: a description of the construction defects or other condition (which shall also have been transmitted to the Declarant); and any written response from the Declarant



concerning such defects (including any offer to settle by performing remedial work, payment of cash or a combination of both).

(viii) A copy of the Litigation Summary shall be transmitted to all Owners, together with a written notice of the Owner's right of access to the Books and Records of the Association as provided in Section 10.6.1, and a written notice of a special Owners' meeting to be convened as provided in this Declaration, at which meeting the Declarant (and its representatives) shall be entitled to attend and participate in on a non-voting basis.

(v) The Owners holding seventy-five percent (75%) of the total Association voting power must grant approval for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in legal proceedings; provided, that under no circumstances may legal proceedings be commenced against Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) with respect to any alleged construction defect or other condition which Declarant has agreed in writing to remedy and is proceeding with reasonable due diligence to do so.

## **SECTION 11 – DISPUTE RESOLUTION**

**11.1 Policy - Mediation.** Townhome living requires that the Declarant, all Owners and the Association (collectively referred to as "party" or "parties") cooperate in good faith and deal fairly in performing their duties and exercising their rights under this Declaration. If any party to a dispute determines that the dispute cannot be resolved without intervention, then that parties shall give notice (the "Arbitration Demand") to all other parties to the dispute and the Association demanding that the dispute be submitted to mediation and arbitration pursuant to this Section. All parties to the dispute shall then participate in a nonbinding mediation for 45 days after the Arbitration Demand. The mediator shall be Dispute Resolution by Volunteers of America in your county. If the mediation is not successful, the dispute shall be resolved by binding arbitration conducted pursuant to Section 11.2 below. The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury. Section 11 is the exclusive remedy to resolve disputes between parties of any claims related in any way to the Subdivision, the construction of the Townhome and/or warranty, statutory or common law claims.

**11.2 Binding Arbitration.** If binding arbitration is required to resolve a dispute, it shall be conducted in the County the Townhome is located in, pursuant to RCW 7.04.060, provided, that the total award by a single arbitrator (as opposed to a panel of three arbitrators) shall not exceed \$50,000, including interest, attorney's fees and costs. If any party demands a total award greater than \$50,000, there shall be three (3) neutral arbitrators. If the parties cannot agree on the selection of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large Complex Case Panel or from any group of arbitrator with equivalent professional credentials as determined by the administrator. Each arbitrator shall be an attorney with at least fifteen (15) year experience in commercial

or real estate law in the King or Snohomish County. The arbitrator(s) shall determine whether the dispute is subject to binding arbitration under this Section. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding hereunder.

**11.3 Hearing - Law - Appeal Limited.** The arbitrator(s) shall take such steps as may be necessary to hold the arbitration hearing within ninety (90) days of the Arbitration Demand, conclude the hearing within three (3) days, issue its decision not later than fourteen (14) calendar days after the hearing. These time limits are intended to expedite the proceeding, but they are not jurisdictional. The arbitrator(s) may for good cause permit reasonable extensions or delays. The arbitrator(s) shall issue a written decision stating the award for each claim involved in the dispute. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final and judgment on the award may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, order the joinder of parties, or consolidate the arbitration with any other proceeding involving common issues of law or fact or to promote judicial economy. The arbitrator(s) shall not have the power to award punitive or exemplary damages, or attorney's fees and costs to any party. If the hearing is before a panel of three (3) arbitrators, the decision of any two arbitrators shall be the decision of the panel.

**11.4 Exception to Arbitration.** The dispute resolution provisions shall not apply to actions by the Association in collecting assessments arising under the Declaration against Unit Owners.

**11.5. Binding Agreement.** Section 11 of this Declaration is a covenant running with the land and binds all heirs, successors and assigns. The terms of Section 11 may not be amended without Declarant's written consent to an Amendment that is recorded.

## **SECTION 12 - COMMON EXPENSE ASSESSMENTS ACCORDING TO THE BUDGET**

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

**12.2 Preparation of Budget.** Not less than 30 days before the end of the fiscal year, the Board shall prepare a budget for the Association of the coming year. In preparing its budget the Board shall estimate the Common Expenses to be paid during the year, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The budget must include the projected income of the Association by category, the projected Common Expenses the amount of the assessments per Unit and the date the assessments are due, the current amount of regular assessments budgeted for contribution to the reserve account, a statement of whether the Association has a reserve study that meets the requirements of RCW 64.90.550 of the Act and, if so, the extent to

which the budget meets or deviates from the recommendations of that reserve study, and the current deficiency or surplus in reserve funding expressed on a per Unit basis.

**12.3 Ratification of Budget.** Within thirty (30) days after adoption of any proposed budget for the Subdivision, the Board shall provide the proposed budget to all the Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than fourteen (14) nor more than fifty (50) days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. If the Board proposed a supplemental budget during any fiscal year, then the supplemental budget shall not take effect unless ratified by the Owner in accordance with this Section.

**12.4 Supplemental Budget.** If during the year the budget proves to be inadequate for any reason, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget is subject to ratification pursuant to Section 12.3 above.

**12.5. Payment by Owners.** Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Section to the treasurer for the Association or managing agent in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Unit Lot.

**12.6. Commencement of Assessments.** The Declarant in the exercise of its reasonable discretion shall determine when the Association shall commence making Assessments; provided, that in all events Assessments shall commence on a date within 60 days the date on which all Unit Lots have been conveyed to Owners. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments must be made against all Unit Lots, based on a budget adopted by the Association; provided, until all Unit Lots have been conveyed to Owners (other than Declarant or an Affiliate of Declarant):

(a) the Board (whether appointed by Declarant or elected by Unit Lot Owners) may elect not to collect monthly assessments calculated as provided in Section 12.2 and instead elect to collect and expend monthly assessments based on the actual costs of maintaining, repairing, operating and insuring the Common Areas; or

(b) the Declarant may elect to pay all of certain of such actual costs and have Unit Lot Owners pay a pro-rata share (based on each Unit Lot's Allocated Interest) of the remainder of such costs.

**12.7. Allocated Liability.** Except for Assessments under Sections 12.8, 12.9, 12.10, 12.11, 12.12, 12.13 and 12.14, all Common Expenses must be assessed against all the Unit Lots in accordance with the allocations set forth in Exhibit C. Any past due Common Expense Assessment or installment thereof bears interest at the rate of 12% per annum.

**12.8. Limited Common Element.** Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be paid by the Owner of or assessed against the Unit Lots to which that Limited Common Element is assigned, equally.

**12.9. Only Some Unit Lots Benefited.** The Board may elect that any Common Expense or portion thereof benefiting fewer than all of the Unit Lots must be assessed exclusively against the Unit Lots benefited. The Detached home unit lots will not be assessed for any portion of the property building insurance on the townhome building or for reserves or maintenance of the roofs and painting of the townhome buildings.

**12.10. Insurance Costs.** The Board may elect that the costs of insurance must be assessed in proportion to risk.

**12.11. Utility Costs.** The Board may elect that the costs of utilities must be assessed in proportion to usage.

**12.12. Assessments for Judgment.** Assessments to pay a judgment against the Association pursuant to RCW 64.90.490 may be made only against the Unit Lots in the Subdivision Plat at the time the judgment was entered in proportion to their Allocated Common Expense Liabilities at the time the judgment was entered. The judgment lien shall not apply to any other property of a Unit Lot Owner.

**12.13. Owner Misconduct.** To the extent that any Common Expense is caused by the misconduct or negligence of any Unit Lot Owner, the Association shall assess that expense against the Owner's Unit Lot.

**12.14. Allocation of Costs and Liability Not Covered by Insurance.** Any cost or liability not covered by insurance maintained by the Owners or Association, including the cost of deductibles and nay coinsurance, shall be allocated: (a) to the applicable Owner to the extent the same relates to such Owner's Unit Improvements or assigned Limited Common Elements; and (b) to the Owner's in accordance with their Common Expense Liability to the extent the same relates to the General Common Elements. Notwithstanding the foregoing, each Owner shall bear all of the costs and liability for claims made against such Owner to the extent caused by its negligent or wrongful acts or omissions and an Owner's responsibility for such acts or omissions shall not be directly or indirectly shifted to any other Owner through a Specially Allocated Expenses under this Section. This Section

is for the sole benefit of Owners and the Association and shall not affect any waivers or subrogation rights set forth herein or elsewhere.

**12.15 Special Assessments.** For those Common Expenses and Specially Allocated Expenses which cannot reasonably be calculated and paid on a monthly basis, the Association may levy special Assessments for such expenses against the Units, subject to ratification by the Owners pursuant to Section 12.3. To the extent that any Common Expense is caused by the misconduct or negligence of an Owner or relates to the repair of any Unit, the Association may, after Notice and Opportunity to be Heard, levy a Special Assessment for the expense against the Unit.

**12.16. Working Capital Contribution.** The first Purchaser of any Unit Lot shall pay to the Association, in addition to other amounts due, an amount equal to six (6) months of monthly Assessments as a contribution to the Association's working capital. Such working capital contributions shall not be used to defray Declarant's expenses in completing the construction of the Subdivision Plat, to pay Declarant's contributions to Association reserves or to make up any deficits in the budget of the Association.

**12.17. Reserves.** The Board shall create reserve accounts for anticipated expenses for repairs, replacements, and improvements for which the Association is responsible to maintain which will occur in the future to accumulate sufficient funds to pay such expenses when they occur. The reserve accounts must be interest-bearing accounts under the direct control of the Board and the Board is responsible for administering the reserve accounts. The operation of the reserve accounts and assessments for reserve accounts shall be further governed by the Bylaws.

**12.18. Reconciliation of Assessments to Actual Expenses.** The Association shall establish and maintain its accounts and records in such a manner that will enable it to credit the Assessments for Common Expenses (including special Assessments) and other income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. The accounts of the Association shall be reconciled as necessary to ensure the owner are correctly assessed for the actual expenses of the Association, and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged in the account of or assessed against) the Owners who paid the surplus (or owe the deficit). Reconciliation shall not be necessary if the administrative cost of doing so will exceed the total adjustment likely to result from the reconciliation.

**12.19 Proceeds Belong to Association.** All Assessments and other receipts received by the Association on behalf of the Subdivision shall belong to the Association.

**12.20. Failure to Assess.** Any failure of the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay Assessments during that

or any subsequent year, and the Assessments amounts established for the preceding year shall continue until new Assessments are established.

**12.21. Certificate of Unpaid Assessments.** Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and Mortgagees of the Unit who rely on the certificate in good faith. The Board may establish the reasonable fee to be charged to reimburse it for the cost of preparing the certificate. In addition, the Board shall furnish resale certificates to the extent required by RCW 64.90.640 of the Act, and shall provide such other information as may be reasonably requested by an Owner or its mortgagee including an estoppel certificate confirming the identity of the Owner, its voting representative, amount and status of payment of Assessments, any significant anticipated expenses which are not reflected in the budget or for which adequate reserves are not maintained, a summary of any pending or threatened litigation, whether the Owner or its Occupants and Invitees are in compliance with this Declaration and any rules and regulations adopted by the Board, and any other information reasonably requested. The estoppel certificate shall be based on the actual knowledge of the Directors then serving on the Board and a reasonable review of the books and records available to them.

**12.22. Recalculation of Assessments.** If the Common Expense Liability for any Unit changes, then Assessments for Common Expenses and any installment thereof not yet due shall be recalculated in accordance with the changed Common Expense Liability.

### **SECTION 13 – COLLECTION OF ASSESSMENTS**

**13.1 Lien Indebtedness.** Unpaid Assessments shall be the separate, joint and several personal debts of the Owner or purchaser by voluntary conveyance of Units for which the same as assessed. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing same. The Association has a statutory lien on each Unit for any unpaid assessment against that Unit from the time such assessment is due. The Association's lien has priority over all other liens and encumbrances on a Unit except for: (i) liens and encumbrances recorded before this Declaration is recorded; (ii) mortgages and other security interests recorded before the due date of the unpaid assessment except as provided below in this Section; and (iii) liens for real estate taxes and other state or local governmental assessments or charges against the Unit. If the Association gives the holder of those security interests described in (ii) of this Section not less than 60 day prior written notice of delinquent assessments that complies with RCW 64.90.485(3)(a)(iii) of the Act, then the Association's lien shall have priority over such security interests for those Common Expense assessments, including special assessments, but excluding any amounts for capital improvements, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the Association's lien or such security interest, together with

costs of foreclosure and attorney's fees to the extent allowed by RCW 64.90.485 of the Act. This limited lien priority over such security interests shall not be available if the Association forecloses its lien non-judicially. A Mortgagee of a Unit that obtains possession through a mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Unit free of any claims for the share of the assessments by the Association chargeable to the Unit which became due before such possession, but will be liable for the assessments and other authorized expenses accruing after such possession.

**13.2 Collection of Delinquent Assessments.** The Board of Directors shall enforce collection of any delinquent Assessment in the following manner, or in any manner permitted by law:

**13.2.1 Security Deposit.** Should an Owner be chronically delinquent in paying any Assessments, the Board of Directors may, in its discretion, require such Owner from time to time to make a security deposit not in excess of Assessments for a 12 month period, which may be collected in the same manner as other Assessments. Such deposit shall be held in a separate fund, credited to such Owner, and resort may be made thereto at any time when an Owner is ten (10) days or more delinquent in paying his monthly or other Assessments.

**13.2.2 Acceleration of Assessments.** If any owner is delinquent in the payment of any Assessment for more than sixty (60) days, and the Owner fails to cure the delinquency within fifteen (15) days after written notice from the Association stating the consequences of failing to cure the delinquency, then the Association may accelerate and demand immediate payment of all Assessments coming due during the twelve (12) month period following the Association's notice. The Association may reasonably estimate any Specially Allocated Expenses or special Assessments in calculating the accelerated balance.

**13.2.3 Action to Foreclose.** The Board of Directors may commence an action to foreclose a lien judicially pursuant to RCW 61.12 for Assessments made pursuant to Section 12 and any accelerated Assessments due pursuant to Section 13.2.2. above, and in any such action shall be entitled to recover attorney's fees and costs pursuant to Section 13.3, and shall further be entitled to seek the appointment of a receiver as provided in the Act. The judgment in the action foreclosing the lien shall be for an amount equal to all delinquent Assessments and advances, plus all costs and expenses in connection with such action and any receivership, including a reasonable sum as attorney's fees and for the cost, if any, of obtaining a title report.

**13.2.4 Non-Judicial Foreclosure** The Board of Directors may commence an action to foreclose a lien for Assessments non-judicially pursuant to RCW 61.24 as permitted by RCW 64.90.485(13) of the Act, and in such foreclosure may recover its reasonable attorney's fees and all costs and expenses reasonably incurred in the preparation or prosecution of such foreclosure. For the purposes of permitting such non-judicial foreclosure: (a) the Unit Lot is granted in trust to Chicago Title Insurance Company (herein

the "Trustee") to secure the Owners' respective obligations to pay Assessments when due; (b) the Trustee is granted the power to sell the individual Units; (c) the Units are not used principally for agricultural or farming purposes; and (d) the foregoing power of sale shall be operative with respect to any Unit if the Owner of that Unit fails to pay Assessments with respect to any Unit when due including any accelerated Assessments due pursuant to Section 13.2.2. above.

**13.2.5 Other Remedies.** The Board shall have all other remedies for collection of delinquent Assessments not prohibited by law.

**13.3 Attorney's Fees, Costs and Interest.** The Association shall be entitled to recover any costs and reasonable attorney's 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. The Association shall be entitled to recover costs and reasonable attorney's fees if it prevails on appeal and in the enforcement of a judgment. Until a different rate is set by the Association, delinquent Assessments shall bear interest from the date of delinquency at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

**13.4 Liability of Mortgagee.** In the event a mortgagee obtains title to any Unit as a result of the Foreclosure of the Mortgage or deed in lieu of Foreclosure, the Mortgagee shall be liable for the Assessments for such Unit for the period after such Mortgagee acquires title to such Unit.

**13.5 Liability After Sale of A Unit.** The lien for unpaid Assessments shall not be affected by the sale or transfer of a Unit, and the buyer of the Unit shall be jointly and severally liable with the seller of the Unit for all unpaid Assessments up to the time of the sale without prejudice to the buyer's right to recover from the seller the amounts paid for such delinquent Assessments. Provided, however, the buyer is not liable for any Assessments delinquent at the time a resale certificate was provided to the buyer pursuant to RCW 64.90.640(3)(a) of the Act to the extent such delinquent Assessments were not shown in the resale certificate.

**13.6 Late Charges.** The Association may establish reasonable late charges and assess them against those Owners who are delinquent in paying Assessments.

## **SECTION 14. INSURANCE.**

**14.1. General Requirements.** Commencing not later than the time of the first conveyance of a Unit Lot to a Person other than the Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance, (b) commercial general liability insurance, (c) fidelity insurance, (d) worker's compensation insurance to the extent required by applicable laws, (e) directors and officers liability insurance, and (f) such other insurance as the Board deems



advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects, authorized to do business in the State of Washington, and meet the specific requirements of FNMA, FHLMC, FHA and VA, so long as any of them is a Mortgagee or Owner of a Unit Lot, regarding the qualifications of insurance carriers. Notwithstanding any other provision herein, the Association shall continuously maintain in effect property, liability and fidelity insurance that meets the insurance requirements for townhome Subdivision Plat projects established by FNMA, FHLMC, FHA and VA, so long as any of them is a Mortgagee or Owner of a Unit Lot, except to the extent such coverage is not available or has been waived in writing by them. All such insurance policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice (10 days for cancellation for nonpayment of premium) to any and all insureds named therein, including Owners, Mortgagees, and designated servicers of Mortgagees.

**14.2. Property Insurance.** The property insurance shall, at a minimum, provide special cause of loss coverage in an amount equal to the full replacement cost of the Common Elements, the Limited Common Elements, the Townhome Units, personal property of the Association, and betterments and improvements including permanently-installed wall and floor coverings, equipment, fixtures (such as cabinets) and appliances, and replacements or upgrades of the same, in or the Units, whether installed by the Declarant, Owners, or their tenants, with an "Agreed Amount" or equivalent endorsement. Each Owner shall promptly inform the Board in writing of any betterment or improvement intended as a permanent part of its Unit Lot which cost in excess of \$5,000. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage to be purchased by FNMA, FHLMC, FHA or VA (regardless of whether or not such property is part of the Common Elements) must be covered by such policy. The Association's policy must provide for the recognition of any insurance trust agreement. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit Lot. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with the Allocated Interest allocated to the Owner's Unit Lot. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. The name of the insured under such policy must be substantially as follows: "KILBIRNIE HOMEOWNERS ASSOCIATION" for the use and benefit of the individual owners." The policy may also be issued in the name of an insurance trustee who has entered into an Insurance trust agreement pursuant to Section 14.8 below, or any successor trustee, as insured, for the use and benefit of the Owners. A loss payable shall be in favor of the Association or such insurance trustee, as a trustee, for each Owner and each Mortgagee of a Unit Lot. The Association or such trustee shall hold any proceeds of insurance in trust for Owners and mortgagees of a Unit Lot, as their interests may appear. Each Owner and each Mortgagee of a Unit Lot, if any, shall be beneficiaries of the policy in accordance with their Allocated Interests. Such policy shall contain by standard mortgagee clause or equivalent endorsement (without contribution), which is commonly accepted by private institutional

mortgage investors in State of Washington, which appropriately names FNMA, FHLMC, FHA, or VA, so long as any of them are Mortgagees or Owners of Units.

The Association property insurance does not cover the single-family detached home Unit Lots or the structures located thereon. The Owner of each detached home shall provide property insurance on their homes and Unit Lots. Said owners shall provide proof of insurance coverage to the Association annually and shall keep said homes insured at all times for their replacement value.

**14.3. Commercial General Liability Insurance.** The liability insurance policy shall insure the Board, Association, Owners, Declarant, and Manager. The policy will cover all of the Common Elements in the townhome Subdivision Plat with a “Severability of Interest Endorsement” or equivalent coverage which would preclude the insurer from denying the claim of an owner because of the negligent acts of the Association or of another Owner, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, host liquor liability, employers’ liability insurance, automobile liability insurance, and such other risks as are customarily covered with respect to townhome Subdivision Plat projects of similar construction, location and use. The liability policy shall also cover any commercial space owned and leased by the Association, and any public ways of the townhome Subdivision Plat. Coverage shall also include legal liability arising out of lawsuits related to employment contracts of the Association. The limits of liability shall be in amounts generally required by Mortgagees for projects of similar construction, location and use but shall be at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence and \$2,000,000 general aggregate.

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

**14.5. Other Insurance.** The Board of Directors may obtain other insurance it deems advisable.

**14.6. Flood Insurance.** The Association shall obtain flood insurance if the townhome Subdivision Plat is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the under the National Flood Insurance

Program ("NFIP"). Such insurance shall be obtained by the Association, as a common expense, under a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein "insurable property"), in an amount deemed appropriate by the Association, but not less than the following:

The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the townhome Subdivision Plat to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement costs of all such buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most recent guidelines on the subject issued by the Federal Insurance Administrator.

**14.7. Owner's Additional Insurance.** For Townhome Units each Owners shall obtain additional property and liability insurance as is typically maintained by the Owners of similar homes at his own expense which is known generally as an "HO6 policy". Provided, however, no Owner shall maintain insurance coverage in any manner which would decrease the amount which the Board of Directors, or any trustee for the Board of Directors, on behalf of all of the Owners, will realize under any insurance policy which the Board of Directors may have in force on the townhome Subdivision Plat at any particular time. Each Owner shall file with the Board of Directors a Certificate of Insurance evidencing the coverage required by this Section within thirty (30) days after purchase of such insurance, and the Board of Directors shall immediately review its effect with its insurance broker, agent or carrier.

**14.8. Insurance Proceeds.** Insurance proceeds for damage or destruction to any part of the property shall be paid to the Board of Directors on behalf of the Association which shall hold such proceeds in trust for each Owner and their first Mortgage holders, as their interests may appear, and shall segregate such proceeds from other funds of the Association for use and payment as provided for this Declaration. The Association acting through its Board of Directors shall have the authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board of Directors on behalf of the named insureds under the policy. No insurance proceeds may be paid directly to any mortgagee. Notwithstanding the foregoing provisions and requirements relating to property or liability insurance, there may be named as insured, on behalf of the Association, the Association's authorized representative, including the Board or other trustee with whom such Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

**14.9. Additional Provisions.** The Board of Directors shall, to the extent they are reasonably available, obtain insurance policies containing (or omitting, as indicated below) the following provisions:

**14.9.1. Contribution.** A provision that the liability of the insurer thereunder is primary and shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for any Owner or any Mortgagee;

**14.9.2. Matters Association Cannot Control.** No provision relieving the insurer from liability for loss because of any act or neglect of Owners which is not within the scope of an Owner's authority to act on behalf of the Association or because of any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control;

**14.9.3. Subrogation.** A waiver of subrogation by the insurer for any and all claims against the Association, the Owner of any Unit Lot and/or their respective household members, agents, employees or tenants, and any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

**14.9.4. Restoration Limited.** A provision prohibiting the insurer from electing to restore damage in lieu of making a cash settlement, without first obtaining the written approval of the Association, or, if the Association is a party to the insurance agreement, the written approval of the trustee;

**14.9.5. Cancellation.** A provision that the insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Chapter 48.18 RCW pertaining to the cancellation or non-renewal of contracts of insurance.

**14.9.6. Inflation Endorsement.** An "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement", which increases coverage and policy limits to the same extent inflation causes the value of the dollar to decrease.

**14.9.7. Appointment of Attorney-in-Fact.** Each Owner appoints the Association or any insurance trustee as attorney-in-fact for the purpose of purchasing and maintaining the insurance provided for under this Section 14, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

## **SECTION 15 - DAMAGE OR DESTRUCTION: RECONSTRUCTION**

**15.1. Initial Board Determinations.** In the event of damage or destruction to any

part of the Subdivision Plat including Buildings within a Unit Lot that the Association insures, the Board shall promptly, and in all events within twenty (20) days after the date of damage or destruction, make the following determinations with respect thereto employing such advice as the Board deems advisable:

**15.1.1.** The nature and extent of the damage or destruction, together with an inventory of the improvements and property directly affected thereby.

**15.1.2.** A reasonably reliable estimate of the cost to repair and restore the damage and destruction, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

**15.1.3.** The anticipated insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

**15.1.4.** The amount, if any, that the estimated cost of repair and restoration exceeds the anticipated insurance proceeds therefore and the amount of assessment to each Unit Lot if such excess was paid as a Common Expense and specially assessed against all the Units in proportion to their percentage of interest in the Common Elements.

**15.1.5.** The Board's recommendation as to whether such damage or destruction should be repaired or restored.

**15.2. Notice of Damage or Destruction.** The Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, provide each Owner, and eligible Mortgagee with a written notice summarizing the initial Board determination made under Section 15.1. If the Board fails to do so within said thirty (30) days, then any Owner or eligible Mortgagee may make the determination required under Section 15.1 and give the notice required under this Section 15.2.

**15.3. Definitions; Restoration; Emergency Work.**

**15.3.1.** As used in this Section 15, the words "repair," "reconstruct," "rebuild" or "restore" shall mean restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit Lot and the Common and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental Rules and Regulations or available means of construction may be made.

**15.3.2.** As used in this Section 15, the term "Emergency Work" shall mean that work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Owners from liability from the condition of the site.

#### **15.4. Restoration by Board.**

**15.4.1.** Unless prior to the commencement of Repair and Restoration Work (other than Emergency Work referred to in subsection 15.3.2) the Owners shall have decided not to Repair and Reconstruct in accordance with the provisions of either subsection 15.5.3 or 15.6.3, the Board shall promptly Repair and Restore the damage and destruction, use the available insurance proceeds therefore, and pay for the actual cost of repair and restoration in excess of insurance proceeds secured as a Common Expense which shall be specially assessed against all Units in proportion to their percentages of interest in the Common Elements.

**15.4.2.** The Board shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the Repair and Restoration. Contracts for such repair and restoration shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provision for the cost thereof. The Board may further authorize the insurance carrier to proceed with Repair and Restoration upon satisfaction of the Board that such work will be appropriately carried out.

**15.4.3.** The Board may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company that such firm or institution shall act as an insurance trustee to adjust and settle any claim for such loss in excess of Fifty Thousand Dollars (\$50,000), or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Section.

**15.5. Limited Damage; Assessment Under \$3,500.** If the amount of the estimated assessment determined under subsection 15.1.4 does not exceed Three Thousand Five Hundred Dollars (\$3,500) for any one Unit Lot, then the provisions of this Section 15.5 shall apply:

**15.5.1.** The Board may, but shall not be required to, call a special Owners' meeting to consider such Repair and Restoration work, which notice shall be given simultaneously with the notice required to be given by the Board under Section 15.2 above. If the Board shall fail to call such meeting, then the requisite number of Owners or any eligible Mortgagee, within fifteen (15) days of receipt of the notice given by the Board under Section 15.2 above, or the expiration of such thirty (30) day period, whichever is less, may call such special Owners' meeting to consider such Repair and Restoration work. Any meeting called for under this Section 15.5.1 shall be convened not less than ten (10) nor more than twenty (20) days after the date of such notice of meeting.

**15.5.2.** Except for Emergency Work, no Repair and Restoration work shall be commenced until after the expiration of the notice period set forth in Section 15.5.1 and until after the conclusion of said special meeting if such meeting is called within said requisite period.

**15.5.3.** A unanimous written decision of the Unit Lot Owners and eligible Mortgagees will be required to avoid the provisions of subsection 15.5.1 and to determine not to Repair and Restore the damage and destruction in accordance with the original plans, as amended by subsequent amendments, if any; provided, that the failure of the Board, the requisite number of Owners or a eligible Mortgagee to call for a special meeting at the time or in the manner set forth in Section 15.5 shall be deemed a unanimous decision to undertake such work.

**15.6. Major Damage; Assessment Over \$3,500.** If the amount of the estimated assessment determined under subsection 15.1.4 exceeds Three Thousand Five Hundred Dollars (\$3,500) for any one Unit Lot, then the provisions of this Section 15.6 shall apply:

**15.6.1.** The Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, provide written notice of a special Owners' meeting to consider Repair and Restoration of such damage or destruction, which notice shall be delivered with the notice required to be provided under Section 15.2 above. If the Board fails to do so within said thirty (30) day period, then notwithstanding the provisions of this Declaration or the Bylaws with respect to calling special meetings, any Owner or eligible Mortgagee may within fifteen (15) days of the expiration of said thirty (30) day period, or receipt of the notice required to be provided by the Board under Section 15.2 above, whichever is less, call a special meeting of the Owners to consider Repair and Restoration of such damage or destruction by providing written notice of such meeting to all Owners and eligible Mortgagees. Any meeting held pursuant to this Section 15.6 shall be called by written notice and shall be convened not less than ten (10) nor more than twenty (20) days from the date of such notice of meeting.

**15.6.2.** Except for Emergency Work no Repair and Restoration work shall be commenced until the conclusion of the special Owners' meeting required under subsection 15.6.1.

**15.6.3.** A concurrence in writing of more than eighty percent (80%) of the eligible Mortgagees (based upon one vote for each eligible Mortgage owned), and Owners (other than the sponsor, developer, or builder) of the individual Units; and every Owner of a Unit Lot or assigned Limited Common Element which will not be rebuilt, will be required to avoid the provisions of Section 15.4 and to determine not to Repair and Restore the damage and destruction; provided, however, that the failure to obtain said eighty percent (80%) concurrence in writing shall be deemed a decision to Rebuild and Restore the damage and destruction in accordance with the original plans, as amended by subsequent amendments, if any; provided, further, that the failure of the Board, or Owners or eligible Mortgagees to convene the special meeting required under subsection 15.6.1 within ninety (90) days after the date of damage or destruction shall be deemed a decision to undertake such Repair and Restoration work.

**15.7. Failure to repair or replace all Units.** In the event of a decision where all of the damaged or destroyed portions of the Subdivision Plat are not repaired or replaced:

**15.7.1.** The Board may nevertheless expend such of the insurance proceeds and Common Funds as the Board deems reasonably necessary to restore the damaged area to a condition compatible with the remainder of the Subdivision Plat;

**15.7.2.** The insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units and the Owners of Units to which those Limited Common Elements were allocated or to the lienholders as their interests may appear;

**15.7.3.** The remainder of the proceeds shall be distributed to all Unit Lot Owners or lienholders as their interests may appear, in proportion to the Common Element interests of all the Units; and

**15.7.4.** If Unit Lot Owners vote to not rebuild any Unit Lot, then that Unit Lot's allocated interests are automatically reallocated upon the vote as if the Unit Lot had been condemned under the Act and this Declaration and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

**15.8. Termination of Subdivision Plat Status.** In the event of a decision under either subsections 15.5.3 or 15.6.3 not to Repair or Restore damage and destruction, the Board may nevertheless expend such of the insurance proceeds and Common Funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of damaged or destroyed buildings and clearing, filling and grading the real property), and the remaining funds and property shall thereafter be held and distributed pursuant to the terms of RCW 64.90.290 governing the termination of Subdivision Plats.

**15.9. Miscellaneous.** The provisions of this Section 15 shall constitute the procedure by which a determination is made by the Unit Lot Owners to Repair, Restore, Reconstruct or Rebuild as provided in the Act. By the act of accepting an interest in the Property, each Unit Lot Owner and party claiming by, through or under such Owner hereby consents and agrees to the provisions hereof. In the event that any provision of this Section 15 shall be determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect the validity of any other provision of this Declaration. The purpose of this Section 15 shall be to provide a fair and equitable method of allocating the costs of Repair and Restoration and making a determination for Repair and Restoration if all or a portion of the improvements are damaged or destroyed. The provisions of this Section 15 shall be liberally construed to accomplish such purpose. By unanimous vote of the Unit Lot Owners, which vote shall be taken within ninety (90) days after the damage or destruction, the Owners may determine to do otherwise than provided in this Section 15.



## SECTION 16 - CONDEMNATION

**16.1. Condemnation.** If a Unit Lot is acquired by condemnation, or if part of a Unit Lot is acquired by condemnation leaving the Unit Lot Owner with a remnant of a Unit Lot which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Lot Owner for the Owner's Unit Lot and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit Lot's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit Lot remaining after part of a Unit Lot is taken under this section is thereafter a Common Element.

**16.2. Partial Unit Lot Condemnation.** Except as provided in Section 16.1, if part of a Unit Lot is acquired by condemnation, the award must compensate the Unit Lot Owner for the reduction in value of the Unit Lot and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That Unit Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Unit Lot, and (b) the portion of the Allocated Interests divested from the partially acquired Unit Lot are automatically reallocated to that Unit Lot and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit Lot participating in the reallocation on the basis of its reduced allocated interests.

**16.3. Common Element Condemnation.** If part of the Common Elements is acquired by condemnation the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective interests in the Common Elements. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

**16.4. Recording of Judgment.** The court judgment shall be recorded in every county in which any portion of the Subdivision Plat is located.

**16.5. Association to Represent Owners.** The Association shall represent the Unit Lot Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Subdivision Plat, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their Mortgagees. Should the Association not act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

## SECTION 17 - PROCEDURES FOR RELOCATING BOUNDARIES BETWEEN

## UNITS.

**17.1. Relocation of Boundaries.** Any Unit Lot Owner or Owners desiring to relocate boundaries between them or Common Elements, shall submit to the Board a written request for approval of the proposed plan for relocation of boundaries, which request shall be accompanied by plans and proposed amendments to the Declaration, Subdivision Plat Map to accomplish the same.

**17.2. Approval of Proposed Plan.** Within 30 days after a complete written request is submitted to the Board the Board shall approve or deny the request. Approval shall require unanimous consent of the entire Board. The Board may in its discretion (but it shall not be required to) require that reasonable conditions for the protection of other Units or Common Elements be included in any contracts for the work. Approval shall also be conditioned upon the requesting Unit Lot Owner agreeing to pay all the costs involved in amendment of the plans and Declaration.

**17.3. Quality of Work.** No request shall be approved unless any modifications required by the request: (a) do not affect the structural integrity of the building; (b) do not impair the use of Common Elements, (c) do not adversely affect the outside appearance of the structure, (d) comply with all state and local building and land use ordinances.

**17.4. Amendment of Declaration, Subdivision Plat Map to Show Subdividing or Relocation.** The changes in the survey map, if any, and the changes in the plans and Declaration, shall be placed of record as amendments to the appropriate documents before the relocation shall be deemed complete. The Association and the affected Unit Lot Owners must sign these amendments. The amendment at a minimum must contain: the identity of the Units involved, a statement of the relocation of allocated interests, signatures of Unit Lot Owners of all affected Units, contain words of conveyance between them, and be recorded in the name of the grantor and the grantee.

**17.5. Relocation of Boundaries Affecting a Unit Lot.** No relocation of boundaries that modifies any Unit Lot or its Limited Common Elements, or immediately and substantially affects any Unit Lot or its Limited Common Elements, may be completed without the consent of the Unit Lot Owner and any mortgagee of the Unit Lot.

## SECTION 18 – MORTGAGEE PROTECTION

**18.1. Abandonment of this Declaration.** Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not, without prior written approval of fifty-one percent (51%) of all Eligible Mortgagees and written approval of eighty percent (80%) Unit Owners, seek by act or omission to, abandon or terminate this Declaration; or abandon, encumber, sell or transfer any of the Common Elements or cause any Unit Lot to be removed the provisions hereof.

**18.2. Partitions and Subdivision.** Neither the Association nor Unit Lot Owners shall not combine nor subdivide any Unit Lot or accept any proposal to do so without the prior written approval of fifty-one percent (51%) of all Eligible Mortgagees and vote or written approval of eighty percent (80%) percent of all Eligible Mortgagees and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit Lot(s), so affected.

**18.3. Change in Assessment Methods, Etc.** Neither the Association nor Unit Lot Owners not make any Material Amendment (as defined in Section 20.7, including changes to the formula for determining the allocated interests or the special allocation of Assessment) without the prior written approval of fifty-one percent (51%) of all Eligible Mortgagees and vote or written approval of ninety percent (90%) percent Unit Owners, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

**18.4. Copies of Notices.** An Eligible Mortgagee of a Unit Lot (and any insurer or guarantor of such Mortgage) shall be entitled to receive timely written notice: (a) that the Owner/Mortgagor of the Unit Lot has for more than sixty (60) days failed to meet any obligation under the Covenants or Bylaws; (b) of all meetings of the Association and be permitted to designate a representative to attend all such meetings; (c) of any proposed action that requires the consent of a specified percentage of Mortgagees. To be entitled to receive notices under this Section 18.4, the Mortgagee (or Mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the Unit Lot number or address of the Unit Lot on which it has (or insures or guaranties) the Mortgage.

**18.5. Effect of Declaration Amendments.** 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 that is inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

**18.6. Inspection of Books.** Declarant (and Declarant's agents), Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit Lot shall be entitled: to inspect and copy at all reasonable hours of weekdays.

## **SECTION 19 - EASEMENTS - ENTRY FOR REPAIRS**

This Declaration establishes the following easements:

**19.1. In General.** In addition to the rights and easements reserved or provided for under The Act (which shall be accorded whether this Declaration is recognized under The Act or as real covenants or equitable servitudes) each Unit Lot has an easement for ingress and egress to its original entries through the Common Elements and Unit Lots, and is granted

easements as required through Common Elements and other Unit Lots for: Location of all pipes, wiring and plumbing and for all structural or service elements necessary or convenient for the occupation of the Unit Lot for its intended use (such as gas, electrical, water, sanitary sewer, storm drainage, cable and phone lines). All such easements shall be located as such features are located in the buildings as built, or as they may become located due to settling, repair, or reconstruction. The easements extend to reasonable access for purposes of repair, replacement or maintenance so long as the areas where they are located are restored after completion of such work. The easements here created are intended for implementing and maintaining the original plans and construction as effected in the Unit Lot as built, but not to authorize features not contemplated in the original plans unless such new features are authorized by Board action and do not materially and adversely affect the Common Elements or any Unit Lot.

**19.2. Right of Entry for Maintenance, Repairs, Emergencies or Improvements.** The Association shall have the right to have access to each Unit Lot from time to time as may reasonably be necessary for maintenance, repair, or replacement or improvement of any of the Common Elements accessible therefrom, or for making repairs necessary to prevent damage to the Common Elements or to other Units, or for any emergency situations.

**19.3. Declarant Functions.** There is hereby reserved to the Declarant (and its duly authorized agents, employees, contractors and representatives), such easements and rights of access over, across, under or into the Subdivision Plat (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Declarant as are set forth, provided for or authorized in: this Declaration, Subdivision Plat Map; Articles, Bylaws, or Association Rules; building or other governmental permits or approvals; and Purchase and Sale Agreement between Declarant and a Unit Lot Purchaser; any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law.

**19.4. Townhome Easement.** Each Unit Lot and all Common and Limited Common Element is hereby declared to have an five-foot wide easement centered on the lot line between the adjoining Units for walls, eaves and other architectural features within the easement area for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. The Owners of the Units abutting the Easement shall equally share on the cost of maintenance as set forth in Section 7.5 of this Declaration. In the event a Unit Lot or Common or Limited Common Element is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common and Limited Common Elements shall be

permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit Lot. The provisions of this Section are intended to supplement RCW 64.90.270 and, in the event of any conflict, the provisions of RCW 64.90.270 shall control.

**19.5. Grant of Easement for Utilities.** Declarant declares that electrical power wires, natural gas pipelines, cable wires, water pipelines and plumbing pipelines which provide services to the Units on the Real Property were installed within the Townhomes at locations which are not clearly identified on any map or plan. Such wires, pipes and lines were installed between the floor or ceiling joists, in the crawlspace and/or in the Party Wall in accordance with and in observation of building code requirements but without regard to boundaries of ownership. The service connection and meters for Units in a Townhome will be installed on the exterior wall of one of the Townhome Units and each Unit Lot Owner has an easement thereto.

Declarant grants an easement for utility purposes over and across each Unit Lot where each such wire, pipe and/or line currently lies in favor of the Units served by such wires, pipes and/or lines. In the event any repair or replacement of any such wire, line or pipe is required by any Unit Lot Owner and such repair or replacement requires entry into another Unit Lot Owner's or Unit Lot Owner's Townhome, the "Consenting Unit Lot Owner" (i.e., the Owner of the Unit Lot which will be entered) agrees to grant reasonable rights of entry for such purposes and further grants such other Unit Lot Owner the right to make such repairs or replacements from within such Consenting Unit Lot Owner's Townhome, on condition that the Unit Lot Owner(s) in need of such entry and such work pays the cost of such work and restores the Consenting Unit Lot Owner's Townhome to the same condition it was before such entry and work therein. This provision is intended to be interpreted in favor of the Consenting Unit Lot Owner who must grant entry for such purposes and shall be liberally interpreted to ensure that a Consenting Unit Lot Owner is not damaged by such work.

The utility connections and/or meters of the utility companies will be located at one end of each Townhome building. An easement is granted to the utility companies to access this area on the lot where they are located as initially installed.

Declarant grants an easement for water, drainage pipes and related equipment which form a part of the drainage and retention system which services the property, electric power, cable, natural gas, telephone, over, under and across the Units in the Subdivision Plat, as constructed, in favor of the owners of the Units in the Subdivision Plat. The intent of this easement is to allow the suppliers of such utility services (and the Owners' Association with respect to the drainage and retention system) a reasonable right to access and right to make necessary repairs and replacement of component parts of the utility service systems. The Owners of the Unit Lot(s) that benefit from any work in such utility easement area shall bear the cost of such repair and replacement and are obligated to restore the ground surface or the side of the structure to the same condition it was prior to such utility repair or replacement.

The Board, on behalf of the Association and all members thereof, shall have the authority to grant utility, road and similar easements, licenses and permits under, through or over the Common Elements, the roadways and the areas shown as easements on the Subdivision Plat Map, which easements the Board determines are reasonably necessary to the ongoing development and operation of the property and which would not materially interfere with the use and enjoyment of the easements.

**19.6. Maintenance of Easement Areas.** Each Unit Lot shall share equally in the costs of repair and maintenance of all easement areas on the Real Property.

The Association shall determine the time and manner of repair and maintenance of the easement areas, the time and manner of payment therefore by the Unit Lot Owners and all other matters relating to the repair and maintenance of said easements.

**19.7. Easement for Exterior Wall Maintenance.** The Owners of each Townhome Unit Lot shall have the right to have access to the other Unit Lot's yard from time to time as may reasonably be necessary for maintenance, repair, or replacement of any of the structures accessible therefrom, or for making repairs necessary to prevent damage to the structures, or for any emergency situations. The Owner of each Unit Lot shall provide access upon reasonable notice to the other Unit Lot Owner.

**19.8. Landscaping Easement.** The Association shall have the right to have access to each Lot from time to time as may reasonably be necessary for maintenance, repair, or replacement or improvement of the improvements the Association is required to maintain and landscaping as provided in Section 4.4 of this Declaration.

**19.9. Pedestrian Access Easement.** Declarant hereby grants and establishes a Pedestrian Access easement across the Units as demarcated on the Subdivision Map recorded herewith. Each Unit Owner and the Association shall have access over said easement for ingress and egress over the Units for access to Units and buildings located therein and for access to Common Elements. The Association shall maintain the easement as an Association expense. The easement shall not be blocked and shall remain open subject to reasonable rules adopted by the Association.

## **SECTION 20 – AMENDMENT OF DECLARATION, SURVEY MAP, PLANS**

**20.1. In General.** Except in cases of amendments that may be executed by a Declarant (in the exercise of any Development Right), the Association (in accordance with RCW 64.90.030; RCW 64.90.230(5); RCW 64.90.240(3); RCW 64.90.260 (6); RCW 64.90.265; or RCW 64.90.285(6), or certain Unit Lot Owners (in connection with RCW 64.90.240(2); RCW 64.90.265; RCW 64.90.260 (2); or RCW 64.90.285(2), and except as limited by Section 20.6, the Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the

votes in the Association are allocated; provided, that the following Sections and Articles may be amended only by vote or agreement of Owners of Units to which one hundred percent (100%) of the votes in the Association are allocated, and only with the consent of the Declarant (so long as any right, duty or obligation of the Declarant continues under the Declaration or any express or implied warranty, agreement or law): Sections 10.2.1, 10.6.1, 10.10, 10.12, 18.6, 19.3, 21.6, 21.11, 19.8, 20.1 20.2, 20.7, 20.9 and Sections 11, 22 and 23.

**20.2. Challenge to Validity.** No action to challenge the validity of an amendment

adopted by the Association pursuant to this Section may be brought more than one year after the amendment is recorded.

**20.3. Recording.** Every amendment to the Declaration must be recorded in every county in which any portion of the Subdivision Plat is located and is effective only upon recording. An amendment shall be indexed in the name of the Subdivision Plat and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto.

**20.4. General Limitations.** Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit Lot, the Allocated Interests of a Unit Lot, or the uses to which any Unit Lot is restricted, in the absence of the vote or agreement of the Owner of each Unit Lot particularly affected and the Owners of Units to which at least ninety percent of the votes in the Association are allocated other than the Declarant.

**20.5. Execution.** Amendments to the Declaration required by the Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

**20.6. Special Declarant/Development Rights.** No amendment may restrict, eliminate, or otherwise modify any Special Declarant or Development Right, or any other right, power, benefit provided in the Declaration to Declarant (nor otherwise hinder the business activities or expectations of, or benefits provided hereunder to, the Declarant) without the consent of the Declarant and any Mortgagee of record (excluding Mortgagees of Units owned by persons other than the Declarant) with a security interest in the Special Declarant or Development Right or in any real property subject thereto.

**20.7. Material Amendments.** Any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall require the consent of fifty-one percent (51%) of the Eligible Mortgagees; voting rights; Assessments, Assessment liens, or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements;

responsibility for maintenance and repairs; reallocation of interests in the Common or Limited Common Elements, or rights to their use; redefinition of any Unit Lot boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Subdivision Plat, or the addition, annexation, or withdrawal of property to or from the Subdivision Plat; insurance or fidelity bond; leasing of Units; imposition of any restrictions on a Unit Lot Owner's right to sell or transfer his or her Unit Lot; a decision by the Association to establish self-management when professional management had been required previously by the Subdivision Plat's documents or by an Eligible Mortgage holder; restoration or repair of the Subdivision Plat (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the Subdivision Plat after substantial destruction or condemnation occurs; or any provisions that expressly benefit Mortgage holders, insurers, or guarantors. A Mortgagee who fails to respond within sixty (60) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered by certified or registered mail with a return receipt requested.

**20.8. Map and Plans Amendment.** Except as otherwise provided herein, the Subdivision Plat Map may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Subdivision Plat Map shall be made available for the examination of every Owner. Such amendment to the Subdivision Plat Map shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

**20.9. Amendments to Conform to Lender Guidelines.** This Declaration is intended to continuously comply with the requirements and guidelines of FNMA, FHLMC, FHA and VA as the same may change from time to time. The Association, upon approval of the Board of Directors, and the Declarant, upon the Declarant's sole signature, in each case without approval of the Owners, may at any time file an amendment to this Declaration or the Bylaws, Rules and Regulations, or Map to conform them to the requirements and guidelines of those lending institutions.

**20.10 Corrective Amendments by Declarant.** Upon thirty-day advance notice to the Owners, Declarant may, without a vote of the Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the this Declaration, the Map, or other governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the governing documents with respect to an objectively verifiable fact including, without limitation, recalculating the Allocated Interests (including votes and Common Expense Liability), within five (5) years after the recordation or adoption of the governing document containing or creating the mistake, inconsistency, error, or ambiguity. Any such amendment or supplement may not materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. By way of example but not limitation, Declarant's intent with regard to this Declaration, the Map, and other governing documents is that they fully comply



with all requirements of the Act and any ordinances or codes of the Municipality or other governmental or quasi-governmental entity with authority over the Community and, as a result, Declarant shall have the authority to record an amendment under this Section to make any changes required by the City or such other entity.

## **SECTION 21 - MISCELLANEOUS PROVISIONS**

**21.1. Notices.** The term "Notice" includes letters or other communications other than legal process. Any notices permitted or required to be delivered under the provisions of this Declaration, the Bylaws, or The Act may be delivered either personally or by mail. If delivery is by mail, any such notice shall be deemed to have been delivered forty-eight (48) hours after a copy has been deposited in the United States mail, postage prepaid for first class mail, addressed to the person entitled to such notice at the address of such person or, in the case of items sent by the Association, at the most recent address given in writing by such person to the Association. Notice to a Unit Lot Owner or Owners shall be sufficient if delivered or addressed to the Unit Lot if no other name or mailing address has been given the Association. Notice to be given to the Association may be given to the person named for service of process until the Board has been elected, and thereafter shall be given to the president or secretary of the Association. Acceptable proof of delivery shall include, but shall not be limited to, registered mail receipt, or post office validated or signed receipt for certified mail, or return receipt signed by party to whom the item was sent or his agent.

**21.2. Records.** The Board shall cause to be kept complete and accurate books and records of the receipts and expenditures of the Association, itemizing the expenses incurred and current copies of the Declaration, Articles of Incorporation, Bylaws, and other rules concerning the Subdivision Plat. Such books and records, Subdivision Plat documents, and the directives authorizing payments shall be available for examination by the Unit Lot Owners, their agents, mortgagees, or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and processed according to law. At least annually the financial statements of the Subdivision Plat shall be audited by a certified public accountant unless the Unit Lot Owners of Units to which 60% of the votes are allocated waive this requirement.

**21.3. Accounts.** The Association shall maintain sufficient accounts for current operations and reserves as deemed necessary by the Treasurer. The funds of the Association shall not be commingled with the funds of any other Association or any other person responsible for the custody of such funds. Any reserve funds of an Association shall be kept in a segregated account and any transactions affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the Association.

**21.4. Enforcement - Remedies.** Each Unit Lot Owner shall comply strictly with the provisions of this Declaration and the Bylaws, as amended from time to time. Failure to comply shall be grounds for an action to recover sums due, or for damages, or injunctive

relief, or for any appropriate remedy, maintainable by the Board or officers of the Association on behalf of the Unit Lot Owners, or in a proper case, by an aggrieved Unit Lot Owner against the Association, or other Unit Lot Owners. Failure to comply shall also entitle the Association to collect reasonable attorney's fees incurred by reason of such failure, irrespective of whether any suit or other judicial proceeding is commenced, and if suit is brought because of such failure, all costs of suit may be recovered in addition to reasonable attorney's fees by the prevailing party. No right or remedy provided or reserved by this Declaration is exclusive of any other right or remedy, and in addition to the foregoing, the Association shall have such rights and remedies as may be provided in this Declaration, the Bylaws, The Act or otherwise existing at law, in equity or by statute.

The Declarant shall have no obligation to enforce or seek the enforcement of these covenants. The Declarant shall have no liability for the enforcement or non-enforcement of these covenants.

**21.5. Waiver.** The failure of the Association, the Board, the Association officers or agents, or the Declarants, to require, in any one or more instances, strict performance of or compliance with any of the terms, covenants, conditions or restrictions contained in this Declaration, the Bylaws, or The Act, or to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or a release thereof, but the same shall continue and remain in full force and effect; and the receipt by any of said parties of any sum paid by a Unit Lot Owner, with or without the knowledge of the breach of or failure to comply with any such provision, shall not be deemed a waiver thereof; and no waiver, express or implied, of any such provisions shall be effective unless made in writing pursuant to procedures specified herein, or in the Bylaws or in The Act, or if no such procedures are specified, then in writing and signed by the president of the Association pursuant to the authority contained in a resolution of the Board, or by the managing authority.

**21.6. Limitation of Liability.**

**21.6.1. Liability for Utility Failure, etc.** Except to the extent covered by insurance obtained by the Board pursuant to Section 14, neither the Association nor the Board shall be liable for: any failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**21.6.2. No Personal Liability.** So long as a Board member, or Association committee member, or Association officer, or Declarants or Declarants' managing agent exercising the powers of the Board, has acted in good faith, without willful or intentional

misconduct, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this section shall not apply where the consequence of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Section 14.

**21.6.3. Indemnification of Board Members.** Each Board member or Association committee member, or Association officer, or Declarant or Declarant's managing agent exercising the powers of the Board, shall be indemnified by the Owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except in such cases wherein such person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

## **21.7. Interpretation.**

**21.7.1. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development and operation of this Subdivision Plat including the development and completion of its phases. It is intended also that, insofar as it affects this Declaration, Bylaws and Subdivision Plat development, the provisions of the Act, referenced herein under which this Declaration is operative, shall be liberally construed to affect the intent of this Declaration and the Bylaws insofar as reasonably possible.

**21.7.2. Gender and Number.** When interpreting this Declaration, or the Bylaws, or any Rules and Regulations, the singular may include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires.

**21.7.3. Declaration Effect as Covenants or Servitudes.** It is intended that the covenants of this Declaration, together with any Subdivision Plat plans by reference incorporated herein or filed simultaneously herewith, and all amendments to the said Declaration shall be operative as covenants running with the land, or equitable servitudes, supplementing and interpreting The Act, and operating independently of The Act should The Act be, in any respect, inapplicable, to establish the common plan for the Subdivision Plat development and its operation as indicated herein and in the Subdivision Plat Map; provided, however, that the provision of this Declaration shall not be so applied if the property is removed from submission to The Act or discontinued in whole or part as a Subdivision Plat development, unless such continued application of all or a part of the Declaration is specifically called for or reasonably implied for all or part of the property.

**21.8. Severability.** The provisions hereto shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof if the remaining portions are sufficient under The Act, or as covenants running with the land, or as equitable servitudes, to affect the common plan for division into Units for individual ownership.

**21.9. Effective Date.** This Declaration shall take effect upon recording.

**21.10. Reference to Subdivision Plat Map.** The Subdivision Plat Map for the Subdivision Plat development referred to herein were recorded with the proper county recording authority simultaneously with the recording of this Declaration, as set forth on the Recording Cover Sheet of this Declaration. The recording authority, the Declarants, or any title company or escrow company or institutional lender is authorized to insert the correct recording data, or correct the same, above the signatures on this document.

**21.11. Transfer of Declarant's Powers.** It is understood that Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any person, upon such terms and conditions as Declarant may determine, all of Declarant's rights, powers, privileges and authority arising hereunder by virtue of Declarant's capacity as Declarant (which rights, powers, privileges and authority are in addition to those arising from Declarant's ownership of one or more Units and include Development Rights and Special Declarant Rights).

## **SECTION 22 - RETAINED DEVELOPMENT RIGHTS BY DECLARANT**

**22.1. Special Declarant Rights.** As more particularly provided in this Section, Declarant for itself and any successor Declarant, has reserved the following Declaration Rights:

**22.1.1. Completion of Improvements.** Declarant, Unit Lot Owners, their agents, employees and contractors shall have the right to complete improvements and otherwise perform work authorized by the Declaration, indicated on the Subdivision Plat Map, authorized by building permits, provided for under any Purchase and Sale Agreement between the Declarant and a Unit Lot Purchaser, necessary to satisfy any express or implied warranty under which Declarant is obligated, or otherwise authorized or required by law.

**22.1.2. Sales Facilities of Declarant.** Declarant, its agents, employees and contractors shall be permitted to establish and maintain in any Unit Lot still owned by Declarant and in any of the Common Elements, such facilities as in the sole discretion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Units and appurtenant interests, including but not limited to: business offices; management offices, sales offices, construction offices, storage areas, signs, model Units, and parking areas for all agents, employees, contractors, prospective tenants or purchasers of Declarant. Declarant may maintain signs on the Common Elements advertising the

Subdivision Plat.

**22.1.3. Association Officers.** Declarant may appoint or remove any officer of the Association during the period of Declarant Control set forth in this Declaration.

**22.1.4. Exercise of Development Rights.** Declarant shall have the right to exercise Development Rights, if any under this Declaration and the Act.

**22.1.5. Termination of Special Declarant Rights.** Except as otherwise stated in this Declaration, the foregoing Special Declarant Rights shall continue as long as Declarant is completing improvements which are within or may be added to the Subdivision Plat, or Declarant owns any Units, or any Development Rights remain in effect, provided, that Declarant may voluntarily terminate any or all of such Rights at any time by recording an Amendment to this Declaration, which amendment specifies which Right is terminated.

**22.2. Development Rights.** As more particularly provided in Section 22, the Declarant, for itself and any successor Declarant, has reserved Development Rights that may be exercised as provided by this Declaration and the Act.

**22.2.1. Subdivision and Combination.** Declarant shall have the right to subdivide and combine Units (owned by Declarant) or convert Units (owned by Declarant) into Common Elements. Whenever Declarant exercises a Development Right to subdivide, combine or convert a Unit Lot previously created into additional Units, Common Elements or both:

(a) If Declarant converts the Unit Lot entirely to Common Elements, the amendment to the Declaration must reallocate all of the Allocated Interest of that Unit Lot among the other Unit Lots as if that Unit Lot had been taken under condemnation as provided in this Declaration.

(b) If Declarant subdivides the Unit Lot into two or more Units, whether or not any part of the Unit Lot is converted into Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of the Unit Lot among the Units created by the subdivision in any reasonable and equitable manner prescribed by the Declarant.

(c) If Declarant combines two or more Units, the amendment to the Declaration must reallocate to the new Unit Lot all of the Allocated Interests formerly allocated to the Units so combined.

**22.2.2. Different Parcels; Different Times.**

(a) Any Development Right may be exercised with respect to different parcels of Real Property at different times.

(b) No assurances are made as to final boundaries of such parcels or as to the order in which those parcels may be subjected to the exercise of each Development Right.

(c) Even though a Development Right is exercised in any portion of the Real Property subject to that right, that right need not be exercised in all or any other portion of the remainder of the Real Property.

**22.2.3. Exercise of Development Rights.** To exercise any Development Right reserved under this Section, the Declarant shall prepare, execute, and record an amendment to the Declaration as provided in this Declaration and comply with RCW64.90.250.

**22.2.4. Termination of Development Rights.** The foregoing Development Rights shall terminate seven (7) years from the date of recording of the first conveyance of a Unit Lot to an Owner other than Declarant; provided that Declarant may voluntarily terminate any or all of such Rights at any time by recording an amendment to this Declaration, which amendment specifies which Right is thereby terminated.

**22.3. Boundaries of Limited Common Elements.** Declarant shall have the right to establish, expand, contract or otherwise modify the boundaries of any Limited Common Element allocated to a Unit Lot; provided, the prior consent will be required from the Owner of the Unit Lot. Declarant reserves the right to convert Common Elements to Limited Common Elements.

**22.4. Liability for Damages.** The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Subdivision Plat, of any portion of the Subdivision Plat damaged by the exercise of rights reserved the Declarant pursuant to or created by this Declaration or the Act.

**22.5. 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 this Declaration.

#### **SECTION 23: DEPARTMENT OF VETERANS AFFAIRS FINANCING:**

To the extent that any provision set forth in the condominium documents is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("DVA Financing"), such provision shall not apply to any Unit that is:

- (i) encumbered by DVA Financing or;
- (ii) owned by the Secretary of Veterans Affairs, an Officer of the United States.

WITNESS WHEREOF, we have hereunto set our names this day:

Date: 10/05, 2023.

211-WLD KILBIRNIE LLC, A Washington Limited Liability Company

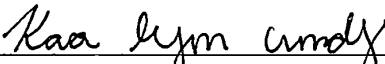
By:   
Kerek Edwards, Member



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Snohomish )

THIS IS TO CERTIFY that on this 5<sup>th</sup> day of October, 2023 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kerek Edwards as a Member of 211-WLD KILBIRNIE LLC, A Washington Limited Liability Company described in and who executed the within and foregoing instrument, and acknowledged to me that he signed the same as his free and voluntary act and deed for the purposes and uses therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

  
Print Name: Kara Lynn Cundy  
Notary Public in and for  
The State of Washington  
Residing in Brier  
My Commission Expires: 6/22/2026





**EXHIBIT A  
LEGAL DESCRIPTION**

Lot 1, Short Plat Recorded Under Recording No. 7801200278, Being a Portion of Lot 6, Block 6, Alderwood Manor No. 7, According to the Plat Thereof Recorded In Volume 9 of Plats, Page 100, Records of Snohomish County, Washington.

Situate in the County of Snohomish, State of Washington.

Lot 2 of Short Plat No. 64-2-77, Recorded Under Auditors File No. 7801200278, Being a Portion of Lot 6, Block 6, Alderwood Manor No. 7, According to the Plat Thereof Recorded In Volume 9 of Plats, Page 100, In Snohomish County, Washington.

Situate in the County of Snohomish, State of Washington.

Lot 3, of Snohomish County Short Plat No. SP 64(2-71), According to the Plat Thereof Recorded January 20, 1978 Under Recording No. 7801200278, Being a Portion of Lot 6, Block 6, Alderwood Manor No, 7, According to the Plat Thereof Recorded In Volume 9 of Plats, Page 100, In Snohomish County, Washington.

Except 10 feet dedicated to Snohomish County by Statutory Warranty Deed recorded under Snohomish County Auditor's File Number \_\_\_\_\_.

Situate in the County of Snohomish, State of Washington.

Exhibit B  
Powers, Duties and Limitation of the Association  
RCW 64.90.290

(1) An association must:

- (a) Adopt organizational documents;
- (b) Adopt budgets as provided in RCW 64.90.525;
- (c) Impose assessments for common expenses and specially allocated expenses on the unit owners as provided in RCW 64.90.080 (1) and 64.90.525;
- (d) Prepare financial statements as provided in RCW 64.90.530; and
- (e) Deposit and maintain the funds of the association in accounts as provided in RCW 64.90.530.

(2) Except as provided otherwise in subsection (4) of this section and subject to the provisions of the declaration, the association may:

- (a) Amend organizational documents and adopt and amend rules;
- (b) Amend budgets under RCW 64.90.525;
- (c) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
- (e) Make contracts and incur liabilities subject to subsection (4) of this section;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:
  - (i) Common elements in a Subdivision, plat community, or miscellaneous community may be conveyed or subjected to a security interest pursuant to RCW 64.90.465 only
  - (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
  - (j) Impose and collect any reasonable payments, fees, or charges for:
    - (i) The use, rental, or operation of the common elements, other than limited common elements described in RCW 64.90.210 (1)(b) and (3);
    - (ii) Services provided to unit owners; and
    - (iii) Moving in, moving out, or transferring title to units to the extent provided for in the declaration;
  - (k) Collect assessments and impose and collect reasonable charges for late payment of assessments;
  - (l) Enforce the governing documents and, after notice and opportunity to be heard, impose and collect reasonable fines for violations of the governing documents in accordance with a previously established schedule of fines adopted by the board of directors and furnished to the owners;
  - (m) Impose and collect reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required under RCW 64.90.640, lender questionnaires, or statements of unpaid assessments;

- (n) Provide for the indemnification of its officers and board members, to the extent provided in RCW 23B.17.030.
  - (o) Maintain directors' and officers' liability insurance;
  - (p) Subject to subsection (4) of this section, assign its right to future income, including the right to receive assessments;
  - (q) Join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the Subdivision property for activities and projects that benefit the Subdivision directly or indirectly;
  - (r) Establish and administer a reserve account as described in RCW 64.90.535;
  - (s) Prepare a reserve study as described in RCW 64.90.545;
  - (t) Exercise any other powers conferred by the declaration or organizational documents;
  - (u) Exercise all other powers that may be exercised in this state by the same type of entity as the association;
  - (v) Exercise any other powers necessary and proper for the governance and operation of the association;
  - (w) Require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community, other than those governed by chapter RCW 64.50, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; and
  - (x) Suspend any right or privilege of a unit owner who fails to pay an assessment, but may not:
    - (i) Deny a unit owner or other occupant access to the owner's unit;
    - (ii) Suspend a unit owner's right to vote; or
    - (iii) Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person.
- (3) The declaration may not limit the power of the association beyond the limit authorized in subsection (2)(w) of this section to:
- (a) Deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons; or
  - (b) Institute litigation or an arbitration, mediation, or administrative proceeding against any person, subject to the following:
    - (i) The association must comply with chapter 64.50 RCW, if applicable, before instituting any proceeding described in chapter 64.50 RCW in connection with construction defects; and
    - (ii) The board must promptly provide notice to the unit owners of any legal proceeding in which the association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association.
- (4) Any borrowing by an association that is to be secured by an assignment of the association's right to receive future income pursuant to subsection (2)(e) and (p) of this section requires ratification by the unit owners as provided in this subsection.
- (a) The board must provide notice of the intent to borrow to all unit owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

- (b) In the notice, the board must set a date for a meeting of the unit owners, which must not be less than fourteen and no more than sixty days after mailing of the notice, to consider ratification of the borrowing.
  - (c) Unless at that meeting, whether or not a quorum is present, unit owners holding a majority of the votes in the association or any larger percentage specified in the declaration reject the proposal to borrow funds, the association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.
- (5) If a tenant of a unit owner violates the governing documents, in addition to exercising any of its powers against the unit owner, the association may:
- (a) Exercise directly against the tenant the powers described in subsection (2)(1) of this section;
  - (b) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant and unit owner for the violation; and
  - (c) Enforce any other rights against the tenant for the violation that the unit owner as the landlord could lawfully have exercised under the lease or that the association could lawfully have exercised directly against the unit owner, or both; but the association does not have the right to terminate a lease or evict a tenant unless permitted by the declaration. The rights referred to in this subsection (5)(c) may be exercised only if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation.
- (6) Unless a lease otherwise provides, this section does not:
- (a) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or
  - (b) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the governing documents.
- (7) The board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the governing documents, including whether to compromise any claim for unpaid assessments or other claim made by or against it.
- (8) The board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:
- (a) The association's legal position does not justify taking any or further enforcement action;
  - (b) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
  - (c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
  - (d) It is not in the association's best interests to pursue an enforcement action.
- (9) The board's decision under subsections (7) and (8) of this section to not pursue enforcement under one set of circumstances does not prevent the board from taking enforcement action under another set of circumstances, but the board may not be arbitrary or capricious in taking enforcement action.

UNITED STATES OF AMERICA

The State of Washington



Secretary of State

I, **STEVE R. HOBBS**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

**ARTICLES OF INCORPORATION**

to

**KILBIRNIE HOMEOWNERS ASSOCIATION**

A **WA NONPROFIT CORPORATION**, effective on the date indicated below.

Effective Date: 07/03/2023

UBI Number: 605 283 922



Given under my hand and the Seal of the State  
of Washington at Olympia, the State Capital

*Steve R Hobbs*

Steve R. Hobbs, Secretary of State

Date Issued: 07/03/2023

**ARTICLES OF INCORPORATION  
OF  
KILBIRNIE HOMEOWNERS ASSOCIATION**

The undersigned, in order to form a nonprofit corporation under Chapter 24.03A of the Revised Code of Washington, hereby executes and adopts the following Articles of Incorporation:

**ARTICLE 1- UBI**

A new UBI Number will be issued to you upon successful completion of the filing.

**ARTICLE 2 - NAME**

The name of the Association is KILBIRNIE HOMEOWNERS ASSOCIATION. Name is not reserved.

**ARTICLE 3- GROSS REVENUE**

The Nonprofit Corporation's gross revenue did not meet or exceed \$500,000 in the most recent fiscal year.

**ARTICLE 4- CHARITABLE NONPROFIT CORPORATION**

The Nonprofit Corporation is Not a Charitable Nonprofit as defined by **RCW 24.03A.010(5)**.

**ARTICLE 5- MEMBERS**

Yes, the Association has members.

**ARTICLE 6- MEMBERS NAMES**

Kerek R. Edwards

**ARTICLE 7- PURPOSES**

The purposes and objects of this Association are as follows:

1. Purposes: To provide an entity pursuant to the Revised Code of Washington, Chapter 64.90 for the operation of a Residential Homeowner's Association for owners of property within KILBIRNIE.

2. Limitations: The Association shall have no capital stock, and no part of its net earnings shall inure to the benefit of any director, officer or member of the Association, or any private individual.

**ARTICLE 8- ANY OTHER PROVISIONS**

The members of the Association shall consist of all the record owners of properties within KILBIRNIE.

Change in membership in the Association shall be established by the recording in the public records of the county where the property is located, a deed or other instrument establishing record title to a parcel of property within the subdivision and the delivery to the Association of a copy of such instrument, the owner designated by such instrument thereby becoming a member of the association. The membership of the prior owner shall be thereby terminated.

The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his or her real property.

The members of the Association shall each be entitled at least one vote for each parcel of property owned by them. The exact number of votes to be cast by owners and the manner of exercising voting rights shall be determined by the Covenants and Bylaws of the Association.

**ARTICLE 9- REGISTERED AGENT & OFFICE**

The Non-Commercial registered agent is Kerek R. Edwards.

The Non-Commercial Registered Agents Phone number is: (425) 576-9390

The Non-Commercial Registered Agents Email Address is: kedwards@westcotthomes.com

The Non-Commercial Registered Agents Street and Mailing Address of the Association is 1010 Market Street, Kirkland Washington 98033.

**CONSENT TO SERVE AS REGISTERED AGENT**

I, Kerek R. Edwards, hereby consent to serve as Registered Agent, in the State of Washington, for KILBIRNIE HOMEOWNERS ASSOCIATION. I understand that as agent for the corporation, it will be my responsibility to receive service of process in the name of the corporation; to forward all mail to the corporation; and to immediately notify the office of the Secretary of State in the event of my resignation, or of any changes in the registered office address of the corporation for which I am agent.

DATED June 1<sup>st</sup>, 2023



Kerek R. Edwards, Registered Agent

**ARTICLE 10- DURATION**

The duration of the corporation shall be perpetual.

**ARTICLE 11- EFFECTIVE DATE**

Articles of Incorporation are effective upon date of filing.

**ARTICLE 12- DIRECTORS**

1. After control of the Association is turned over by the Declarant, the management of the Association will be vested in a Board of Directors elected by Unit Owners. The number, qualifications, terms of office, manner of election, time and place of meeting, and powers and duties of the directors shall be such as are prescribed by the Bylaws of the Association.

2. During the period of Declarant Control as defined in the Declaration of Covenants for the plat, the management shall be vested in a Board of one (1) director(s). The names and addresses of the directors who will first manage the affairs of the Association until the first annual meeting of the membership, as provided in the Bylaws, and until their successors are elected and qualified are:

Kerek R. Edwards  
1010 Market Street,  
Kirkland Washington 98033

**ARTICLE 13- DISSOLUTION**

If the Association is dissolved for any reason, the assets, both real and personal, of the Association shall be dedicated to an appropriate public agency to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused, such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association, or in the event the same is refused and the asset also contains maintenance obligations imposed by County or municipality on the face of the final plat(s), the ownership and related obligations shall revert to the Lot Owners in undivided ownership proportional to the number of Lots within the Association.

**ARTICLE 14- INCORPORATOR**

The name and address of the incorporator of the Association is as follows:

Kerek R. Edwards  
1010 Market Street,  
Kirkland Washington 98033



## **ARTICLE 15- MISC POWERS**

The powers of the Association shall include and be governed by the following provisions:

1. The Association shall have all the powers of the common law and statutory powers of an Association not for profit that are not in conflict with the terms of these Articles.
2. The Association shall have all of the powers and duties set forth in the RCW 64.90 except as limited by said statute, these Articles and the Declaration hereinafter called "Declaration", and all the powers and duties reasonably necessary to operate the association as set forth in the Declaration and as they may be amended from time to time.

## **ARTICLE 16 - BYLAWS**

The authority to make, alter, amend or repeal Bylaws is vested in the members, and may be exercised in the manner provided in the Bylaws.

## **ARTICLE 17 - INDEMNIFICATION**

Directors and Officers of this corporation shall not be liable to the corporation or its members for damages caused by an action or inaction taken in good faith. This provision may not limit the liability of a Director or Officer for acts involving intentional misconduct such as a knowing violation of the law or a knowing breach of his or her fiduciary duty to the corporation.

Directors and Officers of this corporation shall be indemnified and held harmless from and against any damages, liabilities, judgments, penalties, fines, settlements, and reasonable expenses (including attorneys' fees) actually incurred as a result of all actions undertaken by said officers or director in good faith, and (a) in the case of conduct in his own official capacity with the corporation, he reasonably believed his conduct to be in the corporation's best interests or (b) in all other cases, he reasonably believed his conduct to be at least not opposed to the corporation's best interests, and (c) In the case of any criminal proceedings, he had no reasonable cause to believe this conduct was unlawful. Said officers and directors shall be indemnified and held harmless to the full extent permitted by law.

## **ARTICLE 18-AMENDMENT**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
2. A resolution approving a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meetings considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting.

3. Approval of an amendment must be by not less than 75% of the voting power of the Association.

4. No amendment shall make any changes in the qualifications for membership, the voting rights of members, nor the percentage interest of Unit owners in the common area without approval in writing by all members.

5. A copy of each amendment shall be duly filed with the Secretary of State.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 1<sup>st</sup> day of June, 2023, under penalty of perjury under the Laws of the State of Washington.



Kerek R. Edwards  
Incorporator



**WASHINGTON**  
**Secretary of State**  
**Corporations & Charities Division**

Filed  
Secretary of State  
State of Washington  
Date Filed: 07/03/2023  
Effective Date: 07/03/2023  
UBI #: 605 283 922

## ARTICLES OF INCORPORATION

### UBI NUMBER

UBI Number: **605 283 922**

### BUSINESS NAME

Business Name: **KILBIRNIE HOMEOWNERS ASSOCIATION**

### NONPROFIT GROSS REVENUE CERTIFICATION

Did the Nonprofit Corporation certify that the Gross Revenue is less than \$500,000? - **Yes**

### CHARITABLE NONPROFIT CORPORATION

Is the Nonprofit Corporation a Charitable Nonprofit as defined by [RCW 24.03A.010\(6\)](#)? - **No**

### PURPOSE OF CORPORATION

**TO PROVIDE AN ENTITY PURSUANT TO THE REVISED CODE OF WASHINGTON, CHAPTER 64.90 FOR THE OPERATION OF A RESIDENTIAL HOMEOWNERS ASSOCIATION FOR OWNERS OF PROPERTY WITHIN KILBIRNIE.**

### PURPOSE OF CORPORATION - STAFF CONSOLE CONFIRMATION

Customer provided purpose of corporation? - **Yes**

### ANY OTHER PROVISIONS

Required by IRS for Tax Exempt Status <https://www.irs.gov/>:

### REGISTERED AGENT [RCW 23.95.410](#)

Registered Agent Name	Street Address	Mailing Address
KERK R EDWARDS	1010 MARKET ST, KIRKLAND, WA, 98033-5424, UNITED STATES	1010 MARKET ST, KIRKLAND, WA, 98033-5424, UNITED STATES

### REGISTERED AGENT CONSENT

Customer provided Registered Agent consent? \* - **Yes**

### DURATION

Duration: **PERPETUAL**

## EFFECTIVE DATE

Effective Date: **07/03/2023**

## MEMBERS [RCW 24.03A.010\(45\)](#)

Does the Nonprofit Corporation have members? - **Yes**

Title	Member Type	Entity Name	First Name	Last Name
MEMBER	INDIVIDUAL		KEREK R	EDWARDS

## INITIAL BOARD OF DIRECTOR

Title	Initial Board of Director Type	Entity Name	First Name	Last Name	Address
INITIAL BOARD OF DIRECTORS	INDIVIDUAL		KEREK R	EDWARDS	1010 MARKET ST, KIRKLAND, WA, 98033-5424, UNITED STATES

## INCORPORATOR

Title	Incorporator Type	Entity Name	First Name	Last Name	Address
INCORPORATOR	INDIVIDUAL		KEREK R	EDWARDS	1010 MARKET ST, KIRKLAND, WA, 98033-5424, UNITED STATES

## INCORPORATOR SIGNATURE - ATTESTATION

By adding each Incorporator, the business attests that the incorporator signature(s) have been obtained.

## INCORPORATORS SIGNATURE CONFIRMATION

Signature of each incorporator has been provided? - **Yes**

## DISTRIBUTION OF ASSETS

**IF THE ASSOCIATION IS DISSOLVED FOR ANY REASON, THE ASSETS, BOTH REAL AND PERSONAL, OF THE ASSOCIATION SHALL BE DEDICATED TO AN APPROPRIATE PUBLIC AGENCY TO BE DEVOTED TO PURPOSES AS NEARLY AS PRACTICABLE TO THE SAME AS THOSE TO WHICH THEY WERE REQUIRED TO BE DEVOTED BY THE ASSOCIATION. IN THE EVENT THAT SUCH DEDICATION IS REFUSED, SUCH ASSETS SHALL BE GRANTED, CONVEYED, AND ASSIGNED TO ANY NON-PROFIT CORPORATION, ASSOCIATION, TRUST, OR OTHER ORGANIZATION TO BE DEVOTED TO - FULL TEXT ON FILE**

## DISTRIBUTION OF ASSETS PROVIDED

Customer provided information on distribution of assets? - **Yes**

## RETURN ADDRESS FOR THIS FILING

Attention:

Email:

Address:

## UPLOAD ADDITIONAL DOCUMENTS

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Name	Document Type
KILBIRNIE HOMEOWNERS ASSOCIATION.pdf	ARTICLES OF INCORPORATION

## UPLOADED DOCUMENTS

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Document Type	Source	Created By	Created Date
ARTICLES OF INCORPORATION	ONLINE	RANDY M BOYER INC	06/01/2023

## AUTHORIZED PERSON - STAFF CONSOLE

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Document is signed.

Person Type:

**ENTITY**

First Name:

**RANDY**

Last Name:

**BOYER**

Entity Name:

**RANDY M BOYER INC**

Title:

**ATTORNEY**

**BYLAWS  
OF  
KILBIRNIE HOMEOWNERS ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is KILBIRNIE HOMEOWNERS ASSOCIATION, herein also referred to as the "Association."

Meetings of Members and Directors may be held at such places within the State of Washington as may be designated by the Board of Directors.

**ARTICLE II  
DEFINITIONS**

2.1. "Association" shall mean the KILBIRNIE HOMEOWNERS ASSOCIATION, a Washington non-profit corporation, its successors and assigns.

2.2. "Developer" shall mean 211-WLD Kilbirnie LLC, A Washington limited Liability Company, and its successors and/or assigns.

2.3. "Subdivision" shall mean that certain real property described in the KILBIRNIE, records of Snohomish County, State of Washington and such additions thereto as may be hereafter brought within the jurisdiction of the Association.

2.4. "Common Properties" or "Common Area" shall mean all areas defined as such in the Declaration of Covenants, Conditions and Restrictions (the "Declaration") as recorded in Snohomish County, Washington and as thereafter amended, including specifically those amendments subsequently and duly recorded in the Snohomish County Auditors Office.

2.5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the KILBIRNIE, with the exception of common properties described above.

2.6. "Member" shall mean every person or entity that holds a membership in the Association.

2.7. "Owner" shall mean the record owner, whether one or more persons or entities and specifically including the Developer, of the fee simple title to any Lot or Lots which are a part of the Subdivision, but shall not include a contract seller or a mortgagee.

2.8. The term "real estate contract" shall not include an earnest money receipt and agreement and the terms "contract seller" and "contract purchaser" shall not include the parties to any such earnest money receipt and agreement.

2.9. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Subdivision recorded or to be recorded in the Office of the Snohomish County Auditor.

2.10. "Declarant" shall mean and refer to 211-WLD Kilbirnie LLC, A Washington limited Liability Company, its successors and assigns.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

3.1. Qualification for Membership: Every person or entity who is the contract purchaser or record owner of a fee interest in any Lot or Lots which are subject by covenants of record to assessment by the Developer named in the Declaration or by the Association, shall be a member of the Association, provided, however, that if any Lot is held jointly by two (2) or more persons, the several owners of such interest shall designate one (1) of their number as the "Member." The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Lot shall have more than one (1) Membership. Membership shall be appurtenant to and may not be separated from ownership of or the contract purchaser's interest in any Lot that is subject to assessment by the Developer or the Association. Upon transfer of the fee interest to, or upon the execution and delivery of a contract for the sale of (or of an assignment of a contract purchaser's interest in) any Lot, the Membership and Certificate of Membership in the Association shall ipso facto be deemed to be transferred to the Grantee contract purchaser, or new contract purchaser as the case may be. Ownership of or a contract purchaser's interest in any such Lot shall be the sole qualification for Membership.

3.2. Transfer of Membership: The Association Membership of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such Membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon the transfer of title to the Lot, and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

3.3. Suspension of Membership: During any period in which a member shall be in default in the payment of any monthly or special assessment, the voting rights and right to use of the common properties by such member may be suspended by the Board of Directors until such assessment had been paid. During the developmental period, the Board shall be required to exercise such right upon the request of the Developer. Such rights of a Member may also be suspended, after notice and hearing, for a period not to exceed one hundred eighty (180) days, for any and each violation of any rules and regulations established by the Board governing the use of the common properties and facilities. In the event of suspension, such member shall continue to incur and remain liable for any and all monthly, annual and special assessments.

3.4. Voting Rights: The total voting power of the Association at any given time shall equal the number of Lots included within the Property at that time. The Owner or Owners of each Lot within the Property shall be entitled to one vote. If a Person or Entity (including the Declarant) owns more than one Lot, he or she shall have the votes appertaining to each Lot owned. Association Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. When more than one person holds such an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If a Lot is owned by multiple parties and only one of them is at a meeting, the one who is present will represent the lot owners. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. If joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question.

**ARTICLE IV  
BOARD OF DIRECTORS**

4.1. Number: The affairs of this Association shall be managed by a Board of Directors (the "Board"), which shall after the period of Declarant Control shall be composed of three members

who shall be Members of the Association. The number of Board members may be increased by amendment of these bylaws.

4.2. Election: At the first annual meeting, the Members shall elect one (1) Director for a term of one (1) year; one (1) Director for a term of two (2) years; and one (1) Director for a term of three (3) Years; and, at each annual meeting thereafter, the Members shall elect one (1) Director for a term of three years.

4.3. Removal: Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

4.4. Compensation: No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

4.5. Action Taken Without a Meeting: The Directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

## **ARTICLE V MEETINGS OF DIRECTORS**

5.1. Regular Meetings: Regular meetings of the Board of Directors shall be held quarterly without notice, in the event business of the Association requires attention, at such place and hour as may be fixed from time to time by resolution of the Board.

5.2. Special Meetings: Special meetings of the Board of Directors shall be held when called by the President of the Association or by any one Director, after not less than three (3) day notice to each Director. The Director may waive, in writing, the three (3) day notice requirement.

5.3. Quorum: A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## **ARTICLE VI NOMINATION AND ELECTION OF DIRECTORS**

6.1. Nomination: Nomination for election to the Board of Directors may be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee may be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among members.

6.2. Election: Election to the Board of Directors shall be by secret ballot. As such election, the members or their proxies may each cast their vote in accordance with the voting rights provisions herein. The names receiving the largest number of votes shall be elected. There shall be no cumulative voting.



**ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

7.1. Powers: The Board of Directors shall have the Power to:

(a) Adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Exercise for the Association all powers, duties and authority vested in or delegated to this Association not reserved to the membership by other provisions of the Bylaws, the Articles of Incorporation, or the Declaration;

(c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(d) Employ managers, independent contractors, professional advisors or such other employees as they deem necessary, and to prescribe their duties.

7.2. Duties: It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting, when such statement is requested in writing by twenty-five (25) percent of the members who are entitled to vote;

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided herein and in the Declaration:

(1) to establish, levy, assess and collect the assessments or charges referred to in the Declaration, as applicable to the Association; and

(2) to send written notice of each assessment to every owner or contract purchaser subject thereto at least thirty (30) days in advance of each annual assessment period;

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a statement or certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of any assessments therein stated to have been paid;

(e) Procure and maintain adequate liability insurance, and to procure adequate hazard insurance on property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause any common properties owned by the Association to be maintained.

## **ARTICLE VIII COMMITTEES**

The Board of Directors shall appoint a Nominating Committee, as provided by these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes.

## **ARTICLE IX MEETING OF THE MEMBERS**

9.1. Annual Meeting: The first annual meeting of the members shall be held at such time as designated by the Developer, the Board of Directors, or upon a majority vote of the members. In the event of an affirmative vote of the members, the Board of Directors shall be responsible for giving proper notice of the time and place of the meeting. Each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

9.2. Special Meetings: Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of twenty (20%) percent of the members who are entitled to vote.

9.3. Notice of Meetings: Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by personally delivering or mailing a copy of such notice, postage prepaid, not less than fourteen (14) days and not more than sixty (60) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

9.4. Quorum: The presence at the meeting of members entitled to cast, or of proxies entitled to cast, thirty-five (35) percent of the votes of the entire membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

9.5. Proxies: At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon the conveyance by the member of his lot.

9.6. Majority Vote. Except as otherwise provided by statute, by the Declaration, or by these Bylaws, passage of any matter submitted to vote at a meeting where a quorum is in attendance, shall require the affirmative vote of at least fifty one percent (51%) of the voting power present.

9.7. Order of Business. The order of business at meetings of the Association shall be as follows unless dispensed with on motion:

- (a) Roll call;
- (b) Proof of notice of meeting or waiver of notice;

- (c) Minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Election of directors (annual meeting or special meeting called for such purpose);
- (g) Unfinished business;
- (h) New business;
- (i) Adjournment.

9.8. Parliamentary Authority. In the event of dispute, the parliamentary authority for the meetings shall be the most current available edition of Robert's Rules of Order.

## **ARTICLE X OFFICERS AND THEIR DUTIES**

10.1. Enumeration of Officers: The Officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create. Any two or more offices may be held by the same person.

10.2. Election of Officers: The election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

10.3. Term: The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year, unless he shall sooner resign or shall be removed or otherwise become disqualified to serve.

10.4. Special Appointments: The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have authority, and perform such duties as the Board may from time to time determine.

10.5. Resignation and Removal: Any Officer may be removed from office, with or without cause, by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

10.6. Vacancies: A vacancy in any office may be filled in the manner prescribed for regular elections. The Officer elected to such vacancy shall serve for the remainder of the term of the Officer being replaced.

10.7. Multiple Offices: Multiple offices may be held by the same person; however, no one person shall simultaneously hold the offices of Secretary and President.

10.8. Duties: The duties of these Officers are as follows:

(a) President: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all checks or promissory notes.

(b) Vice President: The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLE XI ASSESSMENTS**

11.1. Creation of the Lien and Personal Obligations of Assessments: By the Declaration, each member is deemed to covenant and agree to pay to the Developer during the developmental period, and thereafter to the Association:

(a) annual or monthly assessments of charges; and

(b) special assessments for capital improvements and other purposes as set forth in the Declaration.

The assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and costs of collection thereof (including reasonable attorney's fees) shall also be the personal obligation of the person who was the owner or contract purchaser of such property at the time when the assessment fell due. Any such lien or assessment runs with the property. The Association may file or record a lien or take any other action deemed appropriate to effectuate collection of unpaid assessments.

11.2. Purpose of Assessments: The assessments shall be used exclusively for the purpose of promoting the recreation, health, and welfare of the residents in the properties, including without limitation, the construction, establishment, improvement, repair, maintenance and other expenses of the common properties, services and facilities related to the use and enjoyment of the common properties, the payment of taxes and insurance on the common properties, and the installation and maintenance of the entry planting areas on streets located within the Subdivision. Assessments may also be levied to pay for any professional services, advice or consultation incurred by the Association in carrying out its duties.

11.3. Special Assessments for Capital Improvements: This is governed by the Declaration of Covenants, Conditions and Restrictions.

11.4. Uniform Rate: All assessments shall be fixed at a uniform rate for all lots subject to assessment except as provided in the Declaration of Covenants, Conditions and Restrictions.

11.5. Date of Commencement of Assessments & Due Dates: As to each particular lot involved, the liability for the assessments shall begin on the first day of the calendar month following the date of any deed or contract of sale for the lot, to a buyer other than a speculative builder, or on the first day of the calendar month following occupancy of the premises, whichever is earlier. Said assessment shall be due and payable on such date and on the first day of each calendar month thereafter, or on an annual date designated by the Association except for Special Assessments. For Special Assessments the Board of Directors shall set the dates of payment.

11.6. Effect of Non-Payment of Assessments; Remedies: If any assessment is not paid within thirty (30) days after it was first due and payable, the assessment shall bear interest from the date on which it was originally due at the rate of twelve (12) percent per annum, and the Association may bring an action at law against the one personally obligated to pay the same and/or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be included in any judgment or decree entered in such suit. No owner or contract purchaser shall be relieved of liability for the assessments provided for herein by non-use of the common properties or abandonment of his lot.

11.7. Subordination of the Lien to Mortgages: The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage (and to the lien of any second mortgage given to secure payment of the purchase price) now or hereafter placed on the lot, only in the event that the lien for delinquent assessments has not been recorded with the Snohomish County Auditor at the time of the recording of the mortgage lien. Notwithstanding any provision herein, the lien for delinquent assessments shall be subordinate to any first mortgage when said mortgage is FHA, VA or FNMA/FHLMC (Fannie Mae/Freddie Mac). Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE XII BOOKS AND RECORDS**

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any member. The Declaration, Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE XIII INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Directors of this Association shall not be liable to the Association or its members for damages caused by an action taken by a Director in good faith. This provision may not limit a Director's liability for acts involving intentional misconduct such as a knowing violation of the law or a knowing breach of the Director's fiduciary duty to the Association.

Directors and Officers of this Association shall be indemnified and held harmless from and against any damages, liabilities, judgments, penalties, fines, settlements and reasonable expenses (including attorney fees) actually incurred as a result of all actions undertaken by said Officer or Director in good faith, and (a) in the case of conduct in his own official capacity with the Association, he reasonably believed his conduct to be in the Association's best interest, or (b) in all other cases, he reasonably believed his conduct to be at least not opposed to the Association's best interests, and (c) in the case of any criminal proceedings, he had no reasonable cause to believe his conduct was unlawful. Said Officers and Directors shall be indemnified and held harmless to the full extent permissible under Washington law, including the provisions contained in RCW 24.03.043 and RCW 23A.08.025, and amendments thereto.

The foregoing right of indemnification shall not be exclusive of other rights to which such Director or Officer may be entitled to as a matter of law. The Board of Directors may obtain insurance on behalf of any person who is or was a Director, Officer, employee, or agent against any liability arising out of his status as such, whether or not the Association would have power to indemnify him against such liability.

**ARTICLE XIV  
CORPORATE SEAL**

The Association may obtain a seal in circular form, having within its circumference the words "KILBIRNIE HOMEOWNERS ASSOCIATION" in the form and style as affixed in these Bylaws by the impression of such seal.

**ARTICLE XV  
MISCELLANEOUS**

15.1. Amendment: These Bylaws may be amended at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, except that during the developmental period, the Developer shall have the right to veto amendments.

15.2. Conflict/Control: In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XVI  
FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE XVII  
DATE OF ADOPTION**

These Bylaws were duly adopted by the Association on the 1<sup>st</sup> day of June, 2023.

  
\_\_\_\_\_

# KILBIRNIE

A UNIT LOT SUBDIVISION  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E, W.M.  
SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

### DECLARATION

KNOW ALL PERSONS BY THESE PRESENTS THAT 211-WLD KILBIRNIE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, THE UNDERSIGNED OWNERS, IN FEE SIMPLE OF THE LAND HEREBY PLATTED, AND COLUMBIA STATE BANK, THE MORTGAGEE THEREOF, HEREBY DECLARE THIS PLAT AND CONVEY TO THE LOTS A PERPETUAL EASEMENT FOR INGRESS AND EGRESS, AND UTILITIES OVER, UNDER AND IN ALL PRIVATE STREETS, AVENUES, AND PLACES AS SHOWN ON THE PLAT; AND HEREBY DECLARE AND GRANT EASEMENTS TO ANY WATER, SEWER, ELECTRIC, TELEPHONE, TELEVISION CABLE, GAS OR OTHER UTILITIES AS SHOWN ON THE PLAT PROVIDING SERVICE TO THIS SUBDIVISION OR OTHER PROPERTY; ALSO, THE RIGHT TO MAKE ALL NECESSARY CUTS FOR CUTS AND FILLS UPON LOTS, BLOCKS, TRACTS, ETC. SHOWN ON THIS PLAT IN THE REASONABLE ORIGINAL GRADINGS OF ALL THE PRIVATE STREETS, AVENUES, PLACES, ETC. SHOWN HEREON. ALSO, THE RIGHT TO DRAIN ALL STREETS OVER AND ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER THE STREET OR STREETS ARE GRADED.

FOLLOWING ORIGINAL REASONABLE GRADINGS OF ROADS AND WAYS HEREOF, NO DRAINAGE WATERS ON ANY LOT OR LOTS SHALL BE DIVERTED OR BLOTTED FROM THEIR NATURAL COURSE SO AS TO DISCHARGE UPON ANY PRIVATE ROAD RIGHTS-OF-WAY TO HARMFUL PROPER ROAD DRAINAGE. ANY ENCLOSING OF DRAINAGE WATERS IN CULVERTS OR DRAINS OR REROUTING THEREOF ACROSS ANY LOT AS MAY BE UNDERTAKEN BY OR FOR THE OWNER OF ANY LOT SHALL BE DONE BY AND AT THE EXPENSE OF SUCH OWNER AND SHALL BE DONE IN ACCORDANCE WITH ANY PERMITS NEEDED FROM THE REGULATING GOVERNMENT AGENCIES).

TRACT(S) 995 THROUGH 999 ARE HEREBY GRANTED AND CONVEYED TO THE KILBIRNIE OWNERS ASSOCIATION (HOA) UPON RECORDING OF THIS PLAT SUBJECT TO AN EMERGENCY MAINTENANCE EASEMENT GRANTED AND CONVEYED TO SNOHOMISH COUNTY. OWNERSHIP AND MAINTENANCE OF SAID TRACTS CONSISTENT WITH COUNTY CODE SHALL BE THE RESPONSIBILITY OF THE HOA UNLESS AND UNTIL TRACT OWNERSHIP BY ALL LOTS WITHIN THIS SUBDIVISION IS AUTHORIZED PURSUANT TO A FINAL PLAT ALTERATION. USE OF SAID TRACTS IS RESTRICTED TO THAT SPECIFIED IN THE APPROVED FINAL PLAT. THE HOA AND THE OWNERS OF ALL LOTS WITHIN THE SUBDIVISION SHALL COMPLY WITH THOSE COUNTY REGULATIONS AND CONDITIONS OF FINAL SUBDIVISION APPROVAL SPECIFIED ON THE PLAT. THE HOA SHALL REMAIN IN EXISTENCE UNLESS AND UNTIL ALL LOTS WITHIN THIS SUBDIVISION HAVE ASSUMED COMMON OWNERSHIP OF SAID TRACTS. IN THE EVENT THAT THE HOA SHOULD BE DISSOLVED, THEN EACH LOT SHALL HAVE AN EQUAL AND UNDIVIDED OWNERSHIP INTEREST IN THE TRACTS PREVIOUSLY OWNED BY THE HOA AS WELL AS RESPONSIBILITY FOR MAINTAINING THE TRACTS. MEMBERSHIP IN THE HOA AND PAYMENT OF DUES OR OTHER ASSESSMENTS FOR MAINTENANCE PURPOSES SHALL BE A REQUIREMENT OF LOT OWNERSHIP, AND SHALL REMAIN AN APPURTENANCE TO AND INSEPARABLE FROM EACH LOT. THIS COVENANT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE HOA, THE OWNERS OF ALL LOTS WITHIN THE SUBDIVISION AND ALL OTHERS HAVING ANY INTEREST IN THE TRACTS OR LOTS.

THE UNDERSIGNED OWNER OR OWNERS OF THE INTEREST IN THE REAL ESTATE DESCRIBED HEREIN HEREBY DECLARE THIS MAP AND DECLARE THE SAME FOR A COMMON INTEREST COMMUNITY NAMED KILBIRNIE, A PLAT COMMUNITY AS THAT TERM IS DEFINED IN THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT, SOLELY TO MEET THE REQUIREMENTS OF THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT AND NOT FOR ANY OTHER PURPOSE. THIS MAP AND ANY PORTION THEREOF IS RESTRICTED BY LAW AND THE DECLARATION FOR KILBIRNIE RECORDED UNDER SNOHOMISH COUNTY AUDITORS FILE NO. 202402090287

ONLY THOSE DECLARATIONS, COVENANTS AND RESTRICTIONS REQUIRED BY LAW, OR APPLICABLE COUNTY CODE, ARE DEEMED TO BE CONDITIONS OF APPROVAL OF THE PLAT FOR PURPOSES OF RCW 58.17.000 AND MAY ONLY BE AMENDED OR MODIFIED AS PROVIDED THEREIN. ALL OTHER TERMS OR CONDITIONS WHICH MAY BE INCORPORATED WITHIN ANY SUCH DECLARATION OR OTHER COVENANTS, CONDITIONS OR RESTRICTIONS PERTAINING TO THE PLAT NOT REQUIRED AS SET FORTH ABOVE SHALL BE DEEMED PRIVATE CONTRACTUAL AGREEMENTS BETWEEN THE PARTIES TO SAID DECLARATION OR COVENANT AND SUBJECT TO ENFORCEMENT OR AMENDMENT BETWEEN THE PARTIES AS MAY BE PROVIDED THEREIN.

IN WITNESS WHEREOF, WE SET OUR HANDS AND SEALS THIS 6 DAY OF FEB, 2024

211-WLD KILBIRNIE, LLC,  
A WASHINGTON LIMITED LIABILITY COMPANY

COLUMBIA STATE BANK

Kerek R. Edwards  
BY: KEREK R. EDWARDS  
ITS: AUTHORIZED SIGNOR

Alex Della  
BY: ALEX DELLA  
ITS: Authorized Signor

### REPRESENTATIVE ACKNOWLEDGMENTS

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF SNOHOMISH )

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT KEREK R. EDWARDS IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT (HE/SHE/IT) SIGNED THIS INSTRUMENT, ON OATH STATED THAT (HE/SHE/IT) WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE AUTHORIZED SIGNOR OF 211-WLD KILBIRNIE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

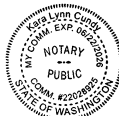
DATED: 02/06/2024  
SIGNATURE: Dana Bolden  
(PRINT NAME) Dana Bolden  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON  
RESIDING AT Lake Stevens  
MY APPOINTMENT EXPIRES 06/15/2024



STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF SNOHOMISH )

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT Alex Della IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT (HE/SHE/IT) SIGNED THIS INSTRUMENT, ON OATH STATED THAT (HE/SHE/IT) WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE AUTHORIZED SIGNOR OF 211-WLD KILBIRNIE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED: 02/07/24  
SIGNATURE: Kara Lynn Cundy  
(PRINT NAME) Kara Lynn Cundy  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON  
RESIDING AT Brier  
MY APPOINTMENT EXPIRES 6/22/2026



### SHEET INDEX

SHEET 1	DEDICATIONS, ACKNOWLEDGMENTS AND APPROVALS
SHEET 2	LEGAL DESCRIPTION, RESTRICTIONS, EASEMENT PROVISIONS AND COVENANTS, TRACT NOTES, AND BUILDING MAINTENANCE EASEMENT DETAIL
SHEET 3	SURVEY CONTROL, MAP, DEPICTIONS OF AROUND WATER AND SEWER EASEMENTS AND DEDICATED ROW AREA
SHEET 4	PLAT MAP AND EASEMENTS DELINEATION
SHEET 5	COMMON OWNERSHIP AREA IMPROVEMENTS

### COUNTY ENGINEER APPROVAL

DEDICATION OF RIGHT-OF-WAY EXAMINED, APPROVED, AND ACCEPTED THIS 9<sup>th</sup> DAY OF February, 2024

Douglas M. McConnaughy  
SNOHOMISH COUNTY ENGINEER/PUBLIC WORKS DIRECTOR

### PLANNING AND DEVELOPMENT SERVICES APPROVAL

EXAMINED, FOUND TO CONFORM TO ALL TERMS OF THE PRELIMINARY PLAT APPROVAL, THE REQUIREMENTS OF CHAPTER 58.17 RCW, OTHER APPLICABLE STATE LAWS, AND APPLICABLE LOCAL ORDINANCES, AND APPROVED THIS 11<sup>th</sup> DAY OF February, 2024

Jules Mann  
SNOHOMISH COUNTY PLANNING AND DEVELOPMENT SERVICES DIRECTOR

### TREASURERS CERTIFICATE

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HEREIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE, HAVE BEEN FULLY PAID AND DISCHARGED, INCLUDING 2024 TAXES.

TAX ID OF EXISTING PARCELS BEING HEREIN SUBDIVIDED: 0037330060602, 0037330060903, 0037330060604

Brian Sullivan  
TREASURER, SNOHOMISH COUNTY

BY: Brian Sullivan 2/9/2024  
DEPUTY COUNTY TREASURER

### SURVEYORS CERTIFICATE & ACKNOWLEDGMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF 211-WLD KILBIRNIE, LLC ON 12, DECEMBER 2023. I HEREBY CERTIFY THAT THIS MAP OR KILBIRNIE IS BASED UPON AN ACTUAL SURVEY OF THE PROPERTY HERIN DESCRIBED, THAT THE BEARINGS AND DISTANCES ARE CORRECTLY SHOWN; THAT ALL INFORMATION REQUIRED BY THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT TO BE REFLECTED ON THE MAP IS SUPPLIED HEREIN; AND THAT ALL HORIZONTAL AND VERTICAL BOUNDARIES OF THE UNITS, (1) TO THE EXTENT DETERMINED BY THE WALLS, FLOORS, OR CEILINGS THEREOF, OR OTHER PHYSICAL MONUMENTS, ARE SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH SAID MAP, OR (2) TO THE EXTENT SUCH BOUNDARIES ARE NOT DEFINED BY PHYSICAL MONUMENTS, SUCH BOUNDARIES ARE SHOWN ON THE MAP.

Christopher Shane Barnes 2/1/24  
DATE  
CHRISTOPHER SHANE BARNES  
PROFESSIONAL LAND SURVEYOR  
CERTIFICATE NO. 35145



STATE OF WASHINGTON )  
COUNTY OF KING )

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT CHRISTOPHER SHANE BARNES IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT HE SIGNED THIS INSTRUMENT AND ACKNOWLEDGED IT TO BE HIS FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED: 2/1/24

State Of Washington  
Cecale Renee Keen - Notary Public  
Commission No. 96778  
My Commission Expires 10/17/2027

(SIGNATURE OF NOTARY)  
Cecale R. Keen

(LEGIBLE PRINT OR STAMP NAME OF NOTARY)  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

RESIDING AT Woodinville

MY APPOINTMENT EXPIRES 10/17/27

### AUDITOR'S CERTIFICATE

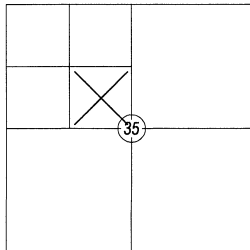
FILED FOR RECORD AT THE REQUEST OF CHRISTOPHER SHANE BARNES, THIS 9 DAY OF Feb, 2024 AT 11 MINUTES PAST 2 P.M. AND RECORDED

IN VOLUME    OF PLATS, SHEET   ; AFN 202402095001 RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

Garm Fan  
AUDITOR, SNOHOMISH COUNTY

BY: Cristian Cudraru  
DEPUTY COUNTY AUDITOR

INDEXING  
SECTION 35, TOWNSHIP 28 NORTH, RANGE 4 EAST, W.M.



AFN 202402095001

KILBIRNIE UNIT LOT SUBDIVISION  
21-110539 PSD  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E, W.M.  
SNOHOMISH COUNTY, WASHINGTON  
OWNER: 211-WLD KILBIRNIE, LLC.

**MG** MEAD GILMAN  
LAND SURVEYORS

P.O. BOX 289, WOODINVILLE, WA 98072  
425.486.1252 | WWW.MEADGILMAN.COM

PROJ. NO. 20161 SHEET 1 OF 6

KILBIRNIE

A UNIT LOT SUBDIVISION

SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M. SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

VOL/P6

LEGAL DESCRIPTION

PARCEL A:

LOT 1, OF SNOHOMISH COUNTY SHORT PLAT NO. SP 6402-77, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1978 UNDER RECORDING NO. 7801200278...

PARCEL B:

LOT 2, OF SNOHOMISH COUNTY SHORT PLAT NO. SP 6402-77, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1978 UNDER RECORDING NO. 7801200278...

PARCEL C:

LOT 3, OF SNOHOMISH COUNTY SHORT PLAT NO. SP 6402-77, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1978 UNDER RECORDING NO. 7801200278...

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

RESTRICTIONS, COVENANTS CONTINUED

FROM CHICAGO TITLE INSURANCE COMPANY GUARANTEE NO. 500103545C, DATED 25, JANUARY 2024

- 1. SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, EASEMENT PROVISIONS, DEDICATIONS, BUILDING SETBACK LINES, NOTES, STATEMENTS AND OTHER MATTERS...

STORM WATER FACILITY EASEMENT AND COVENANT

STORMWATER FACILITIES IN THIS SUBDIVISION ARE LOCATED IN STORMWATER FACILITY EASEMENTS AS SHOWN ON THE FACE OF THIS PLAT. THESE STORMWATER FACILITY EASEMENTS, TOGETHER WITH THE STORMWATER FACILITIES LOCATED IN SUCH EASEMENTS, ARE ESTABLISHED AS COMMON AREAS OF THE SUBDIVISION THAT SHALL BE OWNED, MANAGED AND MAINTAINED BY THE OWNERS ASSOCIATION (HOA) FOR THE BENEFIT OF THE LOT OWNERS...

SNOHOMISH COUNTY SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, AT ANY TIME AND FROM TIME TO TIME, TO ENTER ONTO ANY ONE OR MORE OF THE STORMWATER FACILITY EASEMENTS FOR PURPOSES OF INSPECTING THE STORMWATER FACILITIES LOCATED THEREON...

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED ABOVE, IN THE EVENT OF AN EMERGENCY, SNOHOMISH COUNTY SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO ENTER ONTO ANY ONE OR MORE OF THE STORMWATER FACILITY EASEMENTS AND PERFORM SUCH EMERGENCY MAINTENANCE AND/OR REPAIR TO THE STORMWATER FACILITIES LOCATED THEREON...

TRACT NOTES

- 1. A TRACT IS LAND RESERVED FOR SPECIFIC USES LIMITED TO THOSE SPECIFIED ON THE FACE OF THE PLAT. TRACTS ARE NOT CONSIDERED LOTS FOR BUILDING SITES FOR PURPOSES OF RESIDENTIAL DWELLING CONSTRUCTION.

RESTRICTIONS, COVENANTS

- 1. NO FURTHER DIVISION OF ANY LOT IS ALLOWED WITHOUT SUBMITTING FOR A NEW SUBDIVISION OR SHORT SUBDIVISION.

§) 897.75 FOR A TOTAL OF \$63,884.00 PAID TO THE COUNTY, DISTRIBUTED TO THE TRANSPORTATION SERVICE AREAS AS FOLLOWS:

ROAD SYSTEM IMPACT FEE ALLOCATION TABLE with columns: TO TSA, TOTAL AMOUNT, AMOUNT PER DWELLING UNIT

§) \$334.30 FOR A TOTAL OF \$21,729.50 PAID TO THE COUNTY FOR TRANSPORTATION DEMAND MANAGEMENT.

PAYMENT TO THE COUNTY IS DUE PRIOR TO OR AT THE TIME OF BUILDING PERMIT ISSUANCE FOR EACH SINGLE FAMILY RESIDENCE UNLESS DEFERMENT IS ALLOWED PURSUANT TO CHAPTER 30.068 SCC.

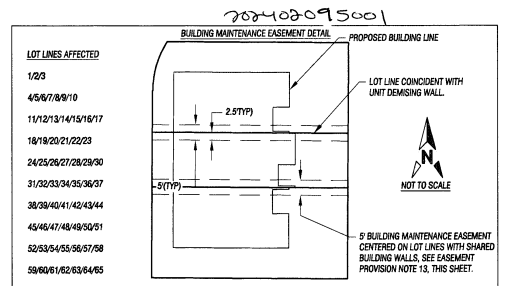
- 10. MEMBERSHIP IN THE HOMEOWNERS ASSOCIATION AND PAYMENT OF DUES OR OTHER ASSESSMENTS FOR MAINTENANCE PURPOSES SHALL BE A REQUIREMENT OF LOT OWNERSHIP AND SHALL REMAIN AN APPURTENANCE TO AND INSEPARABLE FROM EACH LOT...

RESTRICTIONS, COVENANTS CONTINUED

- 11. OPEN SPACE SHALL BE PROTECTED IN PERPETUITY. USE OF THE OPEN SPACE TRACTS WITHIN THIS SUBDIVISION IS RESTRICTED TO THOSE USES APPROVED FOR THE RESIDENTIAL DEVELOPMENT SHOWN ON THE APPROVED SITE PLAN AND THE APPROVED LANDSCAPE PLAN.

EASEMENT PROVISIONS

- 1. AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO ALL UTILITIES SERVING SUBJECT PLAT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE EXTENSIVE 10 FEET PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS, TRACTS AND COMMON AREAS...



MEAD GILMAN LAND SURVEYORS logo and contact information: P.O. BOX 289, WOODINVILLE, WA 98072, 425.486.1252 | WWW.MEADGILMAN.COM

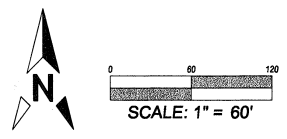
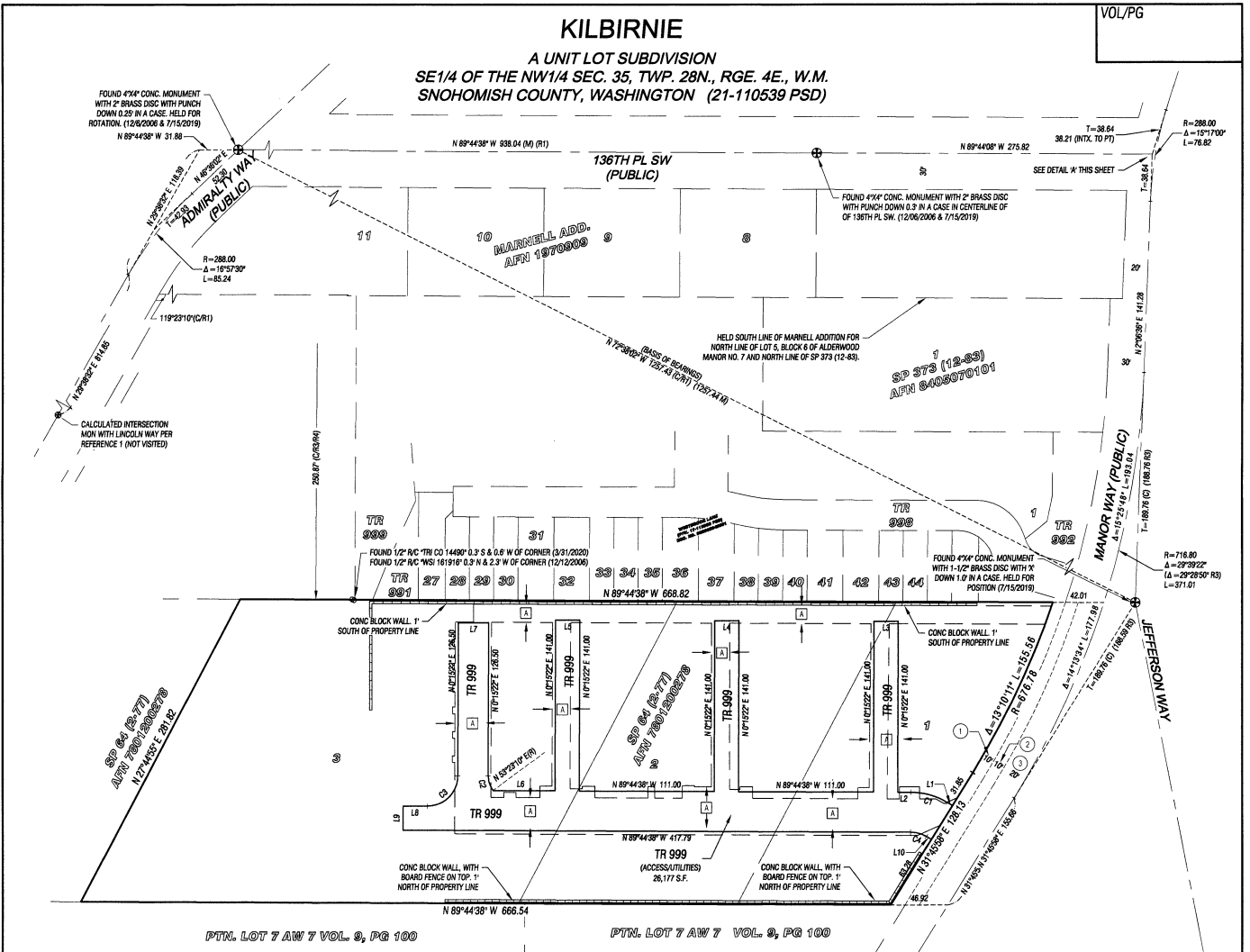
2024-02-05 10:01 AM Document PLAT Rec: S423.50 Page 2 of 6 Record Date: 2/27/2024 2:44 PM Snohomish County, WA



# KILBIRNIE

A UNIT LOT SUBDIVISION  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

VOL/P6



**MERIDIAN**

STARLITE GLEN CONDOMINIUM AS RECORDED UNDER AUDITORS FILE NUMBER 20050855007 (REFERENCE 1)

**BASIS OF BEARINGS**  
N 72°38'02\"/>

**REFERENCES**  
1. WESTBROOK LANE, AFN, 2020090405001.

**RIGHT-OF-WAY LEGEND**

- ① 10' DEEDED TO SNOHOMISH COUNTY BY STATUTORY WARRANTY DEED RECORDED UNDER AFN, 202006270016.
- ② 10' DEEDED TO SNOHOMISH COUNTY BY SP NO. SP84(2-77) AFN 7861200278.
- ③ 20' ORIGINAL PLATTED RIGHT-OF-WAY PER ALDERWOOD MANOR NO. 7, RECORDED IN VOLUME 9 OF PLATS, AT PAGE 100, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

**EASMENT LEGEND**

- A PUBLIC SEWER AND WATER EASMENT TO ALDERWOOD WATER AND WASTEWATER DISTRICT, RECORDED UNDER AFN, SEE RESTRICTION OF RECORD.

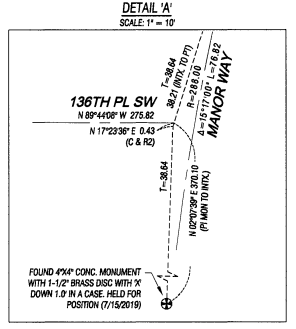
**NOTES**

1. A 0\"/>

**SURVEY NARRATIVE**

THIS PLAT OF KILBIRNIE WAS CALCULATED HOLDING THE PLAT OF WESTBROOK LANE DONE BY MEAD GILMAN AND ASSOCIATES, RECORDED UNDER AFN, 2020090405001. REFER TO THAT PLAT FOR ORIGINAL SURVEYORS NOTES, AND CALCULATION NOTES.

TAG TABLE			
TAG #	RADIUS	DIRECTION/A	LENGTH
C1	58.00	317°14'48"	31.63
C2	20.00	30°52'12"	12.87
C3	25.00	90°00'00"	39.27
C4	25.00	317°14'48"	13.63
L1		N 58°29'50\"/>	



202402095001

KILBIRNIE UNIT LOT SUBDIVISION  
21-110539 PSD  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON  
OWNER: 211-WLD KILBIRNIE, LLC.



96/100

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PROJ. NO. 20161      SHEET 3 OF 6

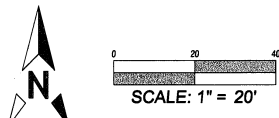
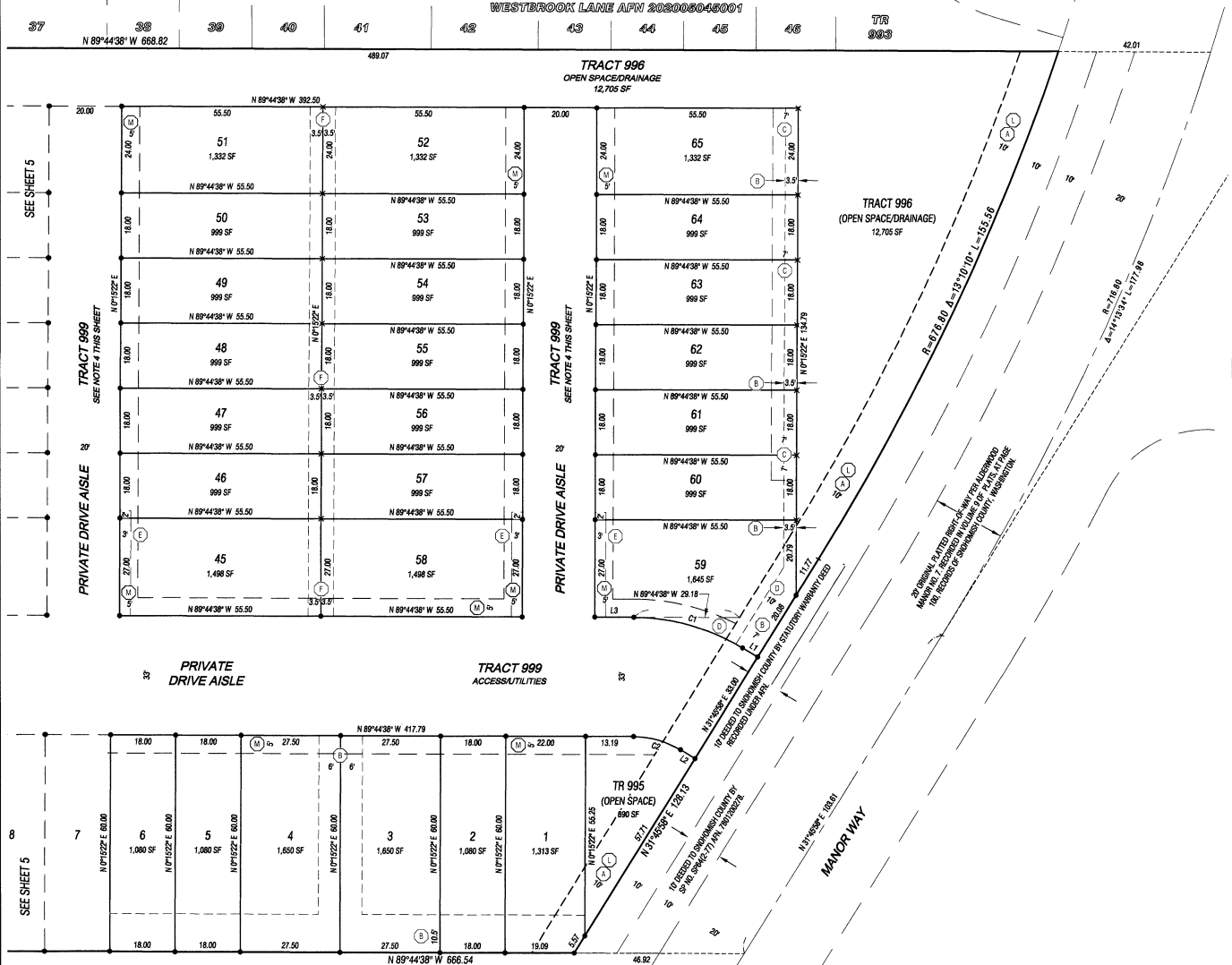
2/1/24

# KILBIRNIE

A UNIT LOT SUBDIVISION  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

VOL/PG

WESTBROOK LANE APM 202006046001



**MERIDIAN**  
STARBUCK GLEN CONDOMINIUM AS RECORDED UNDER AUDITORS FILE NUMBER 20050825007 (REFERENCE 1)

**NOTES**

- A P<sup>3</sup> ELECTRONIC TOTAL STATION WAS USED FOR THIS FIELD TRAVERSE SURVEY. ACCURACY MEETS OR EXCEEDS W.A.C. 332-130-090, -080, -100 AND -110.
- ALL DISTANCES ARE IN FEET.
- SEE EASEMENT PROVISION 13 AND TYPICAL DETAIL ON SHEET 2 FOR 5' TOWNHOUSE WALL MAINTENANCE EASEMENT.
- SEE SHEET 3 FOR TRACT 999 IN ITS ENTIRETY

**EASEMENT LEGEND**

- (A) PUBLIC UTILITY EASEMENT. SEE EASEMENT PROVISION 1, SHEET 2.
- (B) PRIVATE WALL, WALL DRAINAGE AND PEDESTRIAN ACCESS EASEMENT. SEE EASEMENT PROVISION 2, SHEET 2.
- (C) PRIVATE DRAINAGE EASEMENT. SEE EASEMENT PROVISION 3, SHEET 2.
- (D) PRIVATE DRAINAGE EASEMENT. SEE EASEMENT PROVISION 4, SHEET 2.
- (E) PRIVATE ACCESS EASEMENT. SEE EASEMENT PROVISION 5, SHEET 2.
- (F) PRIVATE PEDESTRIAN ACCESS EASEMENT. SEE EASEMENT PROVISION 6, SHEET 2.
- (G) PUD NO. 1 EASEMENT AREA 2. SEE RESTRICTION OF RECORD 5, SHEET 2.
- (H) PRIVATE UTILITY EASEMENT. SEE EASEMENT PROVISION 14, SHEET 2.

**LEGEND**

- SET 1/2" X 24" REBAR WITH PLASTIC CAP STAMPED "ATWELL 28454/05145/22028794".
- ⊙ DENOTES CORNER SET AT OFFSET DISTANCE.
- x SET MAGNETIC PK NAIL AND LS WASHER "35145 32434"
- FOUND CORNER AS NOTED
- x— FENCE LINE AS NOTED.

TAG TABLE			
TAG #	RADIUS	DIRECTION/A	LENGTH
C1	58.00	S11°44'48"	31.63
C2	25.00	S11°44'48"	13.63
L1		N 58°29'50" W	4.83
L2		N 58°29'50" W	4.68
L3		N 89°44'38" W	10.79



2024 02095601

KILBIRNIE UNIT LOT SUBDIVISION  
21-110539 PSD  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON  
OWNER: 211-WLD-KILBIRNIE, LLC

**MIG** MEAD GILMAN  
LAND SURVEYORS

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PROJ. NO. 20161 SHEET 4 OF 6

21/24

9d/10d

# KILBIRNIE

A UNIT LOT SUBDIVISION  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

VOL/PG

WESTBROOK LANE AFN 202006045001



SCALE: 1" = 20'

**MERIDIAN**

STARLITE GLEN CONDOMINIUM AS RECORDED UNDER AUDITOR'S FILE NUMBER 200508255007 (REFERENCE 1)

**NOTES**

- A 9" ELECTRONIC TOTAL STATION WAS USED FOR THIS FIELD TRAVERSE SURVEY. ACCURACY MEETS OR EXCEEDS W.A.C. 302-130-090.
- ALL DISTANCES ARE IN FEET.
- SEE EASEMENT PROVISION 13 AND TYPICAL DETAIL ON SHEET 2 FOR 5' TOWNHOUSE WALL MAINTENANCE EASEMENT.
- SEE SHEET 3 FOR TRACT 999 IN ITS ENTIRETY

**LEGEND**

- SET 1/2" X 24" REBAR WITH 1-3/4" PLASTIC CAP STAMPED 'MEAD GILMAN & ASSOCIATES 32434/35145'
- ⊙ DENOTES CORNER SET AT OFFSET DISTANCE.
- × SET MAGNETIC PK NAIL AND LS WASHER '35145 32434'
- FOUND CORNER AS NOTED
- X- FENCE LINE AS NOTED.

**EASEMENT LEGEND**

- Ⓛ PRIVATE WALL, WALL DRAINAGE AND PEDESTRIAN ACCESS EASEMENT. SEE EASEMENT PROVISION 2, SHEET 2
- Ⓧ PRIVATE ACCESS EASEMENT. SEE EASEMENT PROVISION 5, SHEET 2
- Ⓞ PRIVATE PEDESTRIAN ACCESS EASEMENT. SEE EASEMENT PROVISION 7, SHEET 2
- Ⓨ PRIVATE UTILITY EASEMENT. SEE EASEMENT PROVISION 14, SHEET 2

TAG TABLE			
TAG #	RADIUS	DIRECTION & ANGLE	LENGTH
C3	20.00	36°52'12" E	12.87
L4		N 00°15'22" E	2.50
LS		N 37°22'55" W	12.66



202102095001  
KILBIRNIE UNIT LOT SUBDIVISION  
21-110539 PSD  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON  
OWNER: 211-MGD KILBIRNIE, LLC

**MIG** | MEAD GILMAN  
LAND SURVEYORS

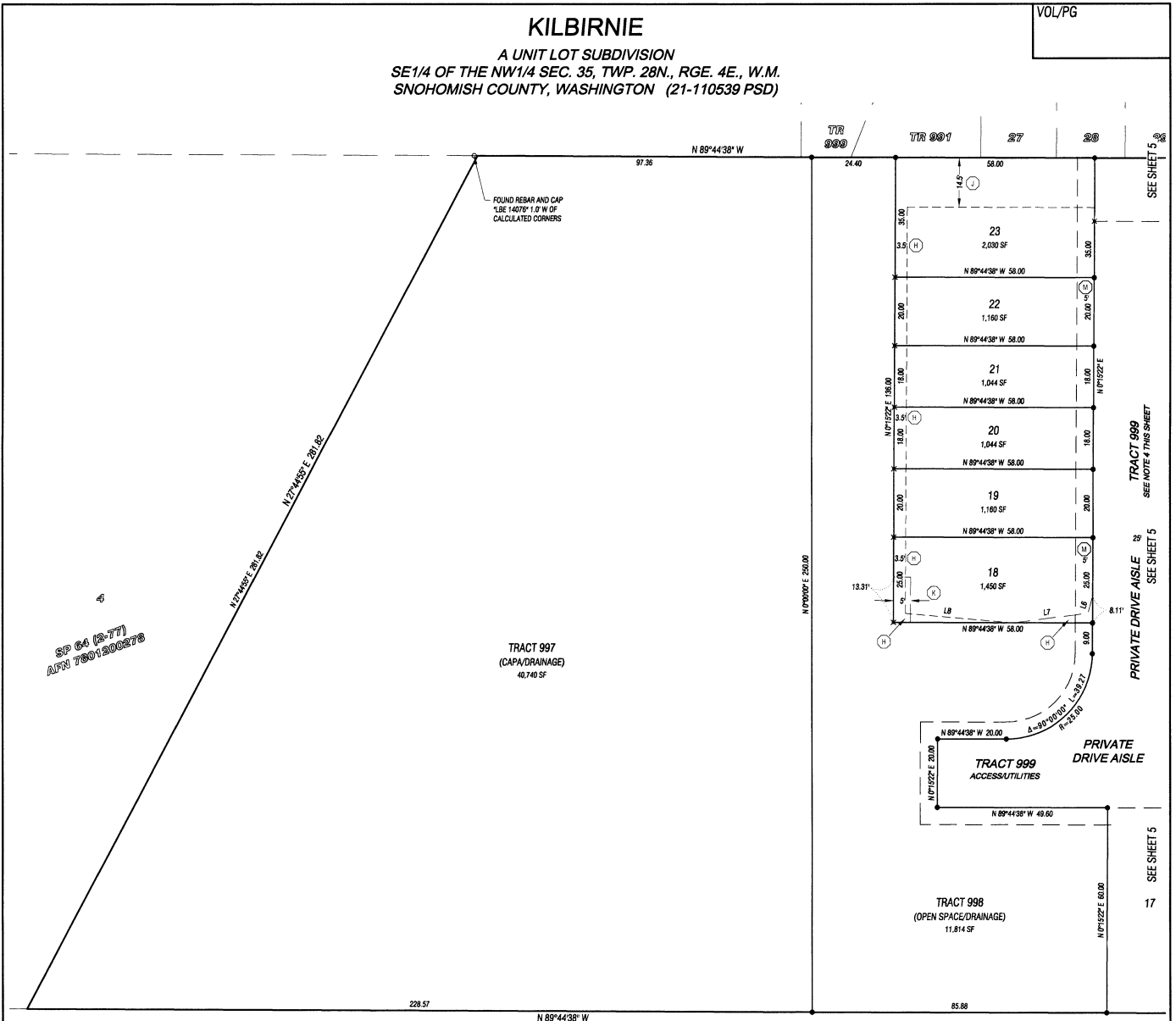
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PROJ. NO. 20161 | SHEET 5 OF 6

# KILBIRNIE

A UNIT LOT SUBDIVISION  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON (21-110539 PSD)

VOL/P6

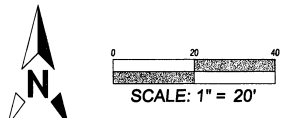


SP 64 (2-77)  
APN 7601200278

TRACT 997  
(CAPA/DRAINAGE)  
40,740 SF

TRACT 999  
ACCESS/UTILITIES

TRACT 998  
(OPEN SPACE/DRAINAGE)  
11,814 SF

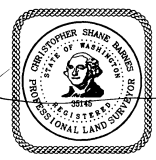


- MERIDIAN**
- STARLITE GLEN CONDOMINIUM AS RECORDED UNDER AUDITORS FILE NUMBER 20050823007 (REFERENCE 1)
- NOTES**
- A 9" ELECTRONIC TOTAL STATION WAS USED FOR THIS FIELD TRAVERSE SURVEY. ACCURACY MEETS OR EXCEEDS W.A.C. 332-130-090.
  - ALL DISTANCES ARE IN FEET.
  - SEE EASEMENT PROVISION 13 AND TYPICAL DETAIL ON SHEET 2 FOR 5' TOWNHOUSE WALL MAINTENANCE EASEMENT.
  - SEE SHEET 3 FOR TRACT 999 IN ITS ENTIRETY

- EASEMENT LEGEND**
- ① PRIVATE PEDESTRIAN ACCESS EASEMENT, SEE EASEMENT PROVISION 8, SHEET 2.
  - ② PRIVATE STORM DRAINAGE, WALL, WALL DRAINAGE AND PEDESTRIAN ACCESS EASEMENT, SEE EASEMENT PROVISION 9, SHEET 2.
  - ③ PRIVATE STORM DRAINAGE EASEMENT, SEE EASEMENT PROVISION 10, SHEET 2.
  - ④ PRIVATE UTILITY EASEMENT, SEE EASEMENT PROVISION 14, SHEET 2.

**TAG TABLE**

TAG #	RADIUS	DIRECTION/A	LENGTH
LB	N 14°22'31" E		6.42
L7	N 82°43'31" E		22.05
LB	N 84°52'40" W		31.43



202402095041

KILBIRNIE UNIT LOT SUBDIVISION  
21-110539 PSD  
SE1/4 OF THE NW1/4 SEC. 35, TWP. 28N., RGE. 4E., W.M.  
SNOHOMISH COUNTY, WASHINGTON  
OWNER: 211 WILD KILBIRNIE, LLC

**MIG** MEAD GILMAN  
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PROJ. NO. 20161 SHEET 6 OF 6

9/5/20A