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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
HAMILTON ISLAND PUD**

Grantor/Declarant: LIFE-KIND, LLC, a Washington limited liability company

Grantee: LIFE-KIND, LLC, a Washington limited liability company

Legal  
Description: Lots 1-32, Tracts A and B, of the Hamilton Island PUD,  
recorded under Skamania County Auditor's File  
No. 2006161510

Property Tax  
Account Number: 02-07-29-0-0-0201-00

FILED BY: Life Kind LLC . REF. # 2006161510

**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
HAMILTON ISLAND PUD**

THIS DECLARATION is made this 10<sup>th</sup> day of May, 2006, by LIFE-KIND LLC, a Washington Limited Liability Company ("Declarant").

**RECITALS:**

- A. Declarant has developed a Planned Unit Development known as the Hamilton Island Planned Unit Development ("Hamilton Island PUD") upon certain real property in the City of North Bonneville, Skamania County.
- B. Declarant has formed a homeowners' association to which only the owners of lots in Hamilton Island PUD will be members, and which has been filed with the Washington Secretary of State as the "Hamilton Island Homeowners' Association", a non-profit corporation.
- C. Declarant desires to establish covenants for the purpose of protecting the value and desirability of the property within Hamilton Island PUD, and the rights and benefits of the lot owners thereof, of insuring the aesthetic quality and uniformity of the structures and improvements in Hamilton Island PUD, and of defining the rules for the use and ongoing maintenance of Lots 1-32, all common areas, easements, and storm water management facilities.

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

**Article 1.  
Definitions**

As used in this Declaration, the terms set forth below shall have the following meanings:

- 1.0 "Architectural Review Committee" means the committee appointed pursuant to 14.4 below.
- 1.1 "Assessments" mean all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration.
- 1.2 "Association" means the nonprofit corporation to be formed to serve as an Owners' association as provided in Article 6 of this Declaration, and its successors and assigns.
- 1.3 "Board of Directors" or "the Board" means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.
- 1.4 "Bylaws" means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.
- 1.5 "Declarant" means LIFE-KIND LLC, a Washington Limited Liability Company, and its successors and assigns, if such successor or assignee should acquire Declarant's interest in the remainder of the Project, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant's rights under this Declaration.

1.6 **"Design Guidelines"** means the guidelines adopted from time to time by the Architectural Review Committee pursuant to 14.1 below.

1.7 **"Lot"** means a numerically designated and platted lot within the Project (including the Unit located on such Lot), with the exception of the Project Common Areas and any tract dedicated to a public body by the plat.

1.8 **"Mortgage"** means a mortgage or a deed of trust; **"mortgagee"** means a mortgagee or a beneficiary of a deed of trust; **"mortgagor"** means a mortgagor or a grantor of a deed of trust.

1.9 **"Owner"** means the person or persons, including Declarant, owning any Lot in the Project, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.10 **"Project Common Areas"** means all real property and interests in real property (including the improvements thereto such as storm water management facilities) which have been conveyed to the Association in the Hamilton Island PUD Plat and all of which are for the benefit of the Owners for their common use and enjoyment, including those tracts designated as Project Common Areas in Section 3.1 below.

1.11 **"Rules and Regulations"** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.12 **"Sold"** means that legal title has been conveyed or that a contract of sale has been executed under which the purchaser has obtained the right to possession.

1.13 **"The Project"** means the real property described in Section 2.1 below.

1.14 **"This Declaration"** means all of the easements, covenants, restrictions and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.15 **"Turnover Meeting"** means the meeting called by Declarant pursuant to Section 6.6 below, at which Declarant will turnover administrative responsibility for the Project to the Association.

1.16 **"Unit"** means a building or a portion of a building located upon a Lot within the Project and designated for separate occupancy as a dwelling, together with any attached deck or patio.

## **Article 2.**

### **Project Subject to These Covenants**

2.1 **Description.** Declarant hereby declares that all the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

The following real property located in the Skamania County, Washington, contained in that certain plat entitled "Hamilton Island PUD":

Lots 1-32, and Tracts A and B, of the Hamilton Island PUD, recorded under Skamania County Auditor's File No. 2006161510

2.2 **Improvements.** Declarant does not agree to build any improvements on the Project other than as required by Skamania County or the City of North Bonneville, but may elect, at Declarant's option, to build additional improvements.

**2.3 Withdrawal of Project.** Property may be withdrawn from Hamilton Island PUD only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Project at any time prior to the sale of the first Lot in the Project, subject to the prior approval of Skamania County and the City of North Bonneville. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Skamania County, Washington. If a portion of the Project is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated among the remaining Lots.

**Article 3.**  
**Property Rights in Project Common Areas**

**3.1 Designation of Project Common Areas.** Tracts A and B, as shown on the plat, shall be Project Common Areas for purposes of this Declaration.

**3.2 Owner's Easements of Enjoyment.** Subject to the provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Project Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

**3.3 Title to the Project Common Areas.** Title to the Project Common Areas has been conveyed to the Association by Declarant in the plat.

**3.4 Extent of Owners' Rights.** The rights and easements of enjoyment in the Project Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Project the following easements over, under and upon the Project Common Areas:

(i) An easement on all Project Common Areas for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors and any such easement shown on any plat of the Project.

(ii) An easement over all roadways for vehicular access within the Project and to adjacent areas.

(iii) An easement for construction, maintenance, repair and use of Project Common Areas, including common facilities thereon.

(iv) An easement for the purpose of making exterior repairs to the Units.

The Project Common Areas shall be subject to public and private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage and access over their entirety. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Project Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Project Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Project.

(b) **Use of the Project Common Areas.** The Project Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Declaration, the Project Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Project Common Areas. The Project Common Areas and facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner. Nothing herein shall prevent the placing of a sign or signs upon the Project Common Areas identifying Hamilton Island PUD or identifying items of interest, including directional signs, provided that such signs comply with any applicable sign ordinances. The Board of Directors shall have authority to abate any trespass or encroachment upon the Project Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. The Association, upon approval in writing of at least 50 percent of the

Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of City of North Bonneville, may dedicate or convey any portion of the Project Common Areas to a park district or other public body.

(c) **Alienation of the Project Common Areas.** The Association shall not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Project Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A voting rights and the Class B member, if any, have given their prior written approval and the City of North Bonneville has given its approval. This provision shall not apply to the easements described in Section 3.4(a).

(d) **Limitation on Use.** Use of the Project Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner and his or her family members, guests, tenants and contract purchasers to the extent provided in Article 9 below.

(ii) The right of the Association to adopt, amend and to repeal rules and regulations in accordance with this Declaration.

**3.5 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment to the Project Common Areas to members of his or her family, tenants, or contract purchasers who reside on the Project, whose use of the Project Common Areas shall be subject to this Declaration and the Rules and Regulations.

**3.6 Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Project Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the Owners of Lots in the Project a perpetual easement and right-of-way for access over, upon and across the Project Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Project Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Project or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

#### **Article 4. Property Rights in Lots**

**4.1 Use and Occupancy.** The Owner of a Lot in the Project shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 5 below and all other provisions of this Declaration for the mutual benefit of all Owners.

**4.2 Easements Reserved.** In addition to any utility and drainage easements shown on the recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant, the Association and Owners, as applicable:

(a) **Right of Entry.** Declarant, the Architectural Review Committee, the Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing the maintenance referred to in Sections 7.1 and 7.8 below and determining whether or not the Lot is then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(b) **Encroachments.** Each Lot and all Project Common Areas shall have an easement over all



adjoining Lots and Project Common Areas for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting or movement of any portion of the Project, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Project Common Areas so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment. The encroachments described in this paragraph shall not be construed to be encumbrances affecting the marketability of title to any Lot. Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct.

(c) **Utilities.** Each Lot shall be subject to an easement under and across the Lot and Unit for installation, maintenance and use of power, gas, electric, water and other utility and communication lines and services and for meters measuring such services installed by Declarant or with approval of the Board of Directors.

(d) **Rain Drains and Storm Sewers.** An easement for installation and maintenance of such rain drains, storm water systems and connected storm sewers installed or to be installed (as required by governmental regulatory authorities or as otherwise authorized by the Board of Directors) in or around any Unit or under the surface of any Lot.

**4.3 Party Walls.** Each wall that is built as a part of the original construction of the dwellings within the Project and placed upon the dividing line between Lots shall constitute a "party wall," and the following provisions shall apply:

(a) **General Rules of Law to Apply.** The general rules of law of the State of Washington regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to all such party walls, to the extent such rules are not inconsistent with the provisions of this section.

(b) **Sharing of Repair and Maintenance.** To the extent established by a resolution of its Board of Directors, reasonable repairs and maintenance of a party wall will be performed by the Association. Otherwise, such maintenance and repairs shall be performed by the Owners sharing the wall, who shall share the cost equally.

(c) **Destruction by Fire or Other Casualty.** If the party wall is destroyed or damaged, then the wall shall be restored to its former condition in the manner provided in paragraph (b) above.

(d) **Weatherproofing.** Notwithstanding any other provision of this Section 4.2(a), an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements to the extent such cost is not covered by the Association's insurance policy.

(e) **Arbitration.** In the event of any disputes arising concerning a party wall, or under the provisions of this Section 4.2(a), the Board of Directors shall act as arbitrators and their decision shall be final.

## **Article 5.**

### **Restrictions on Use**

**5.1 Windows, Decks, Porches and Outside Walls.** To preserve the attractive appearance of the Project, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Project Common Areas. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks.

**5.2 Alterations.** Exterior painting, maintenance and roof repair or replacement may be performed by the Association to the extent provided in Section 7.1 below. Owners are expressly prohibited from painting or changing the exterior of a building or other structure after original construction without the written permission of the Board of Directors and the Architectural Review Committee. To guard against moisture intrusion, no penetration of or attachments to the exterior surfaces is allowed. No structure may be installed outside of Units, including fences, unless installed by Declarant or the Association or installed by an Owner with written approval of the Board of Directors and the Architectural Review Committee.

**5.3 Insurance.** Nothing shall be done or kept in any Lot or Project Common Area that will increase the cost of insurance on the Units or Project Common Areas. No Owner shall permit anything to be done or kept in his Unit or in the Project Common Areas that will result in cancellation of insurance on any Lot or any part of the Project Common Areas.

**5.4 Leasing and Rental of Units.** No Owner may lease or rent his Unit for a period of less than thirty (30) days. All leases or rentals shall be by written lease agreement, that shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Rules and Regulations, Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or the Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his Unit.

**5.5 Garages.** All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage, and shall not be used as office or living space.

**5.6 Landscape.** All exterior landscape installation and maintenance, including lawn care, plant pruning and bark mulch application, will be performed by the Association. An Owner may not change the landscaping or install additional landscaping without the prior written approval of the Board of Directors.

**5.7 Rain Drains, Catch Basins, Swales and Sewers.** All rain drains, catch basins, bio-filtration swales and storm sewers shall be kept free of debris, and Owners shall not cause any such drains, catch basins, swales or sewers to become blocked, clogged or otherwise to back up into any Lot.

**5.8 Firearms.** The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

**5.9 Residential Use.** No Lot shall be used except for residential purposes, except that an Owner or occupant residing in the Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside on the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. This provision however shall not be construed so as to prevent or prohibit an Owner from maintaining his professional personal library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls, or occasionally conferring with business or professional associates in his Unit. The use of Units as builder models and onsite sales offices for the primary purpose of obtaining presales within the Property shall be exempt from the above restrictions.

**5.10 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

**5.11 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets kept largely indoors that are not kept, bred or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective Owners. No animal shall be permitted to roam the Property unattended, and each dog shall be kept on a leash while outside a Lot or within a

Project Common Area. Dog runs and doghouses shall be fully screened or fenced from view from any other Lot, and shall not be visible from the street. All animals shall be controlled so as not to be a nuisance to any Owner. Any unrestrained or barking dog shall constitute a nuisance. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

**5.12 Maintenance of Structures.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean, neat, sightly and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and the interior surface of perimeter fences and other exterior Improvements and glass surfaces. Units and outbuildings shall be painted as needed to maintain an attractive appearance. Roofs shall be kept clean and free of moss and debris. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

**5.13 Maintenance of Landscape.** Each Owner shall maintain the landscaping and yard area in an attractive manner and free from insects and diseases; each Owner shall provide for timely replacement of lost plant life and bark dust, and trimming and pruning of plant material to prevent an overgrown look. Yards and lawns must be kept free of weeds, watered and fertilized as needed to be kept green. In order to protect the feel of the community, any pre-existing living trees of greater than six inches in diameter may not be removed without written approval of the Architectural Control Committee.

**5.14 Parking.** On street parking is only permitted in designated spaces. The streets in front of the Lots shall not be used for parking of any vehicle and shall not be used for the storing of any boats, trailers, camper vehicles, trucks or other vehicles of any kind or nature. Not more than two motor vehicles shall be parked in the driveway or within the front setback of the Unit except for infrequent instances when guests are at the home. No parking or dismantling of inoperable vehicles shall be permitted on any lot outside of a garage or other enclosed structure. The Board may adopt and maintain current rules and regulations concerning the parking and storage of vehicles on any Lot or any portion to provide for exceptions and/or modifications to the conditions of this section as determined in the sole discretion of the Board. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 9.1(c) below.

**5.15 Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair to be abandoned or to remain parked on the Owner's Lot (unless screened from view) or on the Project Common Area for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in a "state of disrepair" when the Board of Directors reasonably determines that its appearance (including, without limitation, rust, dents or primer) causes the vehicle to be unsightly as viewed from the public street or that the vehicle is not operable. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 9.1(c) below.

**5.16 Signs.** No signs shall be erected or maintained on any Lot except (a) one professional sign of not more than one (1) square foot, and (b) not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant, or a licensed real estate agent, not more than five (5) square feet, may be temporarily displayed on any Lot, and two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of "political" signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

**5.17 Rubbish, Trash and Storage.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view, except during garbage pickup days. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets, storm drains or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such



materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner. No house trailer, recreational vehicle, camper, boat, trailers, of any type or any item whatsoever shall be stored or parked in the front yard or driveway portion of any Lot; such storage areas must be behind the adjacent building line and behind a fence of at least five (5) feet in height. Neither the front entry nor porch area nor the yard are to be used for storage of personal or household goods.

**5.18 Construction.** Construction of any dwelling shall be completed, including exterior decoration and landscaping, within nine (9) months from the date of start of construction. All Lots shall, prior to construction of the improvements thereon, be kept in a neat and orderly condition and free of brush, vines, weeds, and the grass thereon cut and mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

**5.19 Landscape.** The yards of all Lots shall be landscaped within ninety (90) days of the date the Unit has an occupancy permit issued, weather permitting. Landscaping shall, at a minimum, consist of planting areas, areas mulched with bark dust, lawn covering at least forty percent (40%) of the yard area, and a finished look. No artificial vegetation, exterior sculpture, fountains, and similar items shall be permitted in the yard of any Lot unless approved by the Architectural Review Committee.

**5.20 Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

**5.21 Fences.** For reasons of aesthetics and visibility, no fencing shall be allowed in the yard of any Lot. Trellises are permitted with the written approval of the Architectural Review Committee.

**5.22 Service Facilities: Basketball Equipment.** Clotheslines, garbage cans, aboveground storage tanks, mechanical equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring property owners and the street. All rubbish, trash, and garbage shall be stored in appropriate containers and shall regularly be removed from the Lots and shall not be allowed to accumulate thereon. No overhead wire or service drop for the distribution of electric energy or for telecommunication purposes, nor any pole, tower, or other structure supporting said shall be permitted within the Property. All Owners shall use underground service wires to connect their Lot and the structure built thereon to the underground service wires to connect their Lot and the structure built thereon to the underground electric, CATV, or telephone utility facilities provided. No permanent basketball hoops shall be placed in the front area of any Lot. Portable basketball hoops may not be used in the street or any public right of way.

**5.23 Antennas and Satellite Dishes.** Any television antenna shall be mounted in the attic of the Unit. One satellite dish of less than thirty-six (36) inch diameter is allowed.

**5.24 Exterior Lighting or Noisemaking Devices.** Except with the consent of the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than as originally installed by the builder of the home and security and fire alarms. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday.

**5.25 Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

**5.26 Owner's Obligation.** The Owner of a Lot will be responsible for any necessary grading, drainage, or retaining walls. The Declarant shall not be responsible for any of the cost thereof. Each Owner of a Lot will be responsible for keeping roadways and adjoining Lots clean and free of debris (and roadways free of mud) arising from construction, landscaping, or maintenance activities on their Lot.

**5.27 Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Lots, Units and the Project Common Areas as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Project. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment,

modification or revocation thereof, shall be furnished by the Board of Directors to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

## **Article 6. Association**

**6.1 Organization.** Declarant shall, before the first Lot is conveyed to an Owner, organize the "**Hamilton Island Homeowners' Association**," as a nonprofit corporation under the general nonprofit corporation laws of the State of Washington, and the Association shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Project and all Owners of property located therein. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated Association of the same name. In that event the assets of the Association shall be dedicated to a public body, or all of the property, powers and obligations of the incorporated Association existing thereupon shall automatically vest in a successor unincorporated nonprofit association. Such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

**6.2 Membership.** Every Owner of one or more Lots within the Project shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Project, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership; shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

**6.3 Voting Rights.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When seventy-five percent (75%) of the Lots in Hamilton Island PUD have been sold and conveyed to Owners other than a successor Declarant;

(b) The expiration of three (3) years after the closing of the sale of the first Lot to an Owner other than a successor Declarant, or

(c) At such earlier time as Declarant may elect to terminate such special voting rights.

**6.4 General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Washington.

(c) The powers and obligations of a homeowner's association under RCW Chapter 64.38.

(d) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Washington.

**6.5 Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, all of the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article 7 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 5.27 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect assessments as provided in Article 8 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as manager; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Project; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money. Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration and, subject to Section 3.4(c) above, encumber the Project Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to easements across all or any portion of the Project Common Area, and shall accept any real or personal property, leasehold or other property interests within the Project conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Project Common Area.** Except as otherwise provided in Section 3.4(c) above, the Association may sell, transfer or encumber all or any portion of the Project Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Project Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the

users of such services without being required to render such services to those of its members who do not assent to such charges, subject to such Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

**6.6 Liability.** A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional misconduct, a knowing violation of law, or for any transaction from which a director or officer will personally receive a benefit in money, property or services to which the director or officer is not legally entitled. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**6.7 Interim Board: Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors until replaced by Declarant or their successors have been elected by the Owners at the Turnover Meeting. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Project to the Association not later than ninety (90) days after termination of the Class B membership as provided in Section 6.3 above. At the Turnover Meeting, the interim directors shall resign and their successors shall be elected by the Owners as provided in the Bylaws. If the Declarant fails to call the Turnover Meeting as required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

**6.8 Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Skamania County, Washington. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit "A" to this Declaration.

#### **Article 7.**

#### **Maintenance, Services, Condemnation, Damage**

**7.1 Exterior Maintenance.** Each Owner shall provide exterior maintenance upon each Unit as follows: paint, caulk, repair, replace and care for roofs, roof overhangs, eaves, gutters, downspouts, flashings, exterior building surfaces, and other exterior improvements as necessary to prevent water intrusion. Such exterior maintenance also requires Owner to:

(a) Repair, replace, restore and clean the interior of the Unit, including, but not limited to interior and exterior glass and skylights;

(b) Maintain exterior window casements, sashes and frames, window screens, storm windows and exterior doors, including caulking, painting or staining of the exterior of the same;

(c) Keep all mechanical and electrical systems and hardware in the Unit and on the exterior of the Unit in good repair and working order, including, without limitation, maintaining, repairing and replacing as necessary electrical wiring, fixtures, plumbing, appliances, heating, air conditioning, sewage disposal and fire protection systems;

(d) Maintain in good condition, repair and replace as necessary bulbs for exterior lighting, walkways, driveways, patios and decks, keeping them free of snow, ice, debris and obstruction;

(e) Maintain decks and patios in neat and good condition,



The Association may maintain party walls to the extent provided in Section 4.3. The Association shall maintain all landscaping within the Project (including sprinkler systems and the cost of irrigation water) and exterior fencing. By policy resolution, the Board of Directors may clarify the Association's maintenance obligations or identify other elements to be maintained by the Association. The cost of such maintenance by the Association shall be a common expense paid out of assessments described in Article 8. In the event, however, the need for such maintenance or repair is caused by the willful or negligent act or omission of an Owner, his or her family, tenants, guests or invitees, and to the extent such maintenance or repair is not covered by the Association's insurance policy, the costs of such maintenance and repair may, in the discretion of the Board of Directors, be charged to the Owner as an Individual Assessment.

**7.2 Maintenance and Lighting of Project Common Areas.** In addition to the maintenance as set forth in Section 7.1, the Association shall maintain any exterior lighting for and perform all maintenance upon the Project Common Areas and the improvements located thereon. The storm water facilities located on the Property shall be maintained by the Association in accordance with the Operations and Maintenance guidelines set forth on Exhibit "B" to this Declaration.

**7.3 Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of any utilities, such as sanitary sewer service lines, domestic water service lines and storm drainage facilities, located in the Project Common Areas and Lots. Each Owner shall maintain at such Owner's expense utility lines to the extent located within the Unit.

**7.4 Utilities and Services.** The Association may provide or contract for such utilities and services as the Board of Directors may reasonably deem to be of benefit to the Project, including, without limitation, cable, telecommunications, garbage and trash removal and security services.

**7.5 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Project, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its board of directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Project assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

**7.6 Access at Reasonable Hours.** For the purpose solely of performing the maintenance and services provided for in this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot, party wall, or exterior portion of a dwelling at reasonable hours. The Association shall also have a right of entry for purposes of effecting emergency repairs or action to prevent imminent damage or injury to other Units, to other Owners and their guests or invitees, or to the Project Common Areas. In such instances, the Association shall give notice by telephone if reasonably possible prior to entry.

**7.7 Condemnation.** If any portion of the Project Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Project Common Areas and each Owner appoints the Association to act as his other attorney-in-fact for such purposes. All compensation, damages or



other proceeds of the taking of Project Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Project Common Area, including a structure on Project Common Area, which may be required to permit the continued enjoyment of such Project Common Area. Thereafter, the Association shall deposit such sums in the Operations Fund or apply these sums to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration.

**7.8 Damage or Destruction by Casualty.** In the event of damage or destruction that affects a material portion of the Project, timely written notice shall be given to the Owners and their mortgagees, and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of any structures erected on the Project Common Areas or to the structure, roof or exterior of any Unit, the damage or destruction shall be repaired, reconstructed, or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten percent (10%) of the Owners shall have requested a special meeting of the Association. Such special meeting must be held within thirty (30) days of the date of damage or destruction. At the time of such meeting, unless seventy-five percent (75%) of the Owners, whether in person, by writing or by proxy, with the approval of seventy-five percent (75%) or more of the mortgagees if and as required by this Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt, with the work commencing as soon as reasonably possible. In the event any portion of the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed Project Common Areas or Units, the Association shall distribute the proceeds attributable to Units to the Owners and mortgagees thereof, as their interests may appear. The proceeds attributable to Project Common Areas shall be deposited in the Operations Fund or applied to such capital improvements as shall be authorized pursuant to Section 8.5 of this Declaration. If the insurance proceeds are not sufficient to pay the entire cost, the Board of Directors, if necessary, may assess the Owner of each Unit such additional amounts as required to pay the cost of restoration.

(b) If, due to act or neglect of an Owner or a member of his or her family or his or her household pet or of a guest or other unauthorized occupant or visitor of such Owner, damage shall be caused to the Project Common Areas or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs or replacements as may be determined by the Association, to the extent not covered by the Association's insurance, as an Individual Assessment.

**7.9 Owner's Maintenance Responsibilities.** Each Owner shall be responsible for maintaining such Owner's Unit and Lot, to the extent such maintenance is not the responsibility of the Association under Sections 7.1 and 7.8 above, in a clean and attractive condition, in good repair and in such fashion as not to create a hazard. The Association shall have the authority to require each Owner to keep his or her respective Lot and Unit at a high standard of maintenance. In the event an Owner fails to maintain his or her Unit or Lot to the standards established by the Board of Directors pursuant to the authority of this section, the Association will have the right and the authority at its option, after giving reasonable notice and opportunity to be heard to the respective Owner, to cause such repairs and maintenance to be performed as are necessary to meet the foregoing standard and charge the respective Owner for such repairs and maintenance.

**7.10 Option to Provide Maintenance Services through Association.** Upon request of an Owner, the Association may provide maintenance and repair services which would otherwise be the responsibility of such Owner under this Article, provided that the respective Owner shall reimburse the Association, as an Individual Assessment, for such services immediately upon completion. Alternatively, upon proposal by the Board of Directors and approval by fifty-one percent (51%) of the total voting power of the Association, the charge for such maintenance and repair services may be designated a common expense of the Association to be paid with funds collected from the Owners pursuant to the assessment procedures set forth in Article 8 below. In the event the Owners elect to designate any such maintenance and repair services as a common expense of the Association, (i) such designation shall identify specifically which services are to become included as common expenses (with any maintenance and repair responsibilities not so included to remain the obligation of the Owners under Section 7.9 above); and (ii) the Association may add a charge to such common expenses sufficient to cover the costs of administering, coordinating and invoicing for such additional maintenance and repair services.

## **Article 8. Assessments**

**8.1 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Project and for the improvement, operation and maintenance of the Project Common Areas and other areas to be maintained by the Association.

**8.2 Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments and Individual Assessments, all as more particularly described below.

### **8.3 Commencement and Apportionment of Assessments.**

(a) **When Subject to Assessment.** Lots shall become subject to Annual Assessments (including assessments for reserves), Special Assessments or Emergency Assessments at such time as an occupancy certificate is issued for the Unit located on the Lot. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence.

(b) **Apportionment.** All Lots subject to assessment shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any of the Project Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

**8.4 Annual Assessments.** The Board of Directors shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over assessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until the assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 8.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

**8.5 Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions that in the aggregate in any fiscal year exceed an amount equal to fifteen percent of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together for acquisition or construction of new capital improvements or additions with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 8.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

**8.6 Emergency Assessments.** If the Annual Assessments levied at any time are, or will become, inadequate

to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noted as to the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Emergency Assessments shall be apportioned as set forth in Section 8.3 above and payable as determined by the Board of Directors.

**8.7 Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitation, charges for services provided under Section 6.5(i) and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

**8.8 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 8.9, separate and apart from its other funds, in a bank account in the name of the Association to be known as the "Operations Fund." All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 8.9. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Project and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Project Common Areas and of the Lots situated upon the Project, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 7.
- (b) Payment of the cost of insurance as described in the Bylaws of the Association.
- (c) Payment of taxes assessed against the Project Common Areas and any improvements thereon.
- (d) Payment of the cost of water service, sewer service and garbage and trash disposal for the Project Common Areas or that are commonly billed.
- (e) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.
- (f) In the event any condemnation of a portion of the Project Common Areas should result in a surplus in the Operations Fund not needed for payment of the other items described in this section, such surplus shall be divided by the number of Units within the Project and such amounts paid equally to the holder of any first mortgage or deed of trust on each Lot, or if none, to the Owner of the Lot.

**8.9 Reserve Fund.** The Board of Directors may establish a Reserve Fund for major maintenance, repair or replacement of those items to be maintained by the Association, all or a part of which could not reasonably be funded from Annual Assessments ("**Reserve Fund**"). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of commonly maintained property as determined by the Board of Directors and shall be kept separate from the Operations Fund. The Board of Directors, however, may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses that will later be paid from Annual Assessments, Special Assessments, or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

**8.10 Creation of Lieu and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Project, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Section 9.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 9 below.

**8.11 Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

## **Article 9. Enforcement**

**9.1 Violation of Protective Covenants.** In the event that any Owner violates any provision of this Declaration, the Bylaws of the Association or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, then the Association acting through its Board of Directors shall, after notice and opportunity to be heard as provided in the Bylaws, have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights and the right to use the Project Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Unit;

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**9.2 Default in Payment of Assessments; Enforcement of Lien.** If any Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:



(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Project Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine or charge is due. RCW 6.13.080 provides that an association may foreclose its lien for assessments and that the homestead exemption does not apply to the execution or forced sale. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under RCW Chapter 61.12. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

**9.3 Notification of First Mortgagee.** The Board of Directors shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner that is not cured within sixty (60) days.

**9.4 Subordination of Lien to Mortgages.** The lien of the assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot that was made in good faith and for value and that was recorded prior to the recording of the notice of lien. Sale or transfer of any Lot shall not affect the assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an assessment notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any assessments or charges thereafter becoming due or from the lien of such assessments or charges.

**9.5 Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Washington. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors.

**9.6 Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

**9.7 Assignment of Rents.** As security for the payment of all liens arising pursuant to this Article 9, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of



such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration or the Bylaws to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time after ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement under this Declaration, and in such order as the Association may determine. Such action shall not cure nor waive any default under this Declaration or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this section shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Lot to do the same or similar acts.

**9.8 Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

**9.9 Enforcement by City of North Bonneville.** The provisions of this Declaration relating to preservation and maintenance of Project Common Areas shall be deemed to be for the benefit of the City of North Bonneville as well as the Association and Owners of Lots, and the City may enforce such provisions by appropriate proceedings at law or in equity or may cause such maintenance to be made, in which event such costs shall become a lien upon the Project.

#### **Article 10. Dispute Resolution**

**10.1 Mediation and Arbitration.** Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, the Architectural Control Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Project shall be first subject to mediation, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Vancouver, Washington, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Washington and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

**10.2 Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the presiding judge of the Superior Court of Skamania County, Washington shall designate the arbitrator.

**10.3 Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

**10.4 Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Skamania County Superior Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without

limitation, award against a party for failure to comply with any order.

**10.5 Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

**10.6 Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.7 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Washington or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 10.

**10.7 Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or the Rules and Regulations; to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

**10.8 Survival.** The mediation and arbitration agreement set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Project and any Lot therein and shall survive the termination of this Declaration.

## **Article 11. Mortgagees**

**11.1 Reimbursement of First Mortgagees.** First mortgagees of units may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Project Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Project Common Areas or any Unit. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association, to the extent the same was the responsibility of the Association.

**11.2 Right of First Mortgagees Relating to Maintenance.** At any time that the Project Common Areas or the exterior of a Unit is not maintained or repaired by the Association pursuant to Article 7 to the extent reasonably necessary to protect and preserve the value of the Project for security purposes, then the record mortgagee, upon giving written notice as hereinafter provided, shall be entitled to exercise the rights of the Owner of the Unit as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one (1) year following the date of such notice. During this one (1) year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as

an observer. Notice from the mortgagee under this section shall quote this Section 11.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last known address of each.

**11.3 FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), if this Declaration was previously approved by such agencies: annexation of additional properties, mergers and consolidations, mortgaging or dedication of Project Common Areas, dissolution of the Association and amendment of this Declaration or the Articles of Incorporation or the Bylaws of the Association.

## **Article 12.**

### **Amendment and Repeal**

**12.1 How Proposed.** Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

**12.2 Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Project, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the voting rights, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. To the extent required by Section 11.3, such amendment shall also require the prior written approval of the FHA and VA. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot, unless the Owners of the affected Lots unanimously consent to the amendment. The obligation to assess sufficient funds for maintenance and the obligation to maintain common areas may not be amended without the prior approval of the City of North Bonneville or its successor.

**12.3 Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Skamania County, Washington of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration, and acknowledged in the manner provided for acknowledgment of deeds.

**12.4 Regulatory Amendments.** Notwithstanding the provisions of Section 12.1 above, until the Turnover Meeting, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Washington, or any corporation wholly owned, directly or indirectly, by the United States or the State of Washington that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

## **Article 13.**

### **Miscellaneous Provisions**

**13.1 Lessees and Other Invitees.** Lessees, invitees, contractors, family members and other persons entering the Project under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his unit and other areas within the Project. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by

such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

**13.2 Enforcement.** The Association, or any Owner or the owner of any recorded mortgage on any part of the Project shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**13.3 Construction; Severability; Number; Caption.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**13.4 Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail, with postage prepaid, addressed as follows: If to Declarant, P.O. Box 100, Underwood, Washington 98651; if to an Owner, at the address given by the Owner at the time of his or her purchase of a Lot, or at the Unit; if to the Association, to the mailing address of the Association as filed with the Washington Secretary of State. The address of a party may be changed by him at any time by notice in writing delivered to the Association as provided herein.

**13.5 Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Hamilton Island PUD. This Declaration does not restrict the City of North Bonneville's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of the City of North Bonneville. The City of North Bonneville will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or Improvement in Hamilton Island PUD to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of the City of North Bonneville and this Declaration, any question regarding which provision controls shall be directed to the Association. The City of North Bonneville will not be liable for any approvals or permits that are granted in compliance with its regulations, the regulations of Skamania County, the State of Washington or any other jurisdiction, but that are not in compliance with this Declaration. Declarant and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the City of North Bonneville, Skamania County, the State of Washington or any other jurisdiction.

#### **Article 14. Architectural Review Committee**

**14.1 Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee, except that Declarant shall not be required to obtain such approval for Improvements commenced, erected, placed or altered by Declarant. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications that were submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes,



solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing an application. In all cases in which the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant.

**14.2 Committee Decision.** The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

**14.3 Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the Design Guidelines or design standards that the Committee intends for the Project. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the City of North Bonneville. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to consent to any proposed work.

**14.4 Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than two, as Declarant may from time to time appoint. Declarant may, at its discretion, remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or, if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

**14.5 Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

**14.6 Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

**14.7 Nonwaiver.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**14.8 Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors pursuant to Section 14.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within



fifteen (15) working days after receipt of such notification.

**14.9 Effective Period of Consent.** The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, or unless the Owner has applied for and received an extension of time from the Committee.


**14.10 Estoppel Certificate.** Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

**14.11 Enforcement.** If during or after the construction the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 14.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 9.1 above.

**IN WITNESS WHEREOF,** Declarant has executed this Declaration as of the date set forth above.

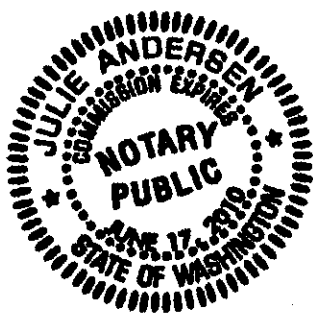
DECLARANT:

LIFE-KIND, LLC,  
a Washington limited liability company

  
By: John Crumpacker, its Manager

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF SKAMANIA     )

On this day personally appeared before me John Crumpacker, who I know to be, or have satisfactory evidence that he is the manager of LIFE-KIND, LLC, a Washington limited liability company, and who, under oath, stated that he was authorized to sign on behalf of such limited liability company the within and foregoing instrument and acknowledged it to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned.



*Julie Andersen*  
Notary Public for the State of Washington

My commission expires 6/17/2010

EXHIBIT A

BYLAWS  
HAMILTON ISLAND HOMEOWNERS' ASSOCIATION

**BYLAWS OF  
HAMILTON ISLAND HOMEOWNERS' ASSOCIATION**

**ARTICLE 1.**

**DEFINITIONS**

**1.1 Association.** "Association" shall mean HAMILTON ISLAND HOMEOWNERS' ASSOCIATION, a nonprofit corporation organized and existing under the laws of the State of Washington.

**1.2 Articles of Incorporation.** "Articles of Incorporation" shall mean the Articles of Incorporation of the Association.

**1.3 Declaration.** "Declaration" shall mean the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Hamilton Island PUD, to which these Bylaws are attached, as the same may be subsequently amended pursuant to the terms thereof.

**1.4 Incorporation by Reference.** Except as otherwise provided herein, the terms which are defined in Article 1 of the Declaration are used in these Bylaws as therein defined or adopted by reference.

**ARTICLE 2.**

**MEMBERSHIP**

**2.1 Membership.** Every owner of one or more Lots within the Project shall, during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

**2.2 Membership List.** The Secretary shall maintain at the principal office of the Association a membership list showing the name, address and membership date of the Owner of each Lot in the Project. The Secretary may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Board of Directors.

**ARTICLE 3.**

**MEETINGS AND VOTING**

**3.1 Place of Meetings.** Meetings of the members of the Association shall be held at such place convenient to the members as may be designated in the notice of the meeting.

**3.2 Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association within ninety (90) days after termination of the Class B membership as provided in Section 3.7 below. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner or mortgagee of a Lot. The expense of giving notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such Turnover Meeting, it may be adjourned as provided in Section 3.6. Nothing in this section shall be construed as preventing Declarant from calling the Turnover Meeting before such date or from calling informal, informational meetings of the Owners.

**3.3 Annual Meeting.** The annual meeting of the members for the election of directors and for the

transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors or, if the Board should fail to designate a date by the first day of September, then at 7:30 p.m. on the second Thursday in October. The first annual meeting shall be held within one year after the date of the Turnover Meeting.

**3.4 Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the members of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members who are entitled to vote 10 percent of the voting rights of the membership.

**3.5 Notice of Meetings.**

(a) Written or printed notice stating the place, day and hour of the meeting and shall be delivered not less than 14 nor more than 60 days before the date of the meeting. The notice shall also state the business to be placed on the agenda by the Board of Directors for a vote by the members, including the general nature of any proposed amendment to the Articles of Incorporation, Bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director. Such notice shall be given either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, as first class mail addressed to the member at his most recent address as designated in writing by the member to the Association.

(b) When a meeting is adjourned for 30 days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

**3.6 Quorum.** At any meeting of the Association, members having thirty-four percent (34%) of the voting rights entitled to be cast at such meeting, present, in person or by proxy, shall constitute a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

**3.7 Voting Rights.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When seventy-five percent (75%) of the Lots in Hamilton Island PUD have been sold and conveyed to Owners other than a successor Declarant;

(ii) The expiration of three (3) years after the closing of the sale of the first Lot to an Owner other than a successor Declarant; or

(iii) At such earlier time as Declarant may elect in writing to terminate such special voting rights.

**3.8 Joint Ownership.** In any case in which two or more persons or entities share the ownership, the vote or consent of any one or more of such persons or entities shall constitute the vote or consent of the entire ownership



interest; provided, however, that in the event such persons or entities disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person or entity may deliver written notice of such disagreement to the Secretary of the Association and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

**3.9 Proxies.** Every member entitled to vote or to execute any waiver or consent may do so either in person or by written proxy duly executed and filed with the Secretary of the Association. A member may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over the meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon sale by the member of the lot or lots upon which the proxy is based.

**3.10 Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

**3.11 Ballot Meetings.** At the discretion of the Board of Directors, any matter which might come before the Association at a meeting, including election of directors, may be determined by proxy ballot, rather than at a formal gathering. Ballots shall be sent to all members entitled to vote in the same manner as notice of meetings, with a specified deadline for return of ballots. Ballots for such meetings must be properly executed and returned in sufficient quantity to constitute a quorum, and determination of the matter presented shall be based upon the required percentage of voting rights of the ballots returned, unless approval of a specified percentage of all voting rights is required by law, the Declaration or these Bylaws. The vote of a ballot meeting shall be determined by the Board of Directors within 48 hours of the deadline for return of ballots. Within 10 days after the ballots have been counted, each member shall be notified by mail or other delivery of written notice of the results of the ballot meeting or that a quorum of ballots was not returned.

## **ARTICLE 4.**

### **DIRECTORS: MANAGEMENT**

**4.1 Qualification.** The affairs of the Association shall be governed by a Board of Directors. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Lots in the Project. For purposes of this section, the officers of any corporate Owner, the partners of any partnership and the members of any limited liability company shall be considered co-Owners of any Lots owned by such corporation, partnership or limited liability company.

**4.2 Interim Board.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or their successors have taken office at the Turnover Meeting. At the Turnover Meeting the interim directors shall resign and be replaced by their successors, who shall be elected as provided in these Bylaws.

### **4.3 Election and Tenure of Office.**

(a) At the Turnover Meeting the interim directors shall resign and the members shall elect three (3) directors consisting of one class of one (1) director to serve for one year and a second class of two (2) directors to serve for two years. Thereafter the successors to each class of directors shall serve for terms of two years each.

(b) Upon a majority vote of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy at a meeting or ballot meeting at which a quorum is present, the Board of Directors may be increased from three (3) directors to five (5) directors. At the same or next annual meeting or a special meeting called for such purpose, two (2) additional directors shall be elected, one (1) to serve for a two-year

term and one (1) to serve for a one-year term. Term selection shall be in the same manner as provided in paragraph (a) above.

(c) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality.

#### 4.4 Vacancies.

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until his successor is elected. Vacancies in interim directors shall be filled by Declarant.

**4.5 Removal of Directors.** Any director, other than an interim director, may be removed, with or without cause, at any meeting of the members by vote of a majority of the voting power. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting.

**4.6 Powers.** The Board of Directors shall exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to the members in the Declaration, Articles of Incorporation or these Bylaws. The powers to be exercised by the Board of Directors shall include, but not be limited to, the following:

(a) Carry out the program for maintenance, upkeep, repair and replacement of any property required to be maintained by the Association as described in the Declaration and these Bylaws.

(b) Determine the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Prepare a budget for the Association, and assessment and collection of the Assessments.

(d) Employ and dismiss such personnel as may be necessary for such maintenance, upkeep and repair.

(e) Employ legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the Board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of the Declaration.

(f) Open bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Prepare and file, or cause to be prepared and filed, any required income tax returns or forms for the Association.

(h) Purchase Lots at foreclosure or other judicial sales in the name of the Association or its designee.

(i) Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of directors), or

otherwise deal with Lots acquired by the Association or its designee.

(j) Obtain insurance or bonds pursuant to the provisions of these Bylaws and review such insurance coverage at least annually.

(k) Make additions and improvements to, or alterations of, the Project Common Areas, or modify, close, remove, eliminate or discontinue use of any common facility, including any improvement or landscaping.

(l) From time to time adopt, modify, or revoke such rules and regulations governing the details for the operation of the Association, the conduct of persons and the operation and use of the Project as the Board of Directors may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Project. Such action may be overruled or modified by vote of not less than seventy-five percent (75%) of the voting rights of each class of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of rules and regulations will be under consideration.

(m) Enforce by legal means the provisions of the Declaration, these Bylaws and any rules and regulations adopted hereunder.

(n) In the name of the Association, maintain a current mailing address of the Association and file annual reports with the Washington Secretary of State.

**4.7 Limitations on Powers of Board.** The Board of Directors shall not act on behalf of the Association to amend the Articles of Incorporation, to take any action that requires the vote or approval of the members, to terminate the Association, to elect members of the Board of Directors, or to determine the qualifications, powers and duties, or terms of office of the members of the Board of Directors; but the Board of Directors may fill vacancies in its membership in accordance with these Bylaws.

**4.8 Managing Agent or Manager.** On behalf of the Association, the Board of Directors may employ or contract for a managing agent or a manager at a compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as are appropriate to the office, including, without limitation, keeping the financial records of the Association, providing notices and minutes of meetings, billing and collection of assessments and assisting in preparation of the budget. All financial and other records of the Association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, shall be the property of the Association. The managing agent shall turn over all original books and records to the Association immediately upon termination of the management relationship with the Association, or upon such other demand as is made by the Board of Directors. The Association managing agent is entitled to keep copies of Association records. All records which the managing agent has turned over to the Association shall be made reasonably available for the examination and copying of the managing agent.

#### **4.9 Meetings.**

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors shall be held within 60 days following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

#### **4.10 Notice of Meetings.**

(a) Notice of the time and place of meetings of the Board of Directors shall be given orally or delivered in writing personally or by mail or telegram at least 24 hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telecopied not less than 72 hours before the meeting. Notice mailed or telecopied shall be directed to the address or telecopy number shown on the Association's records or to the

director's actual address or telecopy number ascertained by the person giving the notice.

(b) Notice of the time and place of holding an adjourned meeting need not be given if such time and place be fixed at the meeting adjourned.

(c) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**4.11 Open Meetings.** Except as provided in this section, all meetings of the Board of Directors shall be open for observation by all Owners of record and their authorized agents. The Board of Directors shall take minutes of all actions taken by the Board, which shall be available to all Owners. Upon the affirmative vote in open meeting to assemble in closed session, the Board of Directors may convene in closed executive session to consider personnel matters, consult with legal counsel or consider communications with legal counsel, and discuss likely or pending litigation, matters involving possible violations of the Declaration or rules and regulations, and matters involving the possible liability of an Owner to the Association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose of the closed session shall be included in the minutes. The Board of Directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion or other action adopted, passed, or agreed to in closed session may be effective unless the Board of Directors, following the closed session, reconvenes an open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this section shall not require disclosure of information in violation of law or which is otherwise exempt from disclosure.

#### **4.12 Quorum and Vote.**

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

**4.13 Compensation.** No director shall receive any compensation from the Association for acting as such.

### **ARTICLE 5.**

#### **OFFICERS**

**5.1 Designation and Qualification.** The officers of the Association shall be the President, the Secretary and the Treasurer and such Vice Presidents and subordinate officers as the Board of Directors shall from time to time appoint. The President shall be a member of the Board of Directors, but the other officers need not be directors. Any two offices may be held by the same person except the offices of President and Secretary.

**5.2 Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new board to serve for one year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

#### **5.3 Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever in their judgment the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.



(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided that the Board of Directors may reject any post-dated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

**5.4 President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and affairs of the Association. He shall preside at all meetings of the members and of the Board of Directors. He shall be ex officio a member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of President of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

**5.5 Vice Presidents.** The Vice Presidents, if any, shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, his duties and powers shall be performed and exercised by the Senior Vice President as designated by the Board of Directors.

#### **5.6 Secretary**

(a) The Secretary shall keep or cause to be kept a Book of Minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause to be given such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. He shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) If there are no Vice Presidents, then in the absence or disability of the President, his duties and powers shall be performed and exercised by the Secretary.

**5.7 Treasurer.** The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Association with such depositories as may be designated by the board. He shall disburse the funds of the Association as may be ordered by the board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

**5.8 Compensation of Officers.** No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members. The Board of Directors may fix any compensation to be paid to other officers.

## ARTICLE 6.

### EXECUTIVE AND OTHER COMMITTEES

Subject to law, the provisions of the Articles of Incorporation and these Bylaws, the Board of Directors may appoint an executive committee and such other committees as may be necessary from time to time, consisting of such number of its members and having such powers as it may designate. Such committees shall hold office at the pleasure of the Board.

## ARTICLE 7.

### INSURANCE

**7.1 Types of Insurance.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Operations Fund, the following insurance:

#### (a) Project Damage Insurance.

(i) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(ii) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the Units and any improvements on the Project Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage or excluded from coverage as provided in these Bylaws), subject to a maximum deductible of the lesser of \$10,000 or one percent (1%) of the policy amount.

(iii) The policy or policies shall include all fixtures and service equipment to the extent that they are part of the Project Common Areas and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each Unit as may be further defined by resolution of the Board of Directors.

(iv) Such policy or policies shall name the Association, for the use and benefit of the individual Lot Owners, as insured, and shall provide for loss payable in favor of the Association, as a trustee for each Owner and each such Owner's mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Washington.

#### (a) Liability Insurance.

(i) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, and the managing agent, against liability to the public or to Owners and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Common Areas, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or use of the part of the Project as to which such Owner has the exclusive use or occupancy.

(ii) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single-limit basis.

(iii) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be

prejudiced as respects his, her or their action against another named insured.

(b) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(c) **Fidelity Bonds.**

(i) The Board of Directors may cause the Association to maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. In the event that the Association has retained a management agent, the Board of Directors may require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance, if any, may be borne by the Association.

(ii) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the Board of Directors.

(iii) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

**7.2 Insurance by Unit Owners.** The Association has no responsibility to procure or assist in procuring property loss insurance for any Owner or tenant for (i) damage to a unit not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies required by these Bylaws or held by the Association); or (ii) for any damage or loss to the Owner's or tenant's personal property. Owners must be responsible for purchasing insurance policies insuring their units for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage. Tenants must be responsible for insuring their own personal property for any loss or damage. The Association shall notify all Owners of the amount of the deductible under the Association policies. To the extent reasonably practicable, the Association shall give at least thirty (30) days' notice to the Owners of any increase in the deductible proposed in renewal or replacement insurance policies. Owners and tenants of all units must procure and maintain comprehensive liability policies having combined limits in amounts reasonably set by the Board of Directors no more often than every three years. Such insurance must provide coverage for, without limitation, the negligent acts of the Owner and tenant and their guests or other occupants of the unit for damage to the Project Common Area and other units and the personal property of others located therein.

**7.3 Other Insurance Requirements.** Insurance obtained by the Association shall be governed by the following requirements:

(a) All policies shall be written with the State of Washington or a company licensed to do business in the State of Washington which falls into a B general policyholder's rating or a financial performance index of 6 or better, as designated in Best's Key Rating Guide, or an A or better rating from Demotech, Inc.

(b) Notwithstanding the provisions of Section 7.1 above, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement, or any successor to such trustee. Such insurance trustee shall have exclusive authority to negotiate losses under any property or liability insurance policy. Each Owner appoints the Association, or any insurance trustee or substitute 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 purchase. The Association or insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first mortgage holders, as their interests may appear.

(c) All property insurance policies shall contain endorsements providing for the following: recognition of any Insurance Trust Agreement, a waiver of the right of subrogation against the Board of Directors, any Owner or any guest of an Owner, that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively, and that the policy is primary in the event the Owner has other insurance covering the same loss, and any such other insurance policies of the Owners or their mortgagees shall not be brought into contribution with the insurance policies to be obtained by the Association.

(d) For purposes of this Article, insurance policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association or Owners, or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (iii) policy includes any limiting clauses (other than insurance conditions) which could prevent Owners from collecting insurance proceeds.

(e) All policies required by this Article shall provide that they may not be canceled or substantially modified without at least 10 days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy. Evidence of insurance shall be issued to each Owner and mortgagee upon request.

(f) The Board of Directors may require each Owner to notify the Board of all improvements made by the Owner to his Unit, the value of which is in excess of an amount established by the Board. Nothing in this paragraph shall permit an Owner to make improvements without first obtaining the approval of the Board of Directors pursuant to the Declaration.

**7.4 Optional Provisions.** The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(a) To the extent appropriate and available at reasonable cost, the Association shall maintain additional coverages against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, flood, host liquor liability, contractual and all-written contract insurance, employer's liability insurance, comprehensive automobile liability insurance, and an endorsement patterned after "use and occupancy" insurance providing relief from monthly assessments while a Unit is uninhabitable due to a covered loss.

(b) If reasonably available, the insurance policies shall include an Agreed Amount and Inflation Guard Endorsement, and Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement, and an Increased Cost of Construction Endorsement).

(c) Flood insurance, if the Project is in a Special Flood Hazard Area.

**7.5 FannieMae and GNMA Requirements.** Notwithstanding any other provisions of this Article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance meeting the insurance and fidelity requirements for planned unit development projects established by FannieMae and Government National Mortgage Association, if any, so long as either is a mortgagee or Owner, except to the extent such coverage is not available or has been waived in writing by FannieMae, or Government National Mortgage Association. FannieMae or FannieMae's servicer, its successors and assigns, shall be named as a mortgagee in the Association's policies, if required by FannieMae.



## ARTICLE 8.

### ASSESSMENTS, RECORDS AND REPORTS

**8.1 Assessments.** The Association, through its Board of Directors or Managing Agent, shall do the following:

(a) Assess and collect from every Owner Assessments in the manner described in the Declaration.

(b) From time to time and at least annually, prepare a budget for the Association, estimating the common expenses expected to be incurred by the Association, and determine whether the annual assessment should be increased or decreased. Within 30 days after adoption of any proposed regular or special budget of the Association, the Board of Directors shall set a date for a meeting of the Owners to consider ratification of the budget, which meeting shall occur not less than 14 nor more than 60 days after mailing of a summary of the budget to the members. Unless at such meeting members having more than seventy-five percent (75%) of the votes of the Association, in person or by proxy, 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 prior budget last ratified by the membership shall be continued until such time as the members ratify a subsequent budget proposed by the Board of Directors.

(c) Keep records of the receipts and expenditures affecting the funds of the Association, maintain an Assessment roll showing the amount of each Assessment against each Owner, the amounts paid upon the account and the balance due on the Assessments, give each Owner written notice of each Assessment at least 30 days prior to the time when such Assessment shall become due and payable, and promptly provide any Owner who makes a request in writing with a written statement of the Owner's unpaid Assessments.

**8.2 Records.** The Association shall keep correct and complete books and records of accounts sufficiently detailed to enable the Association to fully disclose to each member the true statement of its financial status and shall keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors. All financial and other records of the Association, including but not limited to checks, bank accounts, and invoices, in whatever form they are kept, are the property of the Association. Each Association managing agent shall turn over all original books and records to the Association, immediately upon termination of the management relationship with the Association, or upon such other demand as is made by the Board of Directors. An Association managing agent is entitled to keep copies of Association records. All records which the managing agent has turned over to the Association shall be made reasonably available for the examination and copying by the managing agent.

**8.3 Inspection of Books and Records.** All records of the Association, including the names and addresses of Owners and other occupants of the Lots, shall be available for examination by all Owners, holders or mortgages of the Lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the Association or its managing agent. The Association shall not release the unlisted telephone number of any Owner. The Association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the Association in providing access to records.

**8.4 Accounts, Checks, Drafts, Etc.** The funds of the Association shall be kept in separate accounts in the name of the Association and shall not be commingled with the funds of any other person or entity, and shall not be commingled with the funds of any other association, nor with the funds of any manager of the Association or any other person responsible for the custody of such funds. All checks, drafts and other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

**8.5 Execution of Documents.** The Board of Directors may, except as otherwise provided in the Declaration, Articles of Incorporation or these Bylaws authorize any officer or agent to enter into any contract or

execute any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances. Only the President or Secretary may prepare, execute, certify or record amendments to the Declaration, Articles of Incorporation or these Bylaws. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement, or to pledge its credit, or to render it liable for any purpose or for any amount.

**8.6 Reports and Audits.** An annual report of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all members and to all holders of mortgages on Lots in the Project who have requested the same promptly after the end of each fiscal year. From time to time the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the members. If the Association has annual assessments of \$50,000 or more, the books and records shall be audited at least annually by an independent certified public accountant, unless the audit for a specific year is waived by a vote of sixty-seven percent (67%) of the voting power of the members, in person or by proxy, at a meeting of the Association at which a quorum is present. At any time any member or holder of a mortgage may, at his own expense, cause an audit or inspection to be made of the books and records of the Association.

## **ARTICLE 9.**

### **GENERAL PROVISIONS**

**9.1 Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

**9.2 Notice.** All notices to the Association or to the Board of Directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to members shall be sent to such address as may have been designated by the member from time to time in writing to the Board of Directors, or in the absence of same to such member's last known address.

**9.3 Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

**9.4 Action Without Meeting.** Any action which the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or director to take at any meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

**9.5 Conflicts.** These Bylaws are intended to comply with RCW Chapter 64.38 relating to Homeowners' Associations, the Washington Nonprofit Corporation Act, the Declaration and the Articles of Incorporation. In the case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

## **ARTICLE 10.**

### **AMENDMENTS TO BYLAWS**

**10.1 How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members having one-fourth of the votes of the membership. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon.

**10.2 Adoption.** The proposed amendment may be adopted at a regular or special meeting of the members called for that purpose at which a quorum is present by a majority of the voting power present in person or by proxy at such meeting, provided, however, that those provisions of these Bylaws which are governed by the Declaration or the Articles of Incorporation of this Association may not be amended except as provided in those documents.

**10.3 Recording.** Once adopted, such amendment shall recorded in the Official Records of Skamania County, Washington.

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EXHIBIT B

HAMILTON ISLAND PUD STORM WATER FACILITIES INFORMATION



## HAMILTON ISLAND STORM WATER FACILITIES

### Storm Water Facilities Design

The Hamilton Island PUD storm water facilities generally consist of:

- *Grading* of all public and common areas to direct surface water into catch basins, surface bio-filtration swales, and bio-filtration filter strips, which in turn treat storm water before it is detained in detention ponds.
- *Catch basins* which hard pipe storm water into surface bio-swales and detention ponds.
- *Grass bio-filtration swales* which filter storm water before it enters detention ponds.
- *Grass bio-filtration filter strips* which filter storm water before it enters detention ponds.
- *Detention ponds* which detain storm water before it enters the storm water control manhole.
- *A storm water control manhole* which meters storm water from detention ponds into the City of North Bonneville storm sewer system.

Each of these facilities are depicted on the attached engineering drawings, full size copies of which are on file with the City of North Bonneville.

### Facilities Operation and Maintenance

Operation and maintenance of the Hamilton Island PUD storm water facilities should be accomplished according to the following schedule and procedures.

#### Catch Basins

- Grates
  - Remove all debris and trash from grate when inletting capacity is restricted by 10% or more.
- Sumps
  - Sumps should be cleaned when sediment levels exceed 60% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of 6 inches clearance from the sediment surface to the invert of the lowest pipe.
- Inspection Schedule: Quarterly
- Estimated Maintenance Schedule: Yearly

#### Bio-filtration Swale and Filter Strips

- Mow Bio-filter during summer months to promote growth and pollutant uptake. Mow to level of 3 to 4-inches.
- Remove sediments during summer months when they build up to 2-inches in any spot, or other wise interfere with bio-filter operation. Reseed bare spots created by removal equipment.
- Remove litter to keep bio-filter free from external pollution.
- Clean interface between pavement and filter strip when soil and vegetation buildup interferes with even distribution of flow across length of filter strip.
- Inspect bio-filters periodically, especially after periods of heavy runoff. Remove sediments, fertilize, and reseed as necessary. Be careful to avoid introducing fertilizer to receiving waters or groundwater.
- Estimated Maintenance Schedule: Yearly

#### **Control Manhole**

- Control manhole sump should be cleaned when sediment levels exceed 25% of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of 12 inches clearance from the sediment surface to the bottom orifice plate.
- Inspect internal control structure after every major storm to ensure:
  - cross is securely attached to manhole wall and in upright position.
  - bottom orifice plate is attached and no other holes other than those shown in the original design exist.
  - orifice hole is not plugged or restricted and that upper weir (overflow) is not restricted by debris.
- Estimated Maintenance Schedule: Yearly

#### **Detention Ponds**

- Inspect detention ponds to determine depth of accumulated sediment. If sediment exceeds 3-inches of accumulated depth near control structure, sediment should be removed.
- Inspect pond side slopes for signs of erosion. If damage over 2-inches deep is observed, repair with compacted soil and reseed.
- Inspect pond for growth of trees or brush. If growth is observed mow pond to eliminate growth. Remove all poisonous or nuisance vegetation which may constitute a hazard to maintenance personnel or the public.
- Inspect pond for any evidence of oil, gasoline, contaminants, or other pollutants. If present coordinate removal with local water quality response agency.
- Estimated Maintenance Schedule: Yearly

#### **Disposal of Pollutants & Sediment**

- Pollutants and sediments, whether in solid or liquid form, must be disposed of in either an approved sanitary sewer system or in other suitable land fill.
- Pollutants and sediments shall not be disposed of in the City of North Bonneville storm water system.
- Pollutants and sediments shall not be disposed of by placing such material within the borders of the Hamilton Island PUD as they could thereby re-enter receiving waters or re-enter the storm water systems of the Hamilton Island PUD or City of North Bonneville.