

13.4.6 Make contracts and incur liabilities;

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

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

13.4.9 Acquire, hold, encumber, convey, and dispose of, in the Association's name, right, title, or interest to real or tangible and intangible personal property, and arrange for and supervise any addition or improvement to the Condominium; provided that:

13.4.9.1 If the estimated cost of any separate property acquisition or addition or improvement to the Condominium exceeds \$10,000, the approval of the Owners holding a majority of the votes in the Association shall be required; and if such estimated cost exceeds \$25,000, the approval of the Owners holding 67 percent of the votes in the Association shall be required;

13.4.9.2 No structural changes shall be made to the building without the approval of Owners holding at least 67% of the votes in the Association;

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

13.4.9.4 The beneficial interest in any property acquired by the Association pursuant to this Section shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall thereafter be held, sold, leased, mortgaged or otherwise dealt with as the Board shall determine.

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

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

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

13.4.13 Impose and collect charges for late payment of Assessments as further provided in Article 17 and, after Notice and an Opportunity to be Heard by the Board or by such representative designated by the Board and in accordance with

such procedures as provided in this Declaration, the Bylaws, or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of this Declaration, the Bylaws, and rules and regulations of the Association;

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

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

13.4.16 Assign its right to future income, including the right to receive Assessments;

13.4.17 Provide or pay, as part of the Common Expenses, the following utility services to the Units: water, sewer and garbage removal;

13.4.18 Act as the owner of the Residential Unit of Queen Anne Square for all purposes under the Declaration, Articles and Bylaws for Queen Anne Square, a condominium, including, but not limited to, payment of assessments, designation of a Board member and taking any other action required of or permitted to the owner of the Residential Unit by the Declaration or Bylaws of Queen Anne Square; provided, however, that any amendment to the Declaration, Survey Map and Plans, Articles or Bylaws for Queen Anne Square shall not be effective without the consent of the Owners and Eligible Mortgagees of the Condominium as provided in Article 26 and termination of Queen Anne Square shall require the consent of the Owners and Eligible Mortgagees of the Condominium as provided in Article 27.

13.4.19 Exercise any other powers conferred by this Declaration or the Bylaws;

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

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

Section 13.5 Financial Statements and Records. The Association shall keep financial records in accordance with generally accepted accounting principles and in sufficient detail to enable the Association to comply with the resale certificate requirements set forth in RCW 64.34.425. All financial and other records shall be made reasonably available for

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examination by any Unit Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. The annual financial statement shall be audited at least annually by a certified public accountant who is not a member of the Board or an Owner. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 days following the end of the fiscal year. Any mortgagee will, upon request, be entitled to receive the annual financial statement within 120 days following the end of the fiscal year. The Board, or persons having 35% of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner or Mortgagee, at the Owner's or Mortgagee's expense, may at any reasonable time conduct an audit of the books of the Board and Association. Upon written request, the Association shall provide Mortgagees, within a reasonable time, the financial statement of the Association for the preceding fiscal year.

Section 13.6 Inspection of Condominium Documents, Books and Records. The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies.

Article 14. DECLARANT CONTROL PERIOD.

Section 14.1 Declarant Control Until Transition Date. Until the Transition Date, the Declarant shall have the right to appoint and remove all members of the Board; provided that (1) not later than 60 days after conveyance of 25 percent of the Units to Owners other than the Declarant, at least one member and not less than 25 percent of the members of the Board must be elected by Owners other than the Declarant; and (2) not later than sixty days after conveyance of 50 percent of the Units to Owners other than the Declarant, not less than one-third of the members of the Board must be elected by Owners other than the Declarant.

Section 14.2 Transition Date. Declarant Control of the Association shall terminate on the Transition Date. The Transition Date shall be no later than the earlier of: (a) 60 days after conveyance of 75 percent of the Units to Owners other than the Declarant; (b) two years after the last conveyance or transfer of record of a Unit except as security for a debt; (c) three years after the first conveyance of a Unit; or (d) the date on which the Declarant records an amendment to the Declaration pursuant to which the Declarant voluntarily surrenders the right to further appoint and remove officers and members of the Board. If the Declarant voluntarily

surrenders control pursuant to (d) above, the Declarant may require that for the duration of the period of Declarant Control, specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 14.3 Declarant's Transfer of Association Control. Within 60 days after the Transition Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant including, but not limited to, the following:

14.3.1 The original or a photocopy of the recorded Declaration and each amendment to the Declaration;

14.3.2 The certificate of incorporation and a copy or duplicate original of the Articles as filed with the secretary of state;

14.3.3 The Bylaws;

14.3.4 The minute books, including all minutes and other books and records of the Association;

14.3.5 Any rules and regulations that have been adopted;

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

14.3.7 The financial records, including cancelled checks, bank statements, and financial statements of the Association, and source documents from the time of incorporation of the Association through the date of transfer or control to the Owners;

14.3.8 Association funds or the control of the funds of the Association;

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

14.3.10 Insurance policies or copies thereof for the Condominium and the Association;

14.3.11 Copies of any certificates of occupancy that may have been issued for the Condominium;

14.3.12 Any other permits issued by governmental bodies applicable the Condominium in force on the Transition Date;

14.3.13 All original warranties that are still in effect for the Common Elements, or any other areas or facilities which the Association has a responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;

14.3.14 A roster of Unit Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records and the date of closing of the first sale of each Unit sold by the Declarant;

14.3.15 Any leases of the Common Elements or areas and other leases to which the Association is a party;

14.3.16 Any employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Unit Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the services; and

14.3.17 All other contracts to which the Association is a party.

Section 14.4 Audit of Records Upon Transfer. Upon termination of the period of Declarant Control, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the Owners, other than the Declarant, by two-thirds vote, elect to waive the audit. The costs of the audit shall be a Common Expense.

Section 14.5 Termination of Contracts and Leases Made By the Declarant. If entered into before the Board elected pursuant to Section 15.1 takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities or (2) any other contract or lease between the Association and the Declarant or an affiliate of the Declarant, as defined by RCW 64.34.020(1), may be terminated without penalty by the Association at any time after the Board elected pursuant to Section 15.1 takes office upon not less than 90 days' notice to the other party or within such less notice period provided for without penalty in the contract or lease. This Section does not apply to any lease, the termination of which would terminate the Condominium or reduce its size, unless

the real property subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this Section.

Article 15. THE BOARD.

Section 15.1 Selection of the Board and Officers. Prior to the Transition Date, election or appointment of members of the Board shall be governed by Section 14.1. Within 30 days after the Transition Date, the Owners shall elect a Board, a majority of whom must be Unit Owners. The number of Board members and their terms of services shall be specified in the Bylaws. The Board shall elect officers in accordance with the procedures provided in the Bylaws. The members of the Board and officers shall take office upon election. Removal of Board members, and their terms of service shall be as provided in the Bylaws.

Section 15.2 Powers of the Board. Except as provided in this Declaration, the Bylaws or the Condominium Act, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in the Condominium Act, Declaration or the Bylaws.

Section 15.3 Managing Agent. The Board may contract with an experienced professional Managing Agent to assist the Board in the management and operation of the Condominium and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Termination of professional management and assumption of self-management by the Association shall be subject to the consent of Eligible Mortgagees of Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgagees are allocated. Any contract with a Managing Agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, either with or without cause, on 30 days' written notice.

Section 15.4 Limitations on Board Authority. The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to Article 26, to terminate the Condominium pursuant to Article 27, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board. The Board may, in accordance with the Bylaws, fill vacancies in its membership for the unexpired portion of any term.

Section 15.5 Right to Notice and Opportunity to Be Heard. Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of

the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Article 16. BUDGET AND ASSESSMENTS.

Section 16.1 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

Section 16.2 Preparation of Budget. Not less than 30 days before the end of the fiscal year the Board shall prepare a budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses of the Association to be paid during the year, make suitable provision for accumulation of reserves, including amounts reasonably anticipated to be required for operation, maintenance, repair, and replacement of the Common Elements and the Limited Common Elements, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The Declarant shall prepare the initial budget for the first fiscal year of the Association.

Section 16.3 Ratification of Budget. Within 30 days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than 14 nor more than 60 days after 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 is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. If the Board proposes a supplemental budget during any fiscal year, such budget shall not take effect unless ratified by the Unit Owners in accordance with this Section.

Section 16.4 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of any Owner's Assessments, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget shall be ratified pursuant to Section 16.3.

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Section 16.5 Assessments for Common Expenses. The sums required by the Association for Common Expenses as reflected by the annual budget and any supplemental budgets shall be divided into installments to be paid each month over the period of time covered by the budget or supplemental budget. The monthly Common Expense Assessments for each Unit is determined by the Common Expense Liability allocated to each Unit in Schedule B times the total monthly installment for Common Expenses for all Units; except that any Unit owned by the Association shall be exempt from Assessments. Monthly Assessments may be rounded to the nearest dollar. Monthly Assessments begin accruing for all Units upon the closing of the sale of the first Unit by the Declarant; provided that the Declarant may delay the commencement of Assessments and pay all actual Common Expenses (but no allocations to reserves). To the extent that any Common Expense is caused by the misconduct of an Owner or tenant of any Unit, the Association may assess that expense against that Unit.

Section 16.6 Contribution to Initial Working Capital. In connection with the closing of the sale of each Unit, the first purchaser thereof shall pay to the Association, as a nonrefundable contribution to an initial working capital fund, an amount equal to two times the initial monthly Assessment against the Unit, which amount shall not be considered as an advance payment of regular Assessments. On the Transition Date, the Declarant shall make such contribution for any Units remaining unsold on that date and shall be entitled to be reimbursed the amount so paid as each such Unit is conveyed. The Declarant shall not use any of the working capital fund to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits prior to the Transition Date.

Section 16.7 Special Assessments. For those Common Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy special Assessments for such expenses against the Units, subject to ratification by the Owners pursuant to Section 16.3. To the extent that any Common Expense is caused by the misconduct of an Owner or tenant of any Unit, the Association may, after Notice and opportunity to be heard, levy a special Assessment for the expense against the Unit.

Section 16.8 Creation of Reserves; Assessments. The Board shall create reserve accounts for anticipated expenses for repairs, replacement and improvements which will occur in the future in order to accumulate sufficient funds to pay such expenses when they occur. The operation of reserve accounts and Assessments for reserve accounts shall be further governed by the Bylaws.

Section 16.9 Notice of Assessments. The Board shall notify each Owner in writing of the amount of the monthly general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets and the Common Expense Liability allocations which apply to the Unit, on which the general and special Assessments are based. The Board shall furnish the same information to an Owner's mortgagee if so requested.

Section 16.10 Payment of Monthly Assessments. On or before the tenth day of each calendar month each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that month. Any Assessment not paid by the tenth day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 17.

Section 16.11 Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

Section 16.12 Failure to Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay Assessments during that or any subsequent year, and the monthly Assessments amounts established for the preceding year shall continue until new Assessments are established.

Section 16.13 Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

Section 16.14 Recalculation of Assessments. If Common Expense Liabilities are reallocated, Common Expense Assessments, special Assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

Article 17. LIEN AND COLLECTION OF ASSESSMENTS.

Section 17.1 Assessments Are a Lien; Priority. The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due. A lien under this Article shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recording of this Declaration; (b) a mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent, EXCEPT to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budgets adopted by the Association pursuant to Article 16 which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure of a

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mortgage, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract; PROVIDED that the priority of the Association's lien against Units encumbered by a mortgage held by an Eligible Mortgagee or by a mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three months if and to the extent that such lien priority includes any delinquencies which relate to a period after such mortgagee becomes an Eligible Mortgagee or has given such notice and before the Association gives such mortgagee a written notice of the delinquency; and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real property records of the county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to above.

Section 17.2 Lien May be Foreclosed; Judicial Foreclosure. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set forth in RCW 61.12, or nonjudicially in the manner set forth in Section 17.3. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure. Except as provided in the exception to (b) in Section 17.1, the holder of a mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such mortgagee or other purchaser of the Unit. Foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

Section 17.3 Nonjudicial Foreclosure. A lien arising under this Article may be foreclosed nonjudicially in the manner set forth in RCW 61.24 for nonjudicial foreclosure deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to Chicago Title Insurance Company or its successors or assigns ("Trustee"), to secure the obligations of each Unit Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Unit so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Unit, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. The Units are not used principally for agricultural or farming purposes. If the Association forecloses its lien nonjudicially pursuant to this Section, it shall not be entitled to the lien priority over mortgages provided in exception (b) of Section 17.1.

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Section 17.4 Receiver During Foreclosure. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Condominium, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section, and a receiver shall not be appointed less than 90 days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

Section 17.5 Assessments Are Personal Obligation. In addition to constituting a lien on the Unit, all sums assessed by the Association chargeable to any Unit, including all charges provided in this Article, shall be the personal obligation of the Owner of the Unit when the Assessments are made. Suit to recover personal judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 17.6 Extinguishment of Lien and Personal Liability. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

Section 17.7 Joint and Several Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waving the lien securing such sums.

Section 17.8 Late Charges and Interest on Delinquent Assessments. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established nonusurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

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Section 17.9 Recovery of Attorneys' Fees and Costs. The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

Section 17.10 Security Deposit. An Owner who has been delinquent in paying his monthly Assessments for three of the five preceding months may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three months' estimated monthly Assessments, which shall be collected and shall be subject to penalties for nonpayment as are other Assessments. The deposit shall be held in a separate fund, credited to such Owner, and may be resorted to at any time when such Owner is ten days or more delinquent in paying Assessments.

Section 17.11 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

Article 18. ENFORCEMENT OF DECLARATION, BYLAWS AND RULES AND REGULATIONS.

Section 18.1 Rights of Action. Each Owner, the Board and the Association shall comply strictly with this Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board. Failure to comply with any of the foregoing shall be grounds for an action to recover sums due, damages, and for injunctive relief, or any or all of them, maintainable by the Board on behalf of the Association or by an Owner.

Section 18.2 Failure of Board to Insist on Strict Performance No Waiver. The failure of the Board in any instance to insist upon the strict compliance with this Declaration or the Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board. This Article also extends to the Declarant.

Article 19. TORT AND CONTRACT LIABILITY.

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Section 19.1 Declarant Liability. Neither the Association nor any Owner except the Declarant is liable for the Declarant's torts in connection with any part of the Condominium which the Declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the Association must be brought against the Association and not against any Owner or any officer or director of the Association. If the wrong by the Association occurred during any period of Declarant Control and the Association gives the Declarant reasonable notice of and an opportunity to defend against the action, the Declarant who then controlled the Association is liable to the Association or to any Owner: (1) for all tort losses not covered by insurance suffered by the Association or that Owner; and (2) for all costs which the Association would not have incurred but for a breach of contract or other wrongful act or omission by the Association. If the Declarant does not defend the action and is determined to be liable to the Association under this Section, the Declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the Association in such defense. Any statute of limitations affecting the Association's right of action under this Section is tolled until the period of Declarant Control terminates. An Owner is not precluded from bringing an action contemplated by this Section because she is a Unit Owner or a member or officer of the Association.

Section 19.2 Limitation of Liability for Utility Failure, etc. Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, the Managing Agent, nor the Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the building, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

Section 19.3 No Personal Liability. So long as a Board member, or Association committee member, or Association officer, or the Declarant or the Managing Agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

Article 20. INDEMNIFICATION.

Each Board member, Association committee member, Association officer, the Declarant and the Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

Article 21. INSURANCE.

Section 21.1 General Requirements. Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association (or the owners association for Queen Anne Square) 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. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect property, liability and fidelity insurance that meet the insurance requirements for condominium projects established by FNMA, FHLMC, HUD or VA so long as any of them is a Mortgagee or Owner of a Unit, except to the extent such coverage is not reasonably 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 10 days' prior written notice to any and all insureds named therein, including Owners and Mortgagees.

Section 21.2 Property Insurance. The property insurance shall, at the minimum, provide all risk or special cause of loss coverage in an amount equal to the full replacement cost of the Common Elements, the Units, and Limited Common Elements, equipment, fixtures, appliances, improvements in the Units installed by the Declarant, and personal property of the Association with an "Agreed Amount Endorsement" and, if required by FNMA or FHLMC, construction code endorsements, such as a "Demolition Cost Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," an

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“Increased Cost of Construction Endorsement,” and such other endorsements as FNMA or FHLMC deems necessary and are available. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. The policy may, in the discretion of the Board, cover improvements or betterments installed by the Unit Owners. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Each Owner and the Owner’s Mortgagee, if any, shall be beneficiaries of the policy in accordance with the interest in Common Elements appertaining to the Owner’s Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request.

Section 21.3 Commercial General Liability Insurance. The liability insurance coverage shall insure the Board, the Association, the Owners, the Declarant, and the Managing Agent, and cover all of the Common Elements in the Condominium with a “Severability of Interest Endorsement” or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, host liquor liability, employers’ liability insurance, automobile liability insurance, and such other risks as are customarily covered with respect to residential condominium projects of similar construction, location and use. The limits of liability shall be in amounts generally required by Mortgagees for projects of similar construction, location and use but shall be at least \$2,000,000 combined single limit for bodily injury and property damage per occurrence and \$4,000,000 general aggregate.

Section 21.4 Insurance Trustee; Power of Attorney. The named insured under the policies referred to in Section 21.2 and Section 21.3 shall be the Association, as trustee for each of the Owners in accordance with their respective interests in the Common Elements. The insurance proceeds may be made payable to any trustee with which the Association enters into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. Subject to the provisions of Section 21.8, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

Section 21.5 Additional Policy Provisions. The insurance obtained pursuant to Section 21.2 and Section 21.3 shall contain the following provisions and limitations:

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

21.5.2 Such policies shall not provide for contribution by or assessment against Mortgagees or become a lien on the property superior to the lien of a first mortgage.

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

21.5.4 Coverage shall not be prejudiced by (a) any act, omission or neglect of the Owners of Units when such act or neglect is not within the scope of the Owner's authority on behalf of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control.

21.5.5 A waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit, and/or their respective agents, members of the Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

21.5.6 A standard mortgagee clause which shall:

(a) Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit or Unit lease or sublease in their respective order of preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any persons under any of them;

(c) Waive any provision invalidating such mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

(d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

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Section 21.6 Fidelity Insurance. The required fidelity insurance shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all other persons who handle or are responsible for handling funds of or administered by, the Association. The Managing Agent shall maintain fidelity insurance for its officers, employees, and agents who handle or who are responsible for handling funds of, or funds administered by the Association. All such fidelity insurance shall name the Association as an obligee and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time during the term of each policy, but, in no event, shall the aggregate amount of insurance be less than three months' aggregate Assessments. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 21.7 Owners' Individual Insurance. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

Section 21.8 Use of Insurance Proceeds. Any portion of the Condominium for which insurance is required under this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association pursuant to Article 22 unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) Owners holding at least 80% of the votes in the Association, including every Owner of a Unit or Limited Common Element which will not be rebuilt, and Owners other than the Declarant holding at least 80% the votes in the Association excluding votes held by the Declarant vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all of the damaged or destroyed portions of the Condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the interest in Common Elements of each Unit. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 23, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section, Article 27 governs the distribution of insurance proceeds if the Condominium is terminated.

Article 22. DAMAGE AND REPAIR OR DAMAGE TO PROPERTY.

Section 22.1 Initial Board Determination. In the event of damage to any Common Element or to any portion of a Unit or its Limited Common Elements, equipment or appliances covered by the Association's insurance policy, the Board shall promptly, and in all events within 30 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

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

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

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

22.1.4 The amount, if any, by which the estimated cost of repair exceeds the expected insurance proceeds, and the amount of the Assessments that would have to be made against each Unit if the excess cost were to be paid as a Common Expense and assessed against all the Units in proportion to their Common Expense Liabilities.

Section 22.2 Notice of Damage. The Board shall promptly, and in all events within 30 days after the date of damage, shall file a proof of loss statement with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss. The Board shall then provide each Owner with a written notice describing the damage and summarizing the initial Board determinations made under Section 22.1. If the damage affects a material portion of the Condominium, the Board shall also send the notice to each Mortgagee; and if the damage affects a Unit, the Board shall send the notice to the Mortgagee of that Unit. If the Board fails to do so within the 30-day period, any Owner or Mortgagee may make the determinations required under Section 22.1 and give the notice required under this Section.

Section 22.3 Definitions: Damage, Substantial Damage, Repair, Emergency Work. As used in this Article:

22.3.1 Damage shall mean all kinds of damage, whether of slight degree or total destruction.

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22.3.2 Substantial Damage shall mean that in the judgment of a majority of the Board the estimated Assessment determined under Section 22.1.4 for any one Unit exceed ten percent of the full, fair market value of the Unit before the damage occurred, as determined by the then current assessment for the purpose of real estate taxation.

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

22.3.4 Emergency Work shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

Section 22.4 Execution of Repairs

22.4.1 The Board shall promptly repair the damage and use the available insurance proceeds therefor as provided in Section 21.8. If the cost of repair exceeds the available insurance proceeds the Board shall impose Assessments against all Units in proportion to their Common Expense Liabilities in an aggregate amount sufficient to pay the excess costs.

22.4.2 The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient Assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

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

Section 22.5 Damage Not Substantial. If the damage as determined under Subsection 22.3.2 is not substantial, the provisions of this Section shall apply.

22.5.1 Either the Board or the requisite number of Owners, within 15 days after the notice required under Section 22.2 has been given, may but shall not

be required to, call a special Owners' meeting in accordance with Section 13.4 and the Bylaws to decide whether to repair the damage.

Except for emergency work, no repairs shall be commenced until after the 15-day period and until after the conclusion of the special meeting if such a special meeting is called within the 15 days.

22.5.2 A decision to not repair or rebuild may be made in accordance with Section 21.8.

Section 22.6 Substantial Damage. If the damage determined under Section 22.3.2 is substantial, the provisions of this Section shall apply.

22.6.1 The Board shall promptly, and in all events within 30 days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within 30 days, then notwithstanding the provisions of Section 13.4 and the Bylaws, any Owner or first mortgagee of a Unit may call and conduct the meeting.

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

22.6.3 At the special meeting, the following consent requirements will apply:

(a) The Owners shall be deemed to have elected to repair the damage in accordance with the original plan unless the Owners of at least 80% of the total voting power of the Condominium other than that held by the Declarant, including every Owner of a Unit which will not be rebuilt and every Owner of a Unit to which a Limited Common Element which will not be rebuilt is allocated, have given their written consent not to repair the damage.

(b) The unanimous consent of all Owners will be required to elect to rebuild in accordance with a plan that is different from the original plan.

(c) In addition to the consent by the Owners specified above, any election not to repair the damage or not to rebuild substantially in accordance with the original plan will require the approval of eligible holders of first mortgages on Units that have at least 51% of the votes subject to eligible holder mortgages.

(d) Failure to conduct the special meeting provided for under Section 22.6.1 within 90 days after the date of damage shall be deemed a unanimous decision to repair the damage in accordance with the original plan.

Section 22.7 Effect of Decision Not to Repair. In the event of a decision under either Section 22.5.2 or 22.6.3 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed as provided in Section 21.8.

Article 23. CONDEMNATION.

Section 23.1 Consequences of Condemnation; Notices. If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and Mortgagee and the provisions of this Article shall apply.

Section 23.2 Power of Attorney. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings and negotiations, settlements and agreements with the condemning authority for acquisition of Common Elements or any part thereof, from the condemning authority. The Board may appoint a trustee to act on behalf of the Owners in carrying out the foregoing functions in lieu of the Association. Should the Association not act, based on their right to act pursuant to this Section, the affected Owners may individually or jointly act on their own behalf.

Section 23.3 Condemnation of a Unit. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. The proceeds from the condemnation of a Unit shall be paid to the Owner or lienholder of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section is thereafter a Common Element.

Section 23.4 Condemnation of Part of a Unit. Except as provided in Section 23.3, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for