

Owner of any such Lot(s) in any election of directors. Subject to the provisions of Subsection 8.8(a) of this Declaration, with respect to the internal organization, affairs and actions of any Division, each Lot or unit ownership interest included in such Division shall have the same ability to control and influence such internal organization, affairs and actions as every other Lot or unit ownership interest included in such Divisions.

(b) Non-Owner Voting Rights. Subject to the provisions of Subsection 3.3(a), no lessee, tenant or occupant of any Lot shall not be a member of the Association, nor shall such lessee, tenant or occupant have any voting rights unless he, she or it is also an Owner of such Lot. Any lessee, tenant, or occupant of any living unit who is not the Owner is not entitled to exercise proxy rights of the Owner or Owners otherwise entitled to voting rights under this Declaration and the non-profit corporation laws of Washington State.

8.10 Board of Directors. At and after the date the first Lot in Village Phase 1 is conveyed to a resident Owner, the Board of Directors of the Association shall be comprised of an odd number of natural persons, no less than three (3). One member of the Board of Directors shall be elected by a plurality of votes cast for the election of a director by the members of each Division and the last "at large" member shall be appointed by the other two directors. If there are more than two directors elected by the Owners pursuant to the Articles or Bylaws of the Association, then the person serving in the "at large" position on the Board shall be appointed by a majority of the other directors. Each director representing a Division on the Association Board of Directors must be a member of the Division he or she represents. No person may simultaneously serve as a director on behalf of more than one Division. In the event a Division shall fail, neglect or refuse to elect a member thereof to serve as a member of the Board, or in the event of a vacancy occurring on the Board, the position of such director(s) shall be filled in accordance with the terms and provisions of the Bylaws.

8.11 Liability of Directors, Etc. Neither the Association, any person serving as an officer of the Association, nor any person serving as a director of the Association, nor any person serving as a member of the Architectural Review Committee, shall be liable to any Owner for any damage, loss, expense or prejudice suffered or claimed on account of any action or omission by or on the part of the Association, any such officer(s), any such director(s), or any such Committee member(s), provided only that such action or omission was undertaken in good faith and in accordance with actual knowledge possessed by the entity or person responsible therefore.

8.13 Turnover. Not more than thirty (30) days after occurrence of the first of the events which cause Declarant's Class B status as a member of the Association for voting purposes to cease as stated in Subsection 8.8(a) above, the Declarant shall call a "Turnover Meeting" of the Owners by giving notice to each Owner as provided in the Bylaws. The Purpose of said meeting shall be to allow Declarant to formally "turn over", and for the Association to formally accept and assume, all rights and responsibilities for control, management and administrative responsibility for the entire Property to the Association, and control of the Association to the Owners and a Board of Directors comprised of persons elected by the members of the Divisions and appointed, as aforesaid. Declarant may elect to turn over control, management and administrative responsibility of the Property, or portions thereof, and/or control of the affairs of the Association to the Owners at any time prior to the time the Turnover Meeting described above is required by delivering to the Association Board of Directors written notice of its intent to do so, effective as of a date not less than forty-five (45) days following the date of such notice. In any event, Turnover shall be deemed for all purposes to have occurred on the date of any meeting called in accordance with the first sentence of this Subsection or on the



3587953

Page: 34 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co Wa

effective date stated in the notice described in the immediately preceding sentence; and, with respect to Common Property, Turnover shall be deemed to have occurred with respect to any specific Common Property, upon conveyance of such Common Property to the Association.

(a) Failure to Call Turnover Meeting. If Declarant does not call the Turnover Meeting required by this Subsection, or fails to otherwise turn over administrative responsibility for the Property, the Common Property and effective control of the Association as therein provided for, then the Association or any Owner may call such a meeting and give notice as required by this Subsection.

(b) Declarant's Obligations of Turnover. Unless prior thereto any interim directors appointed by Declarant shall have already done so, at the Turnover Meeting, or on the effective date of any notice of the nature described in Subsection 8.13 above, the interim directors shall resign and their successors shall be elected and appointed as provided in this Declaration and in the Bylaws of the Association. At or prior to Turnover, Declarant shall deliver to the Association those items and materials in Declarant's possession relating to ownership of the Common Property and administration of the Association. Turnover shall take place notwithstanding the presence or absence of a quorum of Owners at any Turnover Meeting or at any other meeting or assembly of Owners convened for purposes of assuming control of the Association.

(c) Declarant's Obligations Following Turnover. If Declarant has complied with the foregoing requirements of this Subsection 8.13, unless Declarant otherwise has sufficient voting rights as an Owner to control the Association following Turnover, Declarant shall be relieved of all and any further liability or responsibility for the administration of the Association. If Declarant has sufficient voting rights to control the Association following Turnover, Declarant shall exercise such rights in such a manner as will effectively enable the Association to assume and perform all obligations on its part to be performed hereunder and, if Declarant shall fail to so exercise such rights, Declarant shall remain responsible for performance of the obligations of the Association hereunder.

8.14 Rules and Regulations.

(a) General Authority of Board. The Board of Directors on behalf of the Association may, from time to time, adopt, modify, or revoke such rules and regulations governing the conduct of persons and use of Lots, Common Property, the General Common Areas, Limited Common Areas and Restricted Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyments of the Property and/or conformity of such use with the terms and provisions of this Declaration.

(b) Division Rules and Regulations. In addition, the Board of Directors on behalf of the Association shall adopt, amend or revoke rules and regulations which are specifically applicable to any individual Division only if such rules or regulations entail requirements for, or incorporate limitations on, use of or activities conducted within the Property which the Committee finds are: (i) consistent with the provisions of this Declaration; (ii) necessary or desirable, appropriate, reasonable and sufficient to address one or more matters or issues of unique concern or interest to members of such Division; and (iii) which are submitted for adoption in writing, signed by or on behalf of no less than sixty percent (60%) of the members of the Division to which such rules or regulations will apply.



3587953

Page: 35 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.

(c) **Publication of Rules and Regulations.** A copy of all rules and regulations adopted on behalf of the Association and a copy of each amendment, modification or revocation thereof, shall, upon adoption, be promptly mailed or otherwise delivered by or on behalf of the Board of Directors to each Owner at his, her or its address appearing in the records of the Association.

(d) **Binding Effect.** All such rules and regulations, and any such amendments or modifications thereof, shall be binding upon each Owner and occupants of all Lots to which they pertain on the date a copy of the same is mailed or otherwise delivered as herein stated. Adoption of rules and regulations on behalf of the Association shall be effected in accordance with the Bylaws of the Association.

Section 9 Construction, Maintenance, Utilities, and Services

9.1 Construction and Maintenance of Common Property. Except as otherwise expressly stated in this Declaration, Declarant shall initially construct, or cause to be constructed, all Improvements of Common Property and the General, Limited and Restricted Common Areas. Except as hereinafter stated, once all Improvements of Common Property, General Common Areas, Limited Common Areas and Restricted Common Areas respectively are initially constructed and accepted by the Declarant, the Association shall be responsible for the performance of all construction within and maintenance upon the Common Property, General Common Areas (including public rights of way), Limited Common Areas and Restricted Common Areas and for the upkeep of landscaping and other Improvements within such areas. Such Improvements shall include, but are not limited to lawns, trees and planting beds; irrigation systems and components thereof; pavement, walkways and trails, and fences, playground and recreational equipment located in all such Common Areas, and the Association shall continue to perform such construction, maintenance, and upkeep unless the same is assumed by a public body or other third party.

(a) **Contracting Authority.** The Association shall have the right and authority to contract with the Owner(s) of any Lot or with the Owner(s) of the Multifamily Parcel or with any other third party or parties to affect performance of any obligations otherwise to be performed by or on behalf of the Association under this Declaration.

(b) **Additional Improvements and Common Property.** Declarant shall have the right to add, or cause to be added Improvements not described or referred to in this Declaration.

9.2 Owner Responsibility for Common Area Maintenance. Notwithstanding the fact that some or all of certain Improvements shall be initially constructed and thereafter remain upon Lots abutting public rights of way within the Property or entirely within such right-of-way and/or that the same shall be and remain Common Property, the Owner(s) of each Lot upon which such Improvements are located or which abut such Improvements, shall also be and remain responsible for the repair, reconstruction, replacements and maintenance of all such Improvements on or abutting their respective Lots and any such Improvements within public rights-of-way contiguous with such Lots, and for all costs and expenses associated with such repairs, reconstruction, replacements and maintenance in the event the Association shall fail, neglect or refuse to effect performance of its obligations hereunder after reasonable notice of the need for such repairs, reconstruction, replacement or maintenance has been afforded to the Association.



AHO CONSTRUCTION INC

COV

\$109.00

3587953

Page: 36 of 91

10/20/2003 03:49P

Thurston Co. Wa.

(a) Owner's Right to Recover Maintenance Costs from Association. Any Owner(s) who shall, after notice as aforesaid, effect repair, reconstruction, replacement or maintenance of Improvements or of Common Property which it is the obligation of the Association to care for and maintain under this Declaration shall have a claim against the Association for all costs and expenses, reasonably and actually incurred, and for the reasonable value of any work personally performed by such Owner(s) in effecting such actions on behalf of the Association which claim shall be enforceable by the means provided for in Section 12 of this Declaration but only if appropriate action shall be undertaken for recovery on such claim within one (1) calendar year after the date such notice is delivered to the Association.

(b) Improvements on Lots. Any of the foregoing provisions of this subsection 9.2 to the contrary notwithstanding, it shall be and remain the obligation of all Owners to at all times and under all circumstances care for and maintain all Improvements of any description physically situated on any Lot(s) owned by them regardless of whether or not they are also residents of such Lot(s) all in accordance with the provisions of this Declaration, the Design Guidelines and other rules and regulations from time to time duly adopted by the Association of the Committee.

9.3 Lawn Maintenance - Rights of Association. Lawn maintenance of the front yards of each individual lot, up to the fence line, shall be the responsibility of the Association. The Association shall also maintain the grass areas, up to the fence lines, of all grass areas in the alleys on 15th Way and 17th Way. The sprinkler control clocks for each lot shall be controlled by the Association, and / or its designees to ensure that all yard areas are adequately watered throughout the year. However, payment for the water will be the responsibility of each lot owner.

9.4 Association Rights In Case of Failure to Maintain, Etc. Except as otherwise stated in this subsection 9.4, should any Owner(s), fail, neglect or refuse to fulfill his, her or their responsibilities as provided by the foregoing provisions of Subsections 9.2 or 9.3 of this Declaration (i) within ten (10) days after delivery to such Owner(s) of written notice on behalf of the Association to immediately undertake such action as shall be described in such notice to correct the results of such failure, neglect or refusal, or (ii) if such delivery cannot be effected after reasonable effort on the part of the Association, within (20) days after such notice is posted at a conspicuous location on Lot(s) subject thereof, the Association may, but is not required to, undertake such actions as its managing officers or agents reasonably determine are necessary to correct such results and to prevent the reoccurrence thereof in the future for the account and at the expense of such Owner(s), and recover such costs, with interest thereon as hereinafter provided for, by way of legal action or individual Lot Assessment as hereinafter described.

(a) Extended Time to Remedy Deficiencies. In any case subject of this subsection 9.4, if the nature of the deficiency is such that it cannot reasonably be remedied within the time limits herein described and the affected Owner(s) shall commence the measures necessary to remedy such deficiencies within the time limited for the remedy described herein and the Owner(s) thereafter proceed(s) with reasonable diligence and in good faith to complete, and/or completes, such measures as soon as practicable under the circumstances, then the Association shall not be entitled to exercise the rights afforded it hereunder.

9.5 Public Rights-of-Way. If for any reason the Association, or the Owner(s) responsible therefore, shall fail to adequately maintain Improvements located in any public right-of-way located within the Property which is or becomes, the legally enforceable obligation of the



AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.

3587953

Page: 37 of 91

10/20/2003 03:49P

Association or such Owner(s) to maintain, the City is hereby authorized to assess the Association and/or the individual Owner(s) responsible therefore, for necessary maintenance of such Improvements. This Subsection 9.5 shall not be amended without the prior written consent of the City.

9.6 Maintenance of Utilities and "S.T.E.P." Systems. Each owner shall be responsible for maintaining utility lines within his or her Lot, except for those lines for which a public authority or utility provider has expressly assumed the responsibility to maintain. In addition, each Owner shall be responsible for maintaining all structures, components and equipment installed on his or her Lot as part of a septic tank effluent pumping ("S.T.E.P.") system for purposes of collecting and holding for removal there from sewerage waste materials by pumping and transportation away from such Lot.

SECTION 10 BUDGETS, ACCOUNTS, RESERVES AND CAPITAL EXPENDITURES

10.1 Annual Budgets. The Board of Directors of the association shall from time to time, and at least annually, prepare and adopt one or more budgets for the Association which shall address: (a) Common Expenses of the Association and current costs of maintenance and services which it is the responsibility of the Association to provide and fund on an ongoing basis; (b) funding for future needs of the Association to pay for the repair, reconstruction and replacement of Common Property Improvements and Improvements of General Common Areas, Limited Common Areas and Restricted Common Areas which it is, or becomes the responsibility of the Association to care for and maintain; (c) funding future needs or plans of the Association for acquisition or construction of new or additional capital assets; (d) previous over-assessments, if any; (v) any surplus funds available to the Association, and (e) any common profits of the Association. The method of adoption of such budgets shall be as provided in the Bylaws and shall comply with the requirements or RCW 64.38.025.

10.2 Common Expenses. "Common Expenses" include:

(a) **Association Management.** Expenses of administration and management of the affairs of the Association generally;

(b) **Maintenance, Etc.** Expenses of protecting, maintenance, repair, reconstruction or replacement of Improvements in and of Common Property, General Common Areas, Limited Common Areas and Restricted Common Areas for which the Association is responsible, or has assumed responsibility, pursuant to the provisions of this Declaration, the Bylaws of the Association or by resolution of its Board of Directors;

(c) **Insurance.** The cost of insurance or bonds obtained in accordance with the Association Bylaws.

(d) **General Reserves.** A general operating reserve;

(e) **Reserves for Specific Uses.** Reserves for replacements and deferred maintenance as set forth in Subsection 10.5 below;

(f) **Deficits.** Any deficits in Common Expenses applicable to the Association or a Division for any prior period;



(g) **Payment of Association Obligations.** Amounts required to enable the Association to satisfy any indebtedness of the Association incurred in conformity with the provisions of this Declaration and/or the Bylaws of the Association;

(h) **Other Expenses.** Any other items properly chargeable as an expense of the Association.

10.3 Common Expense Designations.

(a) **General Common Expenses.** Common Expenses of the nature described in Subsection 10.2 which are to be, or are, incurred by the Association for the benefit of all Owners and residents of Lots within the Property shall be separately budgeted for allocation among all such Owners and designated "General Common Expenses".

(b) **Limited Common Expenses.** Common Expenses of the nature described in Subsection 10.2 which are to be, or are, incurred by the Association for the exclusive benefit of the members of a Division including, without limitation, costs and expenses for the repair, reconstruction, maintenance or replacement of Improvements incorporated in Limited or Restricted Common Areas established and maintained for the exclusive use of a Division or group of residents or Owners included in a Division (e.g. pavement of alleyways for vehicular access and egress restricted to certain Lots) and shall be separately budgeted and designated "Limited Common Expenses."

10.4 Maintenance and Operations Fund. The Association shall establish a separate fund to be known as "Maintenance and Operations Fund" into which all funds not otherwise allocated to a separate account pursuant to this Declaration or by action of the directors of the Association shall be deposited. The Association shall use the Maintenance and Operations Fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and for improvement and maintenance of properties, services and facilities devoted to the use and enjoyment of Common Property including, but not limited to:

(a) **Maintenance, Utilities and Services.** Payment of the cost of maintenance, utilities and services as described in Section 9, including the costs of the operation of the Association.

(b) **Insurance.** Payment of the cost of insurance as described in the Association Bylaws.

(c) **Taxes.** Payment of any taxes assessed against the Common Property, General Common Areas, Limited Common Areas and Restricted Common Areas (to the extent taxes assessed thereon are payable by the Association due to its ownership thereof) and any Improvements thereon.

(d) **Services.** Payment of the cost of other services which the Board of Directors deems to be of general benefit to the Owners, including, but not limited to management, accounting, legal and secretarial services contracted for on behalf of the Association.

(e) **Indebtedness of Association.** Satisfaction of any indebtedness of, or claims against, the Association incurred for the purpose of acquiring any goods and services or Common Property on behalf, or for the benefit, of the Association or which may arise by reason

of failure, neglect or refusal of the Association to effect performance of the duties and obligations on its part to be performed under this Declaration.

10.5 Common Property Reserve Accounts. Common expenses of the nature described in Subsection 10.2(e), which are assessed and collected from Owners shall be deposited in one or more accounts separate from the general operating account(s) of the Association.

(a) Purposes. Common expenses in the nature of such reserves shall be determined, assessed, collected and deposited as provided for herein solely for the purposes of meeting the projected estimated costs entailed for major maintenance and replacement of Common Property Improvements, all or part of which would normally require replacement in more than three (3), but less than thirty (30), years from the time the budget providing for such reserves is adopted as aforesaid.

(b) Amounts. Amounts so budgeted, assessed, collected and deposited shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items. The Association is responsible for administering the account and for making such periodic payments into it as may reasonably be required. The Association shall adjust the amount of the payments at regular intervals to reflect changes in maintenance and current replacement costs over time.

(c) Adjustments and Elimination. Any time following the expiration of two (2) years after Turnover, assessments for reserves fixed by action of the Board of Directors of the Association may be reduced, eliminated, or increased only by affirmative vote of at least seventy-five percent (75%) of the Owners of the Property, or, in the case of reserves so established for the sole benefit of Improvements incorporated in Limited Common Areas or Restricted Common Areas established for the exclusive use and benefit of a Division or discrete group of Lots, at least seventy-five percent (75%) of the members of such Division or such Lot owners.

(d) Uses. Reserve accounts shall be used only for the purposes stated in this Subsection. Provided, however, after Turnover the Association may, by resolution of its Board of Directors duly and regularly adopted, borrow funds from reserve accounts to meet high seasonal demands on regular operating funds or to meet other temporary or emergency expenses which will be later recovered by implementation of special assessments or maintenance fees and returned to the reserve accounts from which they are borrowed. The Board of Directors may invest reserve accounts subject to normal prudent investment standards.

(e) Ownership. Funds held in a reserve account shall be the property of the Association and are not refundable to an Owner who sells or otherwise conveys a Lot. Upon the sale of any Lot, the vendor may treat the vendor's interest in any reserve account(s) as a separate item in any agreement for the sale of such Lot.

10.6 Capital Improvement Funds. The Association may, by resolution of its Board of Directors, elect to purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all Owners or for the exclusive use and benefit of the members of a Division provided, in the latter case, at least sixty percent (60%) of the members of such Division shall approve such action on the part of the Board. Upon collection thereof, sums, which are budgeted for such purposes, shall be deposited in one or



more separate accounts or funds and accounted for as "Capital Improvement Funds". No Capital Improvement Funds may be established under this Subsection, which for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, exceeds in the aggregate \$20,000.00, unless approved by not less than seventy-five percent (75%) of the Owners, or members of the Division affected thereby, voting in person, by absentee ballot or by proxy, at a meeting duly called for the purpose of approving establishment of such Capital Improvement Fund.

SECTION 11 ASSESSMENTS

11.1 Assessment of Owners and Lots.

(a) **Liability for Assessments Generally.** Subject to the provisions of Subsections 11.4(a) and 11.4(b) below, all Lot Owners, other than Declarant, shall be obligated to contribute to the payment by or on behalf of the Association of all General Common Expenses and to all funds and reserve accounts not established for the exclusive use and benefit of members of a Division or an otherwise limited and specifically identifiable group of Owners or Lots.

(b) **Liability for Certain Assessments.** All members of a Division or specifically identifiable group of Owners or Lots, other than Declarant, shall also be obligated to contribute to the payment by or on behalf of the Association of all Limited Common Expenses incurred, and to any and all funds and reserve accounts established by the Association for the exclusive use and benefit of the members of such Division, Owners or Lots, or which are otherwise chargeable to members of a particular Division, or group of Owners or Lots by reason of provisions elsewhere set forth and contained in this Declaration.

(c) **Liability for individual Lot Assessments.** The Owners of all Lots, which may be subjected to an individual Lot Assessment in accordance with the provisions of this Declaration, the Bylaws of the Association or by virtue of the provisions of any Design Guidelines, rules or regulations adopted in accordance with this Declaration, shall be obligated for payment of the amounts subject of such individual Lot Assessment.

(d) **Assessment.** The mechanism and method for recovery of all such contributions and amounts shall be assessment thereof to the Owner(s) and upon the Lot(s) responsible for payment thereof.

11.2 Commencement of Assessments. Until such time as any Lot is first conveyed by Declarant to any third party, no obligation for payment of any amounts assessed against and payable by an Owner of such Lot shall arise pursuant to the provisions of this Section 11. At and after the time any Lot is first conveyed by Declarant to any third party, all assessments payable pursuant to this Declaration shall accrue with respect to said Lot and be payable by or on behalf of all Owners thereof as hereinafter stated. However, following Turnover, Declarant shall be assessed as the Owner of any Lot which it then owns, but such assessment shall be prorated to the date of first sale of such Lot.



11.3 Payment of Assessments.

(a) **Initial Assessments.** Upon acquiring title to a Lot, the Owner(s) thereof shall pay to the Association an "Initial Assessment" in an amount equal to one-fourth (25%) of any annual Regular Assessments payable with respect to such Lot or a sum equal to three times any monthly Regular Assessments payable with respect to such Lot, at the time title is so acquired, whichever is greater. Said Initial Assessment shall constitute an initial contribution to the working capital of the Association by such Owner(s) and shall be used by the Association to pay General Common Expenses of the nature described at Subsections 10.2(a), 10.2(b) and 10.2(c) of this Declaration.

(b) **Regular Assessments.** In addition to, and not in lieu of, the initial Assessment described at Subsection 11.3(a), the Board of Directors, on behalf of the Association, shall levy "Regular Assessments" for contributions by all Owners responsible for payment therefore as stated at Subsections 11.1(a) and 11.1(b). Regular Assessments shall be payable by such Owners at such intervals and at such times, but not less frequently than one time each fiscal year as may be determined by the Board of Directors.

(c) **Individual Lot Assessments.** Notwithstanding the other provisions of this Section 11, and in addition to or apart from the Individual Lot Assessments described in Subsections 11.4(g) and 11.4(h) below, the Association may assess any individual Lot or Lot(s) and "Individual Lot Assessment" in the full amount of all costs, expenses, losses, damages or other charges incurred or suffered by the Association, or by the Owner(s) of any other Lot or Lots, attributable to the negligence or misconduct of the Owner of such Lot, any resident thereof, or the family members or invitees of any such Owner or resident, and for the recovery of any unpaid fines, fees or charges payable by the Owner(s) thereof to or for the benefit of the Association or the Committee by reason of the terms and provisions of this Declaration, the Bylaws of the Association, any Design Guidelines and any rules and regulations adopted in accordance therewith or pursuant thereto. Individual Lot Assessments shall be in addition to Initial Assessments and Regular Assessments.

(d) **No Waiver or Abatement of Assessments.** Assessments shall not be waived or abated due to lack of or limited access to, or unavailability for use of, any Common Property, General Common Areas, Limited Common Areas or Restricted Common Areas. The Association shall take prompt action to collect from any Owner(s) any assessments which remain unpaid by such Owner(s) for more than thirty (30) days from the date payment thereof becomes due.

11.4 Basis for Assessments.

(a) **General Common Charges, Single Family Homes Division.** The total amount of all budgeted General Common Expenses and amounts to be contributed toward separately budgeted funds and reserves established for the common benefit of all members of the Association as described in Subsections 10.4, 10.5 and 10.6 of this Declaration, during or for each fiscal year of the Association, shall be divided by the total number of Lots in the Single Family Homes Division. The amount resulting from such division shall constitute the amount of "General Common Charges" payable by way of Regular Assessments levied on each Lot subject to assessment.

(b) **General Common Charges, Multi-Family Homes Division. Deleted.**



3587953

Page: 42 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC COV \$109.00 Thurston Co. Wa.

(c) General Common Profits and Surplus. Common profits and any surpluses of the Association available for payment of General Common Expenses shall be allocated to offset and pay such expenses in proportion to the Common Charges levied by assessment of all Lots, as provided for by Subsections 11.4(a) and 11.4(b) immediately above.

(d) Limited Common Charges. The total amount of all budgeted Limited Common Expenses and amounts to be contributed toward separately budgeted funds and reserves established for the common benefit of all members of any Division, or any specifically identifiable group of Owners or Lots, described in Subsections 10.4, 10.5 and 10.6 of this Declaration, during and for each fiscal year of the Association, shall be divided by the total number of Lots in such Division, or by the total number of Lots owned by such specifically identifiable group of Owners, or by the total number of such specifically identifiable number of Lots. The amount resulting from such division shall constitute the amount of "Limited Common Charges" payable by the Owner(s) of each Lot included in the Division, such Owners, or by the Owners of such specifically identified Lots, in addition to all Common Charges payable by such Owners.

(e) Allocation of Profits or Surpluses Available to Pay Limited Common Expenses. Common profits and any surpluses of the Association available for payment of Limited Common Expenses shall be allocated to offset and pay such expenses in proportion to the Limited Common Charges levied by assessment of all Lots.

11.5 Notice of Assessments. The Association shall, not less than annually, provide written notice to the Owner(s) of each Lot setting forth the amount of all assessments payable by such Owner(s) calculated in accordance with Subsection 11.4 of this Declaration. Assessments shall be due and payable on or before a date set forth in the notice which shall be not less than thirty (30) days after the date the notice is mailed or at such other time or times as the Association may specify in the notice in accordance with this Declaration or the Bylaws.

11.6 Certificate of Assessments. The Association or its managing agents shall, upon receipt of a written request or demand therefore, promptly provide any Owner liable for the payment of any assessments or other charges as may be fixed, established and subject to collection from time to time in the manner provided in this Declaration or the Bylaws, a certificate in writing setting forth whether assessments and/or other charges payable by such Owner assessed against such Owner's Lot or Lots have been paid, and the amount of any delinquency in payment of such assessments and/or other charges. A reasonable charge may be collected by or on behalf of the Association to cover the Association's costs incurred for preparation and issuance of any such certificate. The information set forth and contained in any such certificate issued by or on behalf of the Association shall be conclusive evidence of the amount and nature of all assessments and/or other charges paid and payable by the Owner(s) with the respect to the Lot or Lots subject thereof as of the date of such certificate.

11.7 No Right of Offset. All assessments of Owners and Lots effected under this Declaration shall be payable in full in the amount thereof set forth in any notices of assessment provided to affected Owners in accordance with Subsection 11.5 above and no offsets against such assessments shall be permitted for any reason, including, without limitation, any claim that: (a) the Association is not performing any obligation(s) on its part to be performed under this Declaration; (b) an Owner or resident of any Lot subject to assessment hereunder has made, or intends or purports to make, no use of, or receives no benefit from, any part or all of any Common Property otherwise available for use, or provided for the benefit, of such Owner or resident; or (c) such Owner is entitled to offset against any such assessment costs and



3587953

Page: 43 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.

expenses incurred, and/or the reasonable value of any work personally performed by such Owner in effecting reconstruction, replacement or maintenance of Improvements or Common Property which it is the obligation of the Association pursuant to the provisions of subparagraph (a) of Subsection 9.2 above.

11.8 Homestead Waiver. Each Owner, to the extent permitted by law, shall be deemed for all purposes to have waived, to the extent of any liens arising pursuant to this Declaration, whether now existing or hereafter arising, the benefit of any homestead or exemption laws of the State of Washington now or hereafter enacted and in effect.

11.9 Creation of Lien and Personal Obligation of Assessments. Whether or not stated or otherwise expressed, any instrument conveying ownership of any Lot, by acquiring ownership of such Lot, each Owner shall be deemed for all purposes whatsoever to promise, covenant and agree 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 Bylaws. Such assessments, charges, and other costs together with any interest, expense or attorneys' fees imposed pursuant to Section 12 of this Declaration shall be a charge on the land and Lot so acquired and constitute a continuing lien upon such Lot until fully paid and satisfied. In addition, all such assessments, charges and other costs shall be the personal obligation of the Owner(s) of such Lot at the time when the assessment or charge became due and payable. Such liens and personal obligations shall be enforced in the manner set forth in said Section 12.

SECTION 12 REMEDIES

12.1 Non-Conforming Improvements; Violation of General Protective Covenants. In the event any Owner or other person(s) for whose actions or omissions such Owner is responsible hereunder shall violate or suffer violation of any provision of this Declaration; the Bylaws; and rules or regulations adopted on behalf of the Association, or any Design Guidelines, standards, actions or decisions of the Committee herein provided for, then the Association shall have each and all the following rights, remedies and prerogatives, which shall be cumulative:

(a) Notification of Violation. The Association may notify the Owner in writing that the violations exist, that such Owner is responsible for them, and that unless such violation(s) are corrected or abated within such time following the date of such notice as is stated therein, the Association may take any action with respect to the correction or abatement thereof as may be provided for in this Declaration or otherwise under the Bylaws, such rules or regulations or Design Guidelines

(b) Suspension of Voting and Certain Uses. The Association may suspend such Owner's voting rights and rights of use of Common Property, General Common Areas, Limited Common Areas and/or Restricted Common Areas otherwise available for use by such Owner for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations;

(c) Imposition of Fines and Assessment. The Association may impose reasonable fines upon such Owner, in a manner and amount the Board deems appropriate in



3587953

Page: 44 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.

relation to the violation, which fines shall be paid into the Maintenance and Operations Fund and to make any such fines the subject of an Individual Lot Assessment;

(d) Entry and Cure at Expense of Owner and Assessment. Provided notice of the nature described in subparagraph (a) of this subsection shall have been given as therein stated and the Owner(s) of any offending Lot shall be afforded reasonable advance notice of the time such entry will take place, the Association may enter any offending Lot (which entry shall not subject the Association, the directors or officers of the Association or the Committee, or any agent or representative thereof to liability for trespass, conversion or any other claim for damages) and remove the cause of such violation, or alter, repair or replace any non-conforming Improvement in such a manner as to make it conform the requirements or standards which pertain thereto. In any such case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Maintenance and Operations Fund and may be made subject of an Individual Lot Assessment;

(e) Arbitration. The Association may commence arbitration proceedings pursuant to Subsection 12.2 or resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate;

(f) Other Remedies. The Association may avail itself of any other or further remedies available at law or in equity;

(g) Limitation of Remedies. Provided, however, nothing in this Subsection 12.1 shall be construed to afford to the Association or any person or persons acting, or purporting to act on behalf of the Association, any right to deprive any Owner of use of, and access to and from, such Owner's Lot.

12.2 Failure to Pay Assessments; Lien; Enforcement of Lien. If any assessment or other sum charged, levied or payable pursuant to this Declaration is not paid within thirty (30) days after it becomes due, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate of twelve percent (12%) per annum or the highest "legal" rate of interest recoverable under the laws of Washington on the date of such assessment, whichever is the lesser rate. In addition, the Association may exercise any or all of the following remedies simultaneously or consecutively;

(a) Suspension of Voting Rights and Certain Uses. The Association may suspend such Owner's voting rights and right to use Common Property, General Common Areas, Limited Common Areas and/or Restricted Common Areas otherwise available for use by such Owner until such assessments and/or other amounts payable under this Declaration or the Bylaws, are paid in full and may declare all remaining periodic installments of any annual assessments or any other amounts owed by such Owner to the Association immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from such Owner's Lot.

(b) Lien; Notice of Delinquency; Recording; Foreclosure. The Association shall have a lien as provided for and described in Subsection 11.9 of this Declaration against each Lot for all Initial Assessments, Regular Assessments and Individual Lot Assessments levied against such Lot and for any fines or other charges imposed under this Declaration or the Bylaws against the Owner of such Lot from and after the date on which the assessment, fine or other charge becomes due and payable to the Association. If any assessment or other amount due or to become due under this Declaration or the Bylaws is payable in installments, the full



AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.

3587953

Page: 45 of 91

10/20/2003 03:49P

amount of such assessment or other amount is a lien from the date the first installment payment on account thereof becomes due.

(i) At any time following the date upon which any assessment, fine or other charge becomes due and payable and remains unpaid and satisfied, the Association may cause to be executed and acknowledged on behalf of the Association by its President or Chairperson and by its Secretary and/or Treasurer, and recorded in the official records of the County a "Notice of Delinquency and Lien." Said notice shall set forth specifically the amount and nature of all assessments, fines and other charges subject thereof; the legal description of record of the Lot or Lots subject of such assessments, fines and other charges; the name(s) of the record Owner(s) of such Lot or Lots, and, where applicable, the name and address of any person or party appointed by the Association to act as trustee for the Association as beneficiary for purposes of non-judicial foreclosure of said lien (in the manner provided by law for non-judicial foreclosure of a deed of trust on real property).

(ii) Upon payment and full satisfaction of all sums subject of any Notice of Delinquency and Lien recorded as aforesaid, the Association shall, upon receipt of a sum sufficient to pay the actual costs of preparation and recording thereof from the party or parties named as Owner(s) in said Notice of Delinquency and Lien, cause to be prepared and recorded in the official records of the County a further notice stating that the lien subject of such Notice of Delinquency and Lien is fully satisfied and discharged.

(iii) The lien provided for by this Subsection 12.2 and evidenced by recording of a Notice of Delinquency and Lien as hereinabove provided for, may be foreclosed in any manner permitted by Washington law for the foreclosure of a mortgage, deed of trust or contract for sale of real property (including without limitation, any forms of non-judicial foreclosure and sale permitted by law) which may be specified by resolution of the Board of Directors from time to time.

(c) **Remedies in Foreclosure.** In any judicial or non-judicial proceeding to foreclose any lien arising under this Declaration, in addition to the sums secured by such lien, the Association may seek and recover from the Owner(s) of the Lot(s) subject of such lien reasonable rental for the use of such Lot(s) during the pendency of the suit and shall be entitled to the appointment of a receiver to collect such rental. The Association shall have the power to purchase any such Lot(s), including any Multi-Family Lot, at the foreclosure sale and to thereby acquire all right, title and interest of the Owner(s) thereof and to hold, lease, mortgage, vote the votes appurtenant to, convey, and otherwise deal with such Lot(s) and all Improvements thereon as Common Property of the Association in accordance with this Declaration.

(d) **Priority of Lien.** Any lien for assessments, fines and other charges provided for in this Declaration shall be subordinate to liens for taxes and assessments payable to any governmental entity and to the lien of any mortgage or deed of trust on the Lot subject of such lien made in good faith and for value and which is recorded prior to the recordation of a Notice of Delinquency and Lien as hereinabove provided. Sale or other transfer of any Lot, whether affected voluntarily or by operation of law, shall not affect any lien arising under this Declaration whether or not a Notice of Delinquency and Lien shall be of record at the time of such sale or transfer.

(e) **Transfers in Lieu of Foreclosure.** Where the purchaser or Mortgagee of a Lot obtains title to the Lot by deed or other means in lieu of foreclosure, the lien of the Association for payment of any assessments or charges which became due and payable prior to



3587953

Page: 46 of 91

10/20/2003 03:49P

AHO CONSTRUCTION INC

COV

\$109.00 Thurston Co. Wa.