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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WALLACE WAY COTTAGES  
A Plat Community**

<b>DOCUMENT TITLE</b>	Declaration of Covenants, Conditions and Restrictions for Wallace Way Cottages, a Plat Community
<b>REFERENCE NO. OF DOCUMENTS ASSIGNED/ RELEASED</b>	N/A
<b>GRANTOR</b>	Wallace Cottages, LLC
<b>GRANTEE</b>	Plat of Wallace Way Cottages
<b>LEGAL DESCRIPTION</b>	Portions of SE ¼ of NE ¼, Section 27, Township 25 North, Range 2 East, W.M.
<b>ASSESSOR'S PARCEL NO.</b>	272502-1-023-2005; 272502-1-153-2007; 272502-1-154-2006; 272502-1-155-2005

**Note to Recorder: Concurrent with recording of this Declaration, please insert the recording number of the Plat of Wallace Way Cottages in the blank in Section 1.21 on page 4 and the recording number of the Stormwater Operations Manual in the blank in Section 4.3.1 on page 8. Thank you.**

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This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made by Wallace Cottages, LLC, a Washington limited liability company ("Developer"), as of the date set forth on the signature page hereof. Developer owns the real property legally described on **Exhibit A**, attached hereto, which property is referred to in this Declaration as the "Property" or "Wallace Way Cottages."

NOW, THEREFORE, Developer hereby publishes and declares that the Property shall be held, conveyed, encumbered, leased, occupied and improved subject to the following covenants, conditions, restrictions, easements, reservations, and agreements, all of which are for the purpose of enhancing and protecting the character, attractiveness, and desirability of the Wallace Way Cottages. Those covenants, conditions, restrictions, easements and reservations shall run with the Property and shall be a burden upon and a benefit to the Property and binding upon any person, firm, corporation or entity of any kind whatsoever acquiring or owning an interest in the Property or any part thereof, and their respective lessees, guests, heirs, executors, personal representatives, successors and assigns. Acceptance of an interest in any portion of the Property shall be deemed acceptance of the terms and provisions of this Declaration.

**ARTICLE 1 - DEFINITIONS**

**1.1 Accessory Structure**

The term "Accessory Structure" shall mean and refer to any temporary or permanent accessory structure, including, but not be limited to, spas, garden sheds, play equipment, tool sheds, doll houses, gazebos, sports courts, swimming pools, tents, air conditioning units, satellite dishes, flag poles and other similar structures constructed or located within Wallace Way Cottages other than the primary house located on a Lot.

**1.2 Act**

The term "Act" shall mean the Washington Uniform Common Interest Ownership Act, Ch. 64.90 RCW, as it shall be amended from time to time.

**1.3 Affordable Lot**

The term "Affordable Lot" shall mean any Lot conveyed by Developer to HRB.

**1.4 Assessment**

The term "Assessment" shall mean all sums chargeable by the Association against a Lot including, without limitation: (a) regular and special Assessments for Common Expenses, fees and any other charges imposed by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Lot Owner's account.

### **1.5 Association**

The term "Association" shall mean and refer to the Wallace Cottages Homeowners Association, an association of Lot Owners of Wallace Way Cottages acting collectively in accordance with its governing documents and this Declaration.

### **1.6 Board**

The term "Board" shall mean and refer to the Board of Directors of the Association, which shall have primary authority to manage the affairs of the Association.

### **1.7 Building**

The term "Building" shall mean and refer to any Residence, building or structure and all appurtenances thereto, constructed or located within Wallace Way Cottages, including but not limited to houses, Accessory Structures, fences, walls, recreational facilities and other exterior structures.

### **1.8 City**

The term "City" shall mean the City of Bainbridge Island.

### **1.9 Common Areas**

The term "Common Areas" shall mean and refer to (a) the following areas shown or described on the Map: (i) the Open Spaces (as shown on the Map), which include but are not limited to a playground and pea patch; and (ii) the storm water drainage system and related facilities and equipment, whether located within the Open Space or within a utility easement on a Lot; and (b) any other portions of the Property that benefit the Lot Owners or the Association for the common use and enjoyment of all of the Lot Owners. Any tracts or other areas dedicated or conveyed to a governmental entity for public use are not Common Areas. In the event the Common Areas described on the Map are different from those described herein, the Common Areas described on the Map shall be deemed the Common Areas unless this Declaration has been amended or modified to change the Common Areas shown on the Map.

### **1.10 Common Expenses**

The term "Common Expenses" shall mean and refer any expense of the Association, including any allocations to reserves, allocated to all of the Lot Owners in accordance with common expense liability set forth in Section 14.8.

### **1.11 Common Wall**

The term "Common Wall" shall mean the walls which are on the lot lines separating the individual Residences within the duplex building on Lot 16 and Lot 17. The term Common Wall includes everything located within such wall (such as studs, framing, insulation, soundproofing material, pipes, wires, joists, junction boxes, and other materials or equipment related to utilities), and below such wall (such as the surface of the ground and footings located in the ground), and above such wall (such as the roof and rafters), and on the sides of such walls including the exterior siding and trim.

**1.12 Declaration**

The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Wallace Way Cottages.

**1.13 Developer**

The term "Developer" shall mean and refer to Wallace Cottages, LLC, or a person or entity to which it assigns its rights as Developer. The term "Developer" shall have the same meaning as the term "Declarant" as defined in the Act, except to the extent defined otherwise in this Declaration.

**1.14 Development Period**

The term "Development Period" shall mean that period of time from the date of recording this Declaration until the date of conveyance of the final original Lot to a residential purchaser, but in any event the Development Period shall terminate ten (10) years after the recording of this Declaration.

**1.15 Development Right**

The term "Development Right" means the right to: (a) add real estate or improvements to Wallace Way Cottages; (b) create Lots or common elements, or limited common elements within Wallace Way Cottages; (c) subdivide or combine Lots or convert Lots into Common Area; or (d) withdraw real estate from Wallace Way Cottages.

**1.16 Governing Documents**

The term "Governing Documents" means articles of incorporation and Bylaws of the Association, Map, Declaration, rules, or other written instrument by which the Association has the authority to exercise any of the powers provided for in the Act or to manage, maintain, or otherwise affect the Property.

**1.17 HRB**

The term "HRB" means Housing Resources Bainbridge, its successors and assigns, or other agency, department, or authority designated from time to time by the City of Bainbridge Island to administer affordable housing programs.

**1.18 Lot**

The term "Lot" means any one of the residential lots located within the Property as shown on the Map. The term "Lot" shall have the same meaning as the term "Unit" as defined in the Act, except to the extent defined otherwise in this Declaration.

**1.19 Improvements**

The term "Improvements" shall mean and include Buildings, structures, landscaping and other improvements on any Lot or Common Areas. Ownership of Improvements may be severed from ownership of the underlying real estate pursuant to Section 17.1.

**1.20 Lot Owner**

The term "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot, including any persons or entities purchasing a Lot pursuant to the terms of a recorded

real estate contract, but excluding those persons or entities having an interest in any Lot merely as security for the performance of an obligation. The Developer shall be the sole Lot Owner until it sells a Lot. The term "Lot Owner" shall have the same meaning as the term "Unit Owner" as defined in the Act, except to the extent defined otherwise in this Declaration.

### **1.21 Map**

The term "Map" shall mean the official Map for the Plat of Wallace Way Cottages, City of Bainbridge Island File No. PLN 50589 SUB, recorded under Kitsap County Recording No. \_\_\_\_\_ and any amendments thereto, which subdivides the Property into nineteen (19) Lots.

### **1.22 Member**

The term "Member" shall mean and refer to every Lot Owner who, as a result of such ownership, holds a membership in the Association with rights and responsibilities as set forth herein and in the governing documents of the Association. Each Lot shall have one (1) membership inseparably appurtenant to it.

### **1.23 Mortgage**

The term "Mortgage" means a mortgage, deed of trust or real estate contract covering a Lot or other portion of the Property.

### **1.24 Mortgagee**

The term "Mortgagee" means an institutional lender (i.e., a bank, savings and loan association, insurance company, FHA-approved mortgage lender, or FannieMae), which is the holder of a note and mortgage or the beneficiary of a deed of trust covering a Lot or other portion of the Property, and shall also mean the vendor under a real estate contract covering a Lot.

### **1.25 Occupant**

The term "Occupant" shall mean any person residing in a Lot, including Lot Owners, family members, guests, and tenants.

### **1.26 Open Spaces**

The term "Open Spaces" shall mean the area surrounding the cul-de-sac, the playground, the pea patch and the access pathway west of Lot 18 , all as shown on the Map.

### **1.27 Period of Developer Control**

The term "Period of Developer Control" means that period of time beginning on the date that this Declaration is recorded and continuing until the earliest of: (a) sixty (60) days after conveyance of seventy-five percent of the Lots that may be created to Lot Owners other than Developer; (b) two (2) years after the last conveyance of a Lot, except to a dealer; (c) two (2) years after any right to add new Lots was last exercised; or (d) the day the Developer, after giving notice in a record to Lot Owners, records an amendment to the Declaration voluntarily surrendering all rights to appoint and remove officers and board members.

### **1.28 Property**

The term "Property" shall mean the Property described on **Exhibit A**, attached hereto. The Property is commonly referred to as Wallace Way Cottages.

### **1.29 Residence**

The term "Residence" shall mean the residential structure located on each Lot.

### **1.30 Special Declarant Rights**

The term "Special Declarant Rights" means rights hereby reserved for the benefit of the Developer to: (a) complete any improvements indicated on the map or described in the Declaration or the public offering statement pursuant to RCW 64.90.610(1)(h); (b) exercise any Development Right; (c) maintain sales offices, management offices, signs advertising Wallace Way Cottages and models; (d) use easements through the Common Area for the purpose of making improvements within the Property; (e) appoint or remove any officer or Board member of the Association or to veto or approve a proposed action of the Board or the Association, pursuant to RCW 64.90.415; (f) control the Design Review Committee (if any) and any other construction, design review, or aesthetic standards committee or process; (g) attend meetings of the Lot Owners and, except during an executive session, the Board; and (h) have access to the records of the Association to the same extent as a Lot Owner.

## **ARTICLE 2 - COMMON AREAS**

### **2.1 Grant of Authority**

The Developer and the Owners of all Lots within Wallace Way Cottages hereby grant and convey the Open Spaces (as shown on the Map) to the Association. Further, the Association shall have the exclusive right and obligation to manage and control the Common Areas and to administer the covenants, conditions, restrictions and easements set forth in this Declaration on behalf of and in the interest of the Members, in accordance with the general terms and conditions set forth on the Map and subject to the rights reserved to the Developer herein.

### **2.2 Association Control**

Subject to the Developer's rights set forth in Section 2.3, and pursuant to the authority granted to the Association set forth in Section 2.1, the Association shall manage and control the Common Areas for the benefit of the Lot Owners. Except as otherwise limited by law, prior restriction and the restrictions set forth in the Declaration, each Lot Owner shall have a non-exclusive right to use and enjoy the Common Areas.

### **2.3 Developer Rights**

The Developer shall have and hereby reserves for itself, its successors, and assigns, an easement for the right, during the Development Period and any period thereafter in which Developer is a Lot Owner, to utilize the Common Areas for its business uses and purposes, including, but not limited to, completion of Improvements and other uses and purposes related to the construction, promotion, development and sale of the Wallace Way Cottages.

## **2.4 Association Responsibilities**

The Association shall have the right and obligation to maintain, repair, replace, reconstruct and make necessary improvements to the Common Areas, or shall contract for such maintenance, repair, replacement, reconstruction and improvements, to keep the Common Areas and all Improvements thereon in a good, sanitary and attractive condition. Such maintenance, repairs, replacement, reconstruction and improvements shall include, without limitation: (a) maintenance, repair, replacement and reconstruction of perimeter fences enclosing Common Areas, landscaping, shrubs, vegetation, irrigation systems (if any), lighting (if any), and other recreational or landscaping Improvements located on the Common Areas; (b) maintenance, repair, replacement and reconstruction of all parking areas, roads, sidewalk, and other means of ingress and egress within the Common Areas; (c) inspection, maintenance, pruning, and replacement of trees, including but not limited to hazardous trees, located on the Common Areas; (d) maintenance, repair of and payment for all centrally metered utilities, mechanical and electrical equipment, if any, serving the Common Areas; and (e) maintenance, repair, replacement and reconstruction of storm water drainage facilities and equipment located within the Property. In addition, the Association shall maintain, repair and replace landscaping within the right of way within Wallace Way Cottages and any community entry signage and/or monument within Wallace Way Cottages. The Association may provide such additional common maintenance which it determines to be in the best interest of the Lot Owners. The Board shall acquire and pay for as a Common Expense of the Association all goods and services reasonably necessary or convenient to perform its responsibilities set forth in this Section 2.4 for the efficient and orderly maintenance of the Common Areas.

## **2.5 Restrictions on Use**

Except with regard to utility easements, the Common Areas may be used only by Lot Owners, Occupants and their respective guests and invitees. The Common Areas shall also be subject to the other restrictions, limitations and reservations contained or provided for in this Declaration or the Bylaws.

## **2.6 Rules and Regulations**

The Association shall have the authority to establish reasonable rules and regulations for the maintenance and use of the Common Areas consistent with this Declaration.

## **2.7 Conveyance of Common Area**

Portions of the Common Area may be conveyed or subjected to a security interest by the Association if Lot Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by Developer, agree to that action. An agreement to convey Common Area must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of Lot Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date.

## **2.8 Developer's Rights in the Common Area**

The Developer shall have and hereby reserves for itself, its successors and assigns, an easement for the right, during the Development Period and any period thereafter in which Developer is a Lot Owner, to utilize the Common Area for its business uses and purposes, including, but not limited to, completion of improvements thereon and other uses and purposes related to the construction, promotion and development of Wallace Way Cottages. The Developer may add to or subtract from the Common Area during the Development Period by an amendment to this Declaration. Until the termination of the Development Period, Developer reserves the right to withdraw any undeveloped part of the Property from this Declaration

and to dedicate, transfer or convey to any state, county, municipal or other governmental entity any such part of the Property. The rights reserved to Developer in this Section 2.8 shall be exercised by Developer at Developer's sole discretion. Upon termination of the Development Period, said Developer's easement shall automatically terminate. Control and the management and administration of the Common Area shall vest in the Association at the end of the Development Period subject to the Developer's aforementioned rights of use.

## **ARTICLE 3 - EASEMENTS**

### **3.1 Existing Dedications and Easements.**

Land, improvements, rights-of-way easements have been dedicated to and/or created for the benefit of the City of Bainbridge Island as set forth on the Map.

### **3.2 Association Functions**

The Association, its employees, agents and contractors, shall have a perpetual, non-exclusive easement over, under and across the Property with a right of immediate entry and continued access for the construction, improvement, maintenance, repair and reconstruction of the Common Areas. No Lot Owner or Occupant shall place or permit to be placed any structure, planting or other material, or permit such items to remain under, on or in, any easement area on the Property which (i) interferes with the use of the easement, (ii) may damage or interfere with the installation and maintenance of utilities within easements for installation and maintenance of utilities, or (iii) may damage, interfere with or change the direction or flow of drainage facilities within easements for installation and maintenance of drainage facilities.

### **3.3 Utility Easements**

The Association, its employees, agents and contractors, shall have a perpetual, non-exclusive easement over, under, and across the Easements (as shown on the Map) with a right of immediate entry and continued access for construction, improvement, inspection, maintenance, and repair of utilities, including but not limited to the storm water management system, and to perform all responsibilities of Developer and Lot Owners set forth on the Map and in this Declaration. No structure, planting or other material that may damage or interfere with any easement or the installation, operation or maintenance of utilities shall be placed or permitted to remain on any portion of the easements set forth in this Article. No permanent structures, including decks, patios and outbuildings, shall be allowed within any Utility Easement. No grading, excavation or filling shall occur within a Utility Easement. If maintenance, repair or reconstruction of any utility is required, the property owner shall be responsible for the removal and replacement or restoration of any structure within the Easement. Each Lot Owner shall otherwise maintain the area of the Owner's Lot subject to the Utility Easements in a condition which will not interfere with the operation and maintenance of said utilities and systems. Additionally, grading shall not be allowed within Easements shown on the plat map unless otherwise approved by the City of Bainbridge Island and the Association, or the Developer during the Development Period. Lot Owners may not relocate, remove or disturb any utilities, including utility boxes, without the express written consent of the Association, the City and utility purveyors who have utility lines within such Easements. If the municipality or any utility service provider maintains or repairs any such utility and charges the Association for such work, the Association shall have the right to assess, collect and pay such costs on behalf of the Lot Owners.

### **3.4 Release and Indemnification**

The Association and/or benefited Lot Owner of each easement set forth in this ARTICLE 3 shall release, defend, indemnify and hold the burdened Lot Owner harmless from any and all loss or liability for

damage to property or injury or death to persons related to the benefited Lot Owners use of the Easement Area except to the extent said loss or liability arises from or relates to the grossly negligent or intentional wrongful act of the burdened Lot Owner or said Owner's agents or invitees.

### **3.5 Running with the Land**

The easements set forth in this ARTICLE 3 shall run with the land and shall bind the heirs, successors and assigns of the Association and the Owners of the respective benefited and burdened Lots.

## **ARTICLE 4 - MAINTENANCE**

### **4.1 Maintenance of Common Areas**

As set forth in Section 2.4, the Association shall have the right and duty to maintain, repair, replace and make necessary improvements to the Common Areas. In the event that, in connection with such duties, the Association disturbs or damages any Improvements located on a Lot, the Association shall restore said Improvements as close as practicable to their condition prior to such disturbance, damage or commencement of such repairs or other work. Lot Owners may not change the appearance of the Common Areas without the prior permission of the Board.

### **4.2 Maintenance of Lots and Improvements**

Each Lot Owner shall keep the Owner's Lot, perimeter fencing enclosing the Lot, and all other Improvements thereon in a safe, neat and operable condition, including without limitation the removal of debris and refuse to the extent necessary to keep the Property in a clean and orderly condition. Lot Owners shall maintain hedges, plants, shrubbery, trees and lawns in a neat and trim condition at all times. If a Lot Owner fails to correct a problem in maintenance or repair of the Owner's Lot called to such Lot Owner's attention by written notice by Developer or the Association within thirty (30) days of such notice, the Association shall have the right to effect such maintenance, and the Owner of such Lot shall reimburse the Association for the reasonable cost of the services performed. In the event that the estimated cost of such repair, maintenance or restoration exceeds one-half (1/2) of one percent (1%) of the assessed value of the Lot, a majority of the Lot Owners must approve such repair, maintenance or restoration before the Board may begin such repair, maintenance or restoration. Any such sums the Association expends maintaining or replacing said Improvements shall be secured by a lien on the Lot, which lien shall include collection costs, including attorneys' fees.

### **4.3 Maintenance of Storm Detention System**

4.3.1 Maintenance Standards. The Association and all Lot Owners shall comply with the guidelines set forth in the Operation and Maintenance Manual, recorded under Kitsap County Recording No. \_\_\_\_\_, for operation and maintenance of the storm detention system (also known as the storm drainage system) within Wallace Way Cottages.

4.3.2 Common Areas. All portions of the storm detention system that serves the Common Areas or more than one Lot is a Common Area. Unless or until the City agrees to maintain such portion of the storm detention system, the Association shall maintain, repair, replace and reconstruct them, including but not limited to all storm drains, lines, ponds, ditches and culverts, in the same or better condition as originally constructed by Developer.

4.3.3 Lots. Each Lot Owner shall be responsible for the maintenance, repair, replacement and reconstruction of the storm detention system on such Owner's Lot that serves only one

Lot, including but not limited to roof and footing drains, except that the Association shall maintain, repair and reconstruct any portion of the storm detention system located within a Utility Easement on a Lot, such as rain gardens, bio-retention cells and catch basins.

4.3.4 City's Maintenance Rights. The City shall have the right to inspect the storm detention system throughout Wallace Way Cottages. Until the City assumes maintenance responsibility for the storm detention system, if the City determines any such facilities require maintenance and repair, the City shall notify the Association and/or any Owner(s) responsible for the maintenance of such facilities. If the Association or responsible Owner(s) fail to perform such maintenance and repairs within thirty (30) days (or such shorter time as the City deems necessary to protect life or property), the City shall have the right to perform the work and bill the Association or responsible Owner for the full cost of such work.

#### **4.4 Maintenance of Common Wall**

In the event the Common Wall is damaged or destroyed by the sole negligence or fault of one Lot Owner or Occupant who shares the Common Wall, then such Owner, within thirty (30) days, shall take all necessary steps to repair such damage and restore the Common Wall to the condition it was prior to such damage or destruction and such Owner shall solely bear the cost of repair or reconstruction. If such damage or destruction was caused other than by the sole negligence of one Owner who shares the Common Wall or is the joint or concurring fault of each Owner or other Occupant of their respective Lots, then each Owner shall be responsible for the cost to repair their portion of the wall, except for those utilities that are in the wall and common to both Residences, as to which the repair shall be shared equally. When necessary to repair or reconstruct the Common Wall, the Owners shall have a right of entry into the adjacent Lot for that purpose.

### **ARTICLE 5 - PROPERTY RESTRICTIONS**

#### **5.1 Alterations**

No alterations, additions or deletions to the exterior of any Residence shall be made without the prior written consent of the Board. No windows, chimney flue or other openings may be made in any Common Wall.

#### **5.2 Exterior Finish**

The color of any paint or stain and the color of any replacement or new roofing or siding shall be approximately the original color unless a different color is permitted by prior written consent of the Board.

#### **5.3 Signs**

No signs, billboards or other advertising structure or device shall be displayed to the public on any Lot or the Common Areas, except that one sign not to exceed five (5) square feet in area may be placed on a Lot to offer the Lot for sale or rent, unless the Board has designated an area within the Property for placing signs offering Lots for sale or rent. All signs offering a Lot for sale or for rent shall be of a quality equivalent to those used by Developer. Signs may be used by Developer, or an agent of Developer, to advertise the Lots during the construction and sale period. Notwithstanding the foregoing, a Lot Owner or Occupant may display political yard signs on the Lot Owner's or Occupant's Lot for the sixty (60) days immediately before any primary or general election, or such longer period as may be permitted by applicable law. The Board may remove any sign placed on any Lot or Common Areas in violation of these restrictions.

#### **5.4 Outdoor Lighting**

No outdoor lighting on any Lot, except as initially constructed by Developer, shall be allowed unless approved by the Board.

#### **5.5 Satellite Dishes**

A Lot Owner may install, use and maintain, at the Lot Owner's sole cost and expense, an antenna, satellite dish or other device for the transmission or reception of television or radio (including ham radio) signals, or any other similar device ("Satellite Dish") on the Owner's Lot so long as such installation, use and maintenance complies with this Section. Satellite Dishes must have a diameter or diagonal measurement of one (1) meter or less. Lot Owners desiring to install a Satellite Dish are encouraged, but not required, to notify the Association in writing at least ten (10) days prior to installation with a description of the Satellite Dish and the location of the intended installation. In any event, the Lot Owner shall notify the Board within five (5) days after the installation of the Satellite Dish. The Board shall review the location and determine whether an alternative, less obtrusive location can be used. Satellite Dishes should be screened from view from the street and the Common Areas when possible. However, a Lot Owner may install a Satellite Dish without such screening if the Lot Owner desiring to install such device demonstrates to the Association that such screening would unreasonably delay or prevent installation, maintenance, or use of the Satellite Dish, unreasonably increase the cost of installation, maintenance or use of Satellite Dish, or preclude reception of an acceptable quality signal. The Board may (a) require additional screening and/or the painting of the Satellite Dish to match the color of the Residence so long as such action does not unreasonably interfere with the signal strength or (b) require the relocation of the Satellite Dish, if the Board demonstrates that an alternative location may be used that is less visible or less obtrusive, but still does not unreasonably delay or prevent installation, maintenance, or use of the Satellite Dish, unreasonably increase the cost of installation, maintenance or use of Satellite Dish, or preclude reception of an acceptable quality signal.

#### **5.6 Solar Energy Panels**

Solar energy panels may be installed within a Lot so long as the solar energy panel: (a) meets applicable health and safety standards and requirements imposed by Washington State and local permitting authorities; (b) if used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency for both the solar energy panel and for installation; and (c) if used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as Underwriters Laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability. Solar energy panel frames, support brackets, or any visible piping or wiring shall be painted to coordinate with the roofing or other adjacent material. Solar energy panels may be attached to the slope of a roof facing the street only if the panel conforms to the slope of the roof and the top edge of the panel is parallel to the roof ridge. Ground-mounted solar energy panels must be shielded if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent (10%).

#### **5.7 Garages and Carports**

The exterior appearance of a garage or carport, including the roof lines, roofing materials and siding, must be the same general design and appearance as the principal Residence, all of which are subject to all the provisions of ARTICLE 5, ARTICLE 6 and ARTICLE 7. Owners must keep carports clean and free of debris and refuse. Notwithstanding the foregoing, the provisions of this Section 5.7 shall not

supersede any governmental requirements that are more restrictive or any requirements adopted or modified by Developer that are specific to individual Lots.

### **5.8 Temporary Structures**

Except as provided in Section 5.19, no structure of a temporary character or trailer, recreational vehicle, tent, shack, garage, barn, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. No vehicles parked in public rights-of-way may be used temporarily or permanently for residential purposes. All such structures shall be removed at the expense of the Owner of the Lot on which the structure is located.

### **5.9 Plantings and Fences.**

No hedge more than six (6) feet in height, nor any fence, wall or other similar structure more than six (6) feet in height, shall be constructed, erected, placed, planted, set out, maintained or permitted on any Lot. All fencing and walls must be specifically approved prior to installation by the Developer during the Development Period, or the Association after the termination of the Development Period. No barbed wire, chain link or corrugated fiberglass fences shall be erected on any Lot. Material for fencing must be cedar with a natural tone stain. No fences may extend past the front of the garage. All fences must be maintained in an attractive manner and damage-free condition at all times. The Developer during the Development Period, or the Association after the termination of the Development Period may adopt a fencing policy detailing acceptable styles of fencing if it deems appropriate.

### **5.10 Changing Lot Contours.**

Following the initial construction of Residences by Developer, the surface grade or elevation of the various Lots and other residential sites in the Property shall not be substantially altered or changed in any manner which would affect the relationship of such Lot or other residential sites adjoining, or which would result in materially obstructing the view from any other Lot, or which would otherwise produce an effect out of harmony with the general development of the immediate area in which said Lot. Whether or not such alteration or change in the elevation or grade of any Lot would be prohibited, shall be determined by the Developer during the Development Period, or the Association after the termination of the Development Period.

### **5.11 Plans for Buildings Must Be Approved**

Any Building within the Property constructed, reconstructed or whose exterior is remodeled by a builder other than the Developer must be constructed in accordance with a plan approved by Developer during the Development Period, or the Association after the termination of the Development Period. All additions, remodels, replacement or construction must be constructed with the same or like material as originally constructed from the original description of materials and exterior color selection unless the Association expressly authorizes any variations thereof. The requirements for the plans and the approval thereof are described in ARTICLE 6. All Buildings and other structures must be designed by an architect, who is either registered to practice in the State of Washington or is a designer approved in writing by the Developer (or its nominee) during the Development Period, or the Association after the termination of the Development Period.

### **5.12 Minimum Size Requirements**

No Residence shall be allowed on any Lot except one single-family dwelling house, all for the use and occupancy of one immediate family and attendant bona fide domestic servants only. Each Residence

shall have a fully enclosed living area, excluding attached garage or carport, which has a floor area of not less than 800 square feet in the case of one-story houses, and 1,000 square feet in the case of two-story houses. The above requirements do not supersede any governmental requirements that are more restrictive or any requirements adopted or modified by the Developer that are specific to individual Lots.

### **5.13 Height Restrictions**

No Residence shall exceed two (2) stories (excluding the basement) or be more than thirty-five (35) feet above average grade to mid-gable, without prior written approval of the City and, until termination of the Development Period, Developer, and thereafter, the Association. Height of buildings for purposes of this Section shall be measured in accordance with the method used by the City. Until the termination of the Development Period, Developer may, at any time and within its sole discretion, adopt, supplement or modify height restrictions applicable to individual Lots for the purpose of maintenance of views throughout Wallace Way Cottages, and the height restrictions so adopted shall, unless specifically stated to the contrary, apply to any structure, tree or vegetation. Until termination of the Development Period, said restrictions need only the consent and signature of the Developer, shall be valid and binding upon recordation of the same, and may occur at any time, provided, however, that no Owner of any Lot that has a structure which has been completely constructed and approved in accordance with the provisions of this Declaration may be compelled to have the height restriction reduced to a point below the height of the completed Residence.

### **5.14 Construction**

All construction of authorized Improvements on Lots which have been commenced shall be diligently pursued to completion thereof in a manner and at a rate reasonably consistent with building standards of Developer, and in no event shall the period of construction of any residence exceed twelve (12) months from the date of commencement of construction to completion as to external appearance, including finished painting. No auxiliary Building shall be deemed completed as long as the Residence itself is incomplete. The construction of residences shall also comply with the minimum floor elevations, if any, specified for each Lot. All building downspouts, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet in accordance with the plat conditions, applicable conditions of approval, and City requirements.

### **5.15 Building Materials**

All Residences constructed on the Lots shall be built of new materials, with the exception of decor items such as used bricks, weathered planking and similar items. The Developer during the Development Period, or the Association after the termination of the Development Period, shall determine whether a used material is a decor item. In making this determination, the Developer or the Association will consider whether the material harmonizes with the aesthetic character of Wallace Way Cottages. All roofs, siding and trim shall be in accordance with specifications as to type, style, color and other criteria as shall be adopted by the Developer or the Association. Specifically, the exterior paint shall include a body and trim color similar to the originally selected paint. All roofs shall remain as originally selected in type and color, unless otherwise approved by the Developer during the Development Period, or the Association after the termination of the Development Period. The Developer during the Development Period, or the Association after the termination of the Development Period, may approve alternative selections for building materials and colors.

### **5.16 Building Setbacks**

Setback requirements for all Buildings within Wallace Way Cottages shall be established in accordance with the requirements of the City, the Wallace Cottages plat conditions of approval, and Developer or Association, unless waived by the City, and, until termination of the Development Period, Developer, and thereafter, the Association. Buildings, fill and other Improvements (including, but not limited to, decks, patios, outbuildings, eave overhangs, chimneys, bay windows and similar projections) shall not be permitted within building setback lines or drainage easements.

### **5.17 Permits**

No construction or exterior addition or change or alteration of any Improvements may be started on any portion of Wallace Way Cottages unless the Owner obtains a building permit and other necessary permits from the proper local governmental authority.

### **5.18 Codes**

All construction shall conform to the requirements of the State of Washington building, mechanical, electrical and plumbing codes and local requirements required by the City in force at the commencement of the construction, including the latest revisions thereof.

### **5.19 Sales and Construction Facilities**

Notwithstanding any other provision in this Declaration to the contrary, it is expressly permissible during the Development Period for the Developer and its agents, employees or nominees, to maintain on any portion of the property owned by the Developer or Association, such facilities as the Developer may reasonably feel are required, convenient or incidental to the construction and/or sales of Lots or improvements thereon, including "Job Trailers." The Developer may permit, in writing, an individual Owner to maintain temporary equipment and construction material on the Owner's Lot when the Developer feels the same is reasonably required, convenient or incidental to construction activities for improvement on said Lot.

### **5.20 Partition**

No part of the Property shall be partitioned, nor shall any Lot Owner or any person acquiring any interest in the Property or any part thereof seek judicial partition, except in accordance with the express provisions of this Declaration.

### **5.21 Subdivision or Combination**

No Lot or any part of the Property shall be divided or combined except upon the written approval of sixty-seven percent (67%) of the Members and only to the extent permitted by all applicable provisions of the Bainbridge Island Municipal Code. Following approval by the Members, the Association shall file with the Kitsap County Recorder an amendment to this Declaration as may be necessary to describe fully such combined or subdivided Lot or Lots or Property.

## **ARTICLE 6 - ARCHITECTURAL CONTROL**

### **6.1 Developer Control**

For the purposes of further insuring the development of Wallace Way Cottages as a residential area of high standards, Developer reserves the right to control the Buildings, structures and Improvements, including the location thereof, placed on each Lot and the Common Area. The Owner or occupant of each Lot by acceptance of title thereto or by taking possession thereof, covenants and agrees that no (a) Residence, Building, wall, fence, outbuilding (e.g., garden shed, tool shed, pet house or playhouse), playground equipment, signs, lamp post, recreational facilities (e.g., swimming pool, hot tub, spa, basketball hoop, basketball court, tennis court, pool house or sport court) or other structure or Improvement; and (b) no external addition, modification, structural alteration or change of design, color or materials, shall be made to any Building or Improvement on any Lot, unless and until the plans, specifications and site plans therefore have been approved in writing by (a) the Developer (or its nominee as provided herein) during the Development Period; or (b) the Association after the termination of the Development Period. In the case of such approval, only those plans receiving such approval may be placed, constructed or maintained on the Lot.

### **6.2 Submission of Plans**

An application for approval of plans shall be submitted to the Developer during the Development Period, or the Association after the termination of the Development Period, with copies of complete plans and specifications of all proposed buildings or structures and the location of the same on the particular Lot, at least sixty (60) days prior to the proposed construction starting date, and such construction or alteration shall not be started until written approval thereof is given by the Developer or the Association, respectively. The written submission shall contain the name and address of the Lot Owner submitting the plans and specifications, identify the Lot involved, and the following information about the proposed structure:

- (a) The location of the Building upon the Lot;
- (b) The elevation of the Building with reference to the existing and finished Lot grade;
- (c) The general design;
- (d) The interior layout;
- (e) The exterior finish materials and color, including roof materials;
- (f) The landscape plan; and
- (g) Other information which may be required in order to determine whether the structure conforms to the standards articulated in this Declaration and the standards employed by the Developer or the Association in evaluating development proposals.

### **6.3 Review of Plans**

Refusal or approval of plans and specifications may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer during the Development Period, or the Association after the termination of the Development Period, shall deem sufficient.

#### **6.4 Approval Procedures**

Should the Developer during the Development Period, or the Association after the termination of the Development Period, fail to approve or disapprove the plans and specifications submitted by an Owner of a Lot within thirty (30) days after written request therefore, then the applicant may request in writing a response within an additional fourteen (14) days. In the event there remains no response, the plans shall be deemed approved, provided, however, the plans must still comply with the Declaration in all other respects. No building, wall, fence, sign, swimming pool or other Improvement shall be erected or be allowed to remain on any residential site which violates any of the covenants or restrictions contained in this Declaration, the conditions described on the face of the Map or any other recorded covenant that binds Wallace Way Cottages.

#### **6.5 Exclusions**

Notwithstanding anything to the contrary herein, Lots owned by the Developer and any plans and specifications for Residences, Buildings or other Improvements constructed by Developer shall not be subject to this ARTICLE 6 or any review by the Association.

#### **6.6 Compliance with Codes**

In all cases, ultimate responsibility for satisfying all local building codes and requirements rests with the Lot Owner and contractor employed by the Lot Owner. The Association has no responsibility for insuring that plans and specifications which it reviews comply with relevant building and zoning requirements. No Board member of the Association or other person acting on behalf of the Association shall be held responsible for any defect in any plans or specifications which are approved by the Association nor shall any Board member of the Association or any person acting on behalf of the Association be held responsible for any defect in a structure which was built pursuant to plans and specifications approved by the Association.

### **ARTICLE 7 - USE RESTRICTIONS**

#### **7.1 Number of Lots**

Developer has created nineteen (19) Lots on the Property.

#### **7.2 Residential Use**

All Lots shall be used solely for private single family residential purposes and related activities, on an ownership, rental or lease basis, and for social, recreational or other reasonable uses normally incident to such purposes, unless specifically authorized by zoning laws and regulations, this Declaration, the Association and/or the Developer. No garage shall be converted into living space. The conduct or carrying on of any manufacturing, trade, business, commerce, industry, profession, or other occupation whatsoever, upon any such Lot or any part thereof, or in any building or structure thereon erected, shall constitute a breach of this restriction.

#### **7.3 Animals**

No animals, other than dogs, cats, caged birds, tanked fish and other conventional small household pets, may be kept on any Lot. Animals shall not be allowed to run at large within the Common Areas. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Owner's Lot. Lot Owners shall be responsible for the removal of their animal's waste wherever it is

deposited within the Property. Those animals which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots, shall be removed on the Board's request, even though the Board does not require removal of other animals. No dog houses, dog runs or dog kennels may be placed on any Lot unless they are substantially screened from the view of neighboring properties and the streets and do not create an annoyance or nuisance. Pets may not be tied outside the Residence. Unfenced pets may not be left outside when the Lot Owner is absent from the Lot. Kennels of any type are not allowed.

#### **7.4 Clotheslines**

No Owner or Occupant shall place or permit clotheslines in any side or front yard.

#### **7.5 Firearms and Fireworks**

The discharge of any type of weapon or firearm within the Property is strictly prohibited, including, but not limited to, rifles, shotguns and pistols, air rifles and pistols, pellet guns, sling shots and arrows. No fireworks may be discharged or ignited on any Lot, provided the Board shall have the right, but shall not be required, to adopt rules and regulations permitting limited fireworks usage during the 4th of July or Association sanctioned special events. Any Lot Owner or Occupant using fireworks shall be fully responsible for all damage caused thereby, regardless of approval of use.

#### **7.6 Garbage Disposal**

Lot Owners shall keep garbage cans or other receptacles from sight outside the Lot except on collection day. Garbage cans and other receptacles are to be stored on the side of the Residence or other location where they are not visible from the street.

#### **7.7 Home Businesses**

A Lot Owner may conduct a home trade or business within the Owner's Lot provided that (a) the existence or operation of the trade or business activity within the Lot is not apparent or detectable by sight, sound, vibration or smell from the exterior of the Lot; (b) the trade or business activity conforms to all applicable zoning requirements; (c) the trade or business activity does not involve persons coming onto the Property; (d) the trade or business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (e) the trade or business activity is consistent with the residential character of the Lots and does not constitute a nuisance or hazardous or offensive use, as determined in the sole discretion of the Board. The Board shall have final authority to determine if a home trade or business conducted on a Lot is in compliance with this Section.

#### **7.8 Noise Control**

The Board may adopt reasonable rules and regulations to limit or prohibit activities that generate unreasonable noises. Such rules may include limiting the hours Lot owners may engage in or operate noise generating activities or equipment such as lawn mowers, blowers or chain saws, sports playing and/or music.

#### **7.9 Nuisances and Untidy Conditions**

No noxious, offensive or illegal activity shall be conducted on any Lot or the Common Areas nor shall anything be done or maintained on the Property which may be or become an activity or condition which is an annoyance or a nuisance or otherwise unreasonably interferes with the right of other Lot Owners

to use and enjoy any part of the Property. No activity or condition shall be conducted or maintained on any part of the Property which detracts from the value of the Property as a residential community. No untidy or unsightly condition shall be maintained on the Property.

#### **7.10 Trash and Accumulations**

No trash, refuse pile, vehicles, underbrush, compost or other unsightly growth or objects shall be allowed to group, accumulate or remain on any Lot so as to be a detriment or unreasonable annoyance to the Subdivision or become a fire hazard. In the event any such condition shall exist upon any Lot, Developer or the Association may enter upon said Lot and remove the same at the expense of the Lot Owner, who, on demand, shall reimburse Developer or the Association for the cost thereof and such entry and removal shall not be deemed a trespass.

#### **7.11 Unreasonable Interference**

No Lot or the Common Areas shall be used in any manner which unreasonably interferes with other Lot Owners' right to use and enjoy their respective Lots or the Common Areas. The Board or, during the Development Period, the Developer, shall determine whether any given use of a Lot or the Common Areas unreasonably interferes with those rights and such determinations shall be conclusive.

#### **7.12 Vehicles**

Boats, boat trailers, automobiles, trucks or other vehicles (collectively, "Vehicles") or any part thereof, not in actual current use shall be not stored or permitted to remain on any Lot unless the same is stored or placed in a garage or other fully enclosed space, or is substantially screened so as to minimize unsightly view thereof from any streets and abutting Lots or Property. The Developer or the Association shall be permitted to permit exterior storage of such Vehicle if the Developer or the Association is satisfied that such storage area is substantially screened in an attractive manner, (i) so as to minimize the unsightly view of such stored Vehicle from the private or public streets and abutting Lots; and (ii) such screening is visually attractive and harmonious with and in keeping with the Subdivision as a whole.

#### **7.13 Woodpiles**

Woodpiles or wood supplies shall not be stored on any front or side yard unless substantially screened in an attractive manner.

#### **7.14 Yard Sales**

Developer and the Association shall have the right to limit, restrict, regulate or prohibit "Yard Sales", "Garage Sales", "Moving Sales" and similar activities through the adoption of a uniform "Sale Policy."

#### **7.15 Deviation**

Developer hereby reserves the right to enter into agreement with the grantee of any Lot or Lots (without the consent of the Owners of any other Lots) to deviate from the conditions, restrictions, limitations or agreements contained in this Declaration. Any deviation shall be manifested in an agreement in writing and shall not constitute a waiver of any such condition, restriction, limitation or agreement as to the remaining Lots in the Property and the same shall remain fully enforceable as to all other Lots located in the Property.

## **7.16 Delegation of Use and Responsibilities**

Any Lot Owner may delegate the Lot Owner's right of enjoyment of Common Areas to members of the Lot Owner's family or other Occupants. In the event a Lot Owner rents or leases the Owner's Lot, a copy of this Declaration, as well as any rules and regulations that may be adopted by the Association, shall be delivered by the Lot Owner to the prospective renter at the time of commitment to the rental agreement. Each Lot Owner shall also be responsible for informing guests and service personnel of the contents of this Declaration, as well as any rules and regulations that may be adopted by the Association as they may relate to appropriate community behavior.

## **7.17 Development Activities Exempted**

Nothing in this Declaration shall prevent Developer, its successors and assigns, and their contractors and employees from performing, developing and marketing the Property, including erecting and maintaining such structures and signs and conducting such business as Developer deems necessary in order to accomplish such purpose. As used in this Section, "successors and assigns" shall not include purchasers of Lots improved with completed residences.

# **ARTICLE 8 – OPEN SPACES AND RECREATIONAL AMENITIES**

## **8.1 Open Spaces**

The Open Spaces are established to further the purposes of this Declaration and are for the exclusive benefit of individual Lots, Owners and Occupants.

## **8.2 Appurtenant Easements**

All easements and other rights to use and enjoy the Open Spaces shall be expressly appurtenant to the individual Lots. No such rights, title or interest in or to the Open Spaces shall be sold, assigned or otherwise transferred (except that the same shall automatically transfer with any transfer of title to a Lot).

## **8.3 Management and Maintenance**

The Association shall manage and maintain the Open Spaces, including the perimeter fencing surrounding the open spaces. Existing vegetation shall be retained in the Open Spaces except for roadways, driveways, and trails, and except for hazard trees approved for removal utilizing the procedures outlined in Bainbridge Island Municipal Code. The Association shall maintain any right of way landscaping within the Property, including but not limited to landscaping along Wallace Way Cottages NW.

## **8.4 Prohibited Activities**

Without limiting the generality of the purpose of Open Spaces above, the following is a non-exclusive list of activities that are prohibited in the Open Spaces: (i) construction of Buildings, structures, decks, wells, paving or fixtures of any kind; (ii) trimming, limbing or removal of trees (except as approved by the City Planning Director); (iii) operation of motorized vehicles (except for maintenance and installation of passive trails); (iv) hunting; (v) livestock or animal housing or grazing; (vi) regrading, removal, excavations or disturbing soil, peat, rock or other surface or subsurface materials; and (vii) dumping and/or storage of waste materials, such as trash, sawdust, lawn clippings, tires, bricks, metal and automobiles.

## **8.5 Permitted Activities**

Without limiting the generality of the purpose of Open Spaces above, the following is a non-exclusive list of activities that are permitted in the Open Spaces: (i) passive and active recreation, including use of private park, sports court and trails; (ii) planting of native vegetation; (iii) planting of non-invasive, non-native vegetation; (iv) removal of invasive vegetation using hand-held tools; (v) construction of low impact fencing; and (vi) construction of storm drainage systems.

## **8.6 Miscellaneous Provisions**

(a) The use of fertilizers, pesticides, or herbicides in the Open Spaces is discouraged, but if necessary they shall be used consistent with Integrated Pest Management strategies.

(b) To discourage the removal of wildlife habitat, significant trees that are removed from designated protection areas without prior City approval will be subject to fines and will be replaced with new trees as required by applicable City code.

## **ARTICLE 9 – COMPLIANCE WITH MISCELLANEOUS PLAT CONDITIONS**

### **9.1 Plat Conditions**

The Developer, the Association, all the Lot Owners and their tenants and contractors shall adhere to the conditions, requirements and restrictions noted on the fact of the Map and all applicable codes and ordinances.

### **9.2 Parking**

Not less than two (2) parking places shall be installed and maintained to be continuously available on each Lot by means of a garage and/or driveway. Recreational vehicles may not be parked or stored within Wallace Way Cottages or on any Lot, *provided*, temporary loading and unloading for a period not to exceed two (2) hours shall be permitted.

## **ARTICLE 10 - DEVELOPMENT PERIOD; DEVELOPER'S RIGHTS DURING DEVELOPMENT PERIOD**

### **10.1 Developer's Authority During Development Period**

The Development Rights and Special Declarant Rights are hereby reserved for use by the Developer. Until the termination of the Development Period, the Developer hereby reserves for itself, its successors or assigns, all rights to manage and control the Common Areas, including all of the rights, and all powers and functions of the Association, or the Board thereof. All such reserved rights may be exercised and/or performed solely by the Developer without further authority from or action by the Lot Owners. Upon termination of the Development Period, administrative power and authority for management of the Property shall pass to the Association, acting through the Board, and to the Lot Owners as provided herein and in the Bylaws.

### **10.2 Termination of Development Period**

The Developer, at its option, may elect to terminate the Development Period at any time by recording with the Kitsap County Recorder a Notice of Termination of Development Period referencing this Declaration and stating that the Development Period is terminated.

### **10.3 Dedication to Governmental Entities**

Until the termination of the Development Period, Developer reserves the right to withdraw any undeveloped part of the Property from this Declaration and to dedicate, transfer or convey to any state, county, municipal or other governmental entity any such part of the Property. The rights reserved to Developer in this Section 10.3 shall be exercised by Developer at Developer's sole discretion.

## **ARTICLE 11 - WALLACE COTTAGES HOMEOWNERS ASSOCIATION**

### **11.1 Establishment**

There is hereby created an association to be called the "Wallace Cottages Homeowners Association." The Association shall be a nonprofit corporation formed and operated pursuant to RCW Ch. 24.03 and the Act. The Association shall have all powers of an association as set forth in the Act except to the extent provided otherwise in this Declaration.

### **11.2 Membership**

The membership of the Association at all times consist exclusively of all Lot Owners. Each Lot Owner shall automatically become a member of the Association and shall be subject to its Bylaws and such rules and regulations as may from time to time be adopted by the Association. The membership shall be appurtenant to and non-severable from the Ownership of each Lot. The membership shall automatically pass to the succeeding Lot Owner with the conveyance of each Lot.

### **11.3 Voting**

After termination of the Development Period, except as otherwise set forth herein, each Member shall be entitled to cast, at any meeting of the Association, one (1) vote for each Lot owned by that Member. The Association may suspend voting rights of any Member as provided in this Declaration or the Governing Documents.

### **11.4 Voting Representative**

11.4.1 Entities. If a Lot is owned by a partnership, limited liability company, corporation or other entity that is not a natural person, such Owner shall, by notice to the Board, designate a single voting representative for such Lot. The Owner may change its designation at any time and from time to time by written notice to the Board from the Owner.

11.4.2 Severed Improvements. If ownership of an Affordable Lot's Improvements has been severed from the ownership of the Affordable Lot's underlying real estate, the owner of the Improvements shall have the right to vote as the "Owner" of such Affordable Lot. In such case, the owner of the Improvements shall be deemed to have an irrevocable proxy from the Owner of the underlying real estate to cast the vote for the Affordable Lot, except to the extent that the owner of the Affordable Lot's underlying real estate and the owner of the Affordable Lot Improvements have agreed between themselves to the contrary in a written ground lease or other agreement.

### **11.5 Proxies**

Members may vote at any meeting of the Association in person or by proxy. A proxy must be in writing, signed by the designated voting Member for the Lot and filed with the Board in advance of the meeting at which such vote is taken. No Member may revoke any proxy given by a Member to or in favor

of a holder of indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over all other mortgages) upon the Member's Lot, without the prior written consent of the holder of such indebtedness.

### **11.6 Vote Without a Meeting**

The Association may conduct a vote of the Lot Owners without a meeting provided such vote complies with the Act. The Bylaws shall set forth the procedures for such vote.

### **11.7 Adoption of Bylaws and Amendments**

Prior to the termination of the Development Period, the Developer, acting pursuant to its authority to act on behalf of the Association, shall adopt Bylaws of the Association ("Bylaws"), consistent with this Declaration and the Act. After termination of the Development Period, except as expressly provided to the contrary herein, the Bylaws may be amended from time to time as set forth in the Bylaws.

### **11.8 Management of the Association by the Board**

The Association shall be administered and managed by a Board of at least three (3) persons who shall serve as established by the Bylaws.

11.8.1 Temporary Board of Directors. Until termination of the Period of Developer Control, Developer shall have the right to appoint and remove officers and directors of the Association and veto or approve any proposed action of the Board or the Association. In the exercise of such right, Developer may, at such time as it deems appropriate, appoint a Temporary Board of one (1) or more persons who need not be Lot Owners. The Temporary Board (and Developer, until the Board is appointed) shall exercise the rights, duties and functions of the Board as set forth in this Declaration until the entire Board is elected by the Lot Owners pursuant to Section 11.8.4.

11.8.2 Election After Sale of Lots. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Lot Owners other than Developer, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Lot Owners other than the Developer. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Lot Owners other than a Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Lot Owners other than the Developer. Until such members are elected and take office, the existing Board may continue to act on behalf of the Association.

11.8.3 Removal of Directors and Officers. During the Period of Developer Control, Developer may remove any director or officer appointed by Developer at any time and for any reason. Developer may not remove any director elected by the Lot Owners. After the entire Board is elected by the Lot Owners pursuant to Section 11.8.4, Lot Owners may remove any director or officer as set forth in the Bylaws.

11.8.4 Election of Complete Board. Within thirty (30) days after the termination of the Period of Developer Control, the Lot Owners shall elect a Board of at least three (3) directors as set forth in the Bylaws.

11.8.5 Employment of Manager. The Board may, to the extent it deems advisable, employ a person or firm to manage the Property, as well as such other persons as are necessary in its opinion for the proper operation thereof; provided, that the employment of a person or firm to manage the Property,

shall be under a written contract for a term not in excess of one (1) year and shall permit the Board to revoke the same without cause and without payment of a termination fee, upon no more than thirty (30) days' notice.

## 11.9 Authority of the Association

11.9.1 Mandatory Authority. The Association, acting by and through the Board, its officers, manager or other duly authorized agents or representatives, shall:

- (a) Adopt Bylaws;
- (b) Adopt budgets for revenues, expenditures, and reserves;
- (c) Impose and collect Assessments for Common Expenses from Lot Owners;
- (d) Prepare financial statements as set forth in Section 11.15; and
- (e) Deposit and maintain funds of the Association in accounts as set forth in Section 11.14.

(f) Discretionary Authority. The Association, acting by and through the Board, its officers, manager or other duly authorized agents or representatives, may:

- (g) Amend Bylaws and adopt and amend rules and regulations;
- (h) Amend budgets for revenues, expenditures, and reserves;
- (i) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (j) Institute, defend, or intervene in litigation, arbitration, mediation or administrative proceedings or any other legal proceedings in its own name on behalf of itself or two (2) or more Lot Owners on matters affecting Wallace Way Cottages;
- (k) Make contracts and incur liabilities;
- (l) Regulate the use, maintenance, repair, replacement, and modification of the Common Areas and contract with third parties to accomplish these objectives;
- (m) Cause additional improvements to be made as a part of the Common Areas provided that any improvements or series of related improvements in excess of twenty-five thousand dollars (\$25,000) within one (1) year must be approved by a majority of the Lot Owners;
- (n) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (o) Grant easements, leases, licenses, and concessions through or over the Common Area, petition for or consent to the vacation of streets and alleys, and upon agreement of sixty-seven percent (67%) of the Lot Owners, dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members;

(p) Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Areas or for services provided to Lot Owners;

(q) Impose and collect charges for late payment of Assessments pursuant to Section 14.10 of this Declaration;

(r) Enforce the Governing Documents, and after notice and an opportunity to be heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in the Declaration or Bylaws or rules and regulations adopted by the Board, impose and collect reasonable fines for violations of the Governing Documents in accordance with a previously established schedule of fines adopted by the Board and furnished to the Lot Owners;

(s) Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

(t) Borrow money and assign its right to future income, including the right to receive Assessments, subject to Section 11.16;

(u) Require that disputes between the Association and Lot Owners or between two (2) or more Lot Owners regarding Wallace Way Cottages, other than those governing by Chapter 64.50 RCW, be submitted to non-binding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;

(v) Suspend any right or privilege of a Lot Owner who fails to pay an Assessment, but may not (i) deny a Lot Owner or other occupant access to the Owner's Lot, (ii) suspend a Lot Owner's right to vote, or (iii) withhold services provided to a Lot or Lot Owner by the Association if the effect of withholding the service would be to endanger the health, safety or property of any person;

(w) Establish and administer a reserve account and prepare a reserve study;

(x) Exercise any other powers conferred by the Declaration or Bylaws;

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

(z) Exercise any other powers necessary and proper for the governance and operation of the Association.

### **11.10 Rules**

The Board must, before adopting, amending, or repealing any rule, give all Lot Owners notice of (a) its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change, and (b) the date on which the Board will act on the proposed rule or amendment after considering comments from Lot Owners. Following adoption, amendment, or repeal of a rule, the Association must give notice to the Lot Owners of its action and provide a copy of any new or revised rule. The Association's internal business operating procedures need not be adopted as rules. Every rule must be reasonable.

### **11.11 Notices**

Notices to the Association and to Lot Owners and Occupants shall be delivered and effective as set forth in the Bylaws.

### **11.12 Association Records**

The Association must maintain the following:

- (a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the Association, and other appropriate accounting records within the last seven (7) years;
- (b) Minutes of all meetings of its Lot Owners and Board other than executive sessions, a record of all actions taken by the Lot Owners or Board without a meeting, and a record of all actions taken by a committee in place of the Board on behalf of the Association;
- (c) The names of current Lot Owners, addresses used by the Association to communicate with them, and the number of votes allocated to each Lot;
- (d) Its original or restated Declaration, organizational documents, all amendments to the Declaration and organizational documents, and all rules currently in effect;
- (e) All financial statements and tax returns of the Association for the past seven (7) years;
- (f) A list of the names and addresses of its current Board members and officers;
- (g) Its most recent annual report delivered to the Washington Secretary of State;
- (h) Financial and other records sufficiently detailed to enable the Association to provide resale certificates as required by the Act;
- (i) Copies of contracts to which it is or was a party within the last seven (7) years;
- (j) Materials relied upon by the Board to approve or deny any requests for design or architectural approval for a period of seven (7) years after the decision is made;
- (k) Materials relied upon by the Board or any committee concerning a decision to enforce the governing documents for a period of seven (7) years after the decision is made;
- (l) Copies of insurance policies under which the Association is a named insured;
- (m) Any current warranties provided to the Association;
- (n) Copies of all notices provided to Lot Owners or the Association in accordance with the Act or the Governing Documents; and
- (o) Ballots, proxies, absentee ballots, and other records related to voting by Lot Owners for one (1) year after the election, action, or vote to which they relate.

### **11.13 Examination of Records**

Any Lot Owner, Mortgagee or their authorized agents may examine the books and records of the Association on reasonable advance notice during working hours at the offices of the Association. The Association may charge a reasonable fee for producing and providing copies of any such records and for supervising the Lot Owner's inspection. A right to copy records under this Section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available

upon request by the Lot Owner. An Association is not obligated to compile or synthesize information. Information provided pursuant to this Section shall not be used for commercial purposes.

#### **11.14 Association Funds**

The Association must keep all funds of the Association in the name of the Association with a bank, savings association, or credit union whose deposits are insured by the federal government. The funds must not be commingled with the funds of any other Association or with the funds of any managing agent of the Association or any other person, or be kept in any trust account or custodial account in the name of any trustee or custodian.

#### **11.15 Financial Statements; Reconciliation**

At least annually, the Board shall prepare, or cause to be prepared, a financial statement of the Association in accordance with accrual-based accounting practices. If the aggregate annual Assessments of the Association are \$50,000 or more, the Board shall obtain an audit of the financial statements by a certified public accountant. If the aggregate annual Assessments of the Association are less than \$50,000, an annual audit is also required but may be waived annually by Lot Owners other than the Developer of Lots to which a majority of the votes in the Association are allocated, excluding the votes allocated to Lots owned by the Developer. Such audit obtained by the Board shall be a Common Expense.

#### **11.16 Borrowing**

Any borrowing by the Association that is to be secured by an assignment of the Association's right to receive future income pursuant to Sections 11.9.1(k) and 11.9.1(t) requires ratification by the Lot Owners as follows:

(a) The Board must provide notice of the intent to borrow to all Lot Owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any Assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

(b) In the notice, the Board must set a date for a meeting of the Lot Owners, which must not be less than fourteen (14) and no more than sixty (60) days after mailing of the notice, to consider ratification of the borrowing.

(c) Unless at that meeting, whether or not a quorum is present, Lot Owners holding a majority of the votes in the Association reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

### **ARTICLE 12 - INSURANCE**

#### **12.1 Lot Owner's Insurance**

Every Lot Owner, at his own expense, shall insure the Owner's own Building against loss or damage by fire or other casualty in an amount equal to the full replacement value thereof. Every Lot Owner shall secure liability insurance covering the Owner's Lot. However, no Lot Owner shall be entitled to maintain insurance coverage in any manner that would decrease the amount that the Board, or any trustee for the Board, on behalf of all of the Lot Owners, would otherwise realize under any insurance policy that the Board may have in force at any particular time. The Board may adopt rules that establish other requirements for Lot Owner's coverage. The Association shall have no liability for an Owner's failure to

obtain insurance coverage. At the request of the Board, Lot Owners shall provide the Board with a copy of such individual policy or policies, and the Board may review its effect with the Association's insurance consultants.

## **12.2 Insurance provided by the Association**

Commencing not later than the time of the first conveyance of a Lot to a person other than a Developer, the Association shall maintain, to the extent reasonably available:

12.2.1 If the Common Area contains any insurable Buildings or Accessory Structures with an aggregate value greater than \$10,000, property insurance on the Common Area, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

12.2.2 Liability insurance, including medical payments insurance, in an amount determined by the Board but not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area or other areas under control and supervision of the Association. The policy may insure against liability in connection with employment contracts of the Association, host liquor liability, employers' liability, automobile liability and such other risks as are customarily covered with respect to residential condominium project of similar construction, location and use.

12.2.3 Worker's compensation insurance to the extent required by applicable laws.

12.2.4 Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

12.2.5 Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment.

12.2.6 Insurance coverage, in such amounts as the Board may in its discretion determine, to indemnify, directors, officers and agents of the Association pursuant to Section 19.2.

12.2.7 Such other insurance (including directors and officers liability) as the Board deems advisable.

## **12.3 Insurance Not Available**

If the insurance specified in Section 12.2 is not reasonably available, the Association must promptly cause notice of that fact to be delivered in the form of a Record to all Lot Owners.

## **12.4 Common Area Repair and Replacement**

If the property covered by the insurance specified in Section 12.2.1 is damaged or destroyed, the Association shall (to the extent permitted by any persons or entities to whom the damaged property is pledged as collateral), upon receipt of the insurance proceeds, contract to rebuild or repair such property to as good a condition as it was in when the loss occurred unless (a) Wallace Way Cottages is terminated, (b) repair or replacement would be illegal, or (c) eighty percent (80%) of the Lot Owners vote not to rebuild.

The Association may contract with any licensed contractor for reconstruction or rebuilding of such property. During the Development Period, the Developer may elect to rebuild the damaged or destroyed portions of the property to the extent it receives insurance proceeds to cover said repair or reconstruction.

### **12.5 Lot Building Repair and Replacement**

The Lot Owner of any Building on a Lot damaged or destroyed by fire or other casualty shall, upon receipt of the insurance proceeds, contract to repair or rebuild the damaged or destroyed portions of the Building in a good workmanlike manner in conformance with the original plans and specifications of said Building. The plans and specifications for said Building may be modified and said Building may be reconstructed in accordance with said modified plans and specifications if the Lot Owner secured approval as required by Section 5.1. If the Lot Owner refuses or fails to commence such repair or rebuilding within thirty (30) days after such damage or destruction, the Association is hereby authorized by such Lot Owner to repair and rebuild any such Building in a good workmanlike manner in conformance with the original plans and specifications. The Lot Owner shall then repay the Association the amount actually expended for such repairs. The Association shall have a lien against the Lot for such amount and the rights to collect said lien as provided in ARTICLE 15.

### **12.6 Special Policy Requirements**

Insurance policies carried pursuant to Section 12.2.1 shall provide that:

- (a) Each Lot Owner is an insured person under the policy with respect to liability arising out of the Lot Owner's interest in the Common Areas or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Lot Owner, and any member of the Lot Owner's household;
- (c) Any act or omission by any Lot Owner, unless acting within the scope of the Lot Owner's authority on behalf of the Association, will not void the policy or is not a condition to recovery under the policy;
- (d) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;
- (e) The insurer shall not be relieved from liability for loss occurring while the hazard to such Building(s) is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board, the Lot Owners or any other persons acting under authority of any of them;
- (f) The policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Board and every other person in interest who shall have requested such notice of the insurer;
- (g) The policy contains a cross-liability endorsement wherein the rights of an insured party under the policy or policies shall not be prejudiced as respects actions against another insured party thereunder, or other equivalent coverage in cases of liability of the Association or Lot Owners to other Lot Owners; and
- (h) The policy contains a standard mortgagee clause which shall:

(i) Provide that any reference to a Mortgagee in such policy shall mean and include all holders of Mortgages of a Lot or a Lot lease or sublease, in their respective order and preference, whether or not named therein;

(j) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board, and Lot Owners or any persons acting under authority of any of them; and

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

## **ARTICLE 13 - ENFORCEMENT**

### **13.1 Enforcement**

The Board may enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations promulgated by the Board by any proceeding at law or in equity. During the Period of Developer Control, Developer may exercise this enforcement power on behalf of the Association.

### **13.2 Fines**

The Board is hereby authorized and empowered to impose fines and other penalties for the infraction of any restrictions, conditions, covenants or reservations set forth in this Declaration, the Bylaws or the rules and regulations. Said fines and penalties must be reasonable and in accordance with a previously established schedule thereof adopted by the Board and furnished to the Lot Owners for violations of the Declaration, Bylaws, and rules and regulations of the Association. The Board shall notify all Lot Owners in writing within thirty (30) days of the adoption of said rules and regulations, although the failure to provide such notice shall not cause any rule or regulation to become void.

### **13.3 Remedies**

The remedies provided herein for collection of any assessment, charge or claim against any Lot Owner, for and on behalf of the Association or Developer, are in addition to, and not in limitation of, any other remedies provided by law.

### **13.4 Non-Waiver**

The failure of the Association, the Developer, any Lot Owner or any of their duly authorized agents to insist in any one or more instances upon the strict performance of or compliance with this Declaration, the Bylaws, or the rules and regulations of the Association, or to exercise any right or option contained therein, or to serve notice or to institute any action or summary proceedings, shall not be construed as a waiver or relinquishment of such right for the future, such enforcement right shall continue and remain in full force and effect. No waiver of any provision of this Declaration, the Bylaws, or the rules or regulations of the Association shall be deemed to have been made, either expressly or impliedly, unless such waiver shall be in writing and signed pursuant to a resolution of the Board. The receipt by the Association of payment of any assessment with knowledge of any breach of any covenant hereof shall not be deemed a waiver of such breach.

### **13.5 Costs and Attorneys' Fees**

If any authorized person or entity (including Developer) employs an attorney to enforce any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted by the Association, the court or arbitrator may award reasonable attorneys' fees and costs incurred in said action to the prevailing party whether such fees and costs are incurred in negotiation, mediation, arbitration, litigation, appeal, bankruptcy or pre- or post-judgment collection.

## **ARTICLE 14 - COVENANT FOR ASSESSMENTS**

### **14.1 Purpose of Assessments**

The regular and special Assessments levied by the Association shall be used exclusively to perform the obligations of the Association set forth in this Declaration, including but not limited to maintaining the Common Areas and Building Exteriors, insuring the Improvements, and other such activities as are, in the reasonable determination of the Board, in the best interests of the health, safety and general welfare of the Lot Owners. All funds collected hereunder shall be expended for the purposes designated herein.

### **14.2 Initial Assessment**

Until the termination of the Development Period, the Developer shall pay all operating costs to maintain the Common Areas, unless the Developer has elected to commence the Assessments prior to termination of the Development Period. Whenever Assessments are commenced and required from any Lot Owner other than Developer, Assessments shall be required from all Lot Owners except Developer. If Developer has commenced Assessments from Lot Owners, then at the time of the purchase of a Lot by a residential buyer, such Lot Owner shall pay an initial regular Assessment. The initial regular Assessment shall be collected by the escrow agent at the closing of the purchase of the Lot.

### **14.3 Regular Assessments**

Each year the Board shall assess each Lot Owner for regular Assessments in an amount which, in the aggregate, is sufficient to meet the obligations of the Association. Commencing on January 1 following the termination of the Development Period and continuing each year thereafter, the regular Assessments shall not be increased by more than five percent (5%) in any year without the approval of sixty-seven percent (67%) of the Lot Owners voting at a meeting duly called for such purpose. Notwithstanding the provisions set forth in this Section 14.3, Developer shall not be liable for any fees or Assessments assessed or due prior to the termination of the Development Period.

### **14.4 Estimated Assessments – Budget**

Commencing on January 1<sup>st</sup> following the termination of the Development Period and continuing each year thereafter, but within sixty (60) days prior to the beginning of each calendar year or such fiscal year as the Board may adopt, the Board shall (a) estimate the annual Assessments and special Assessments for the Lots to be paid during such year; (b) make provisions for creating, funding and maintaining reasonable reserves for contingencies and operations, for maintenance repair, replacement and acquisition of Common Area and/or (c) take into account any expected income and any surplus available from the prior year's operating fund.

Within thirty (30) days after the Board's adoption of any proposed regular or special budget of the Association, the Board shall provide a copy of the budget to all Lot Owners and set a date for a meeting of the Lot Owners to consider ratification of the budget. The Board shall give written notice of such meeting

to all Lot Owners. The meeting date shall be not less than fourteen (14) and not more than fifty (50) days after providing the budget. Unless at the meeting the Lot Owners holding a majority of the votes in the Association, in person or by proxy, reject the budget, the budget and the Assessments against the Lots included in the budget shall be deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. The budget must include: (a) the projected income to the Association by category; (b) the projected Common Expenses and those specially allocated expenses that are subject to being budgeted, both by category; (c) the amount of the Assessments per Lot and the date the Assessments are due; (d) the current amount of regular Assessments budgeted for contribution to the reserve account; (e) a statement of whether the Association has a reserve study that meets the requirements of the Act and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and (f) the current deficiency or surplus in reserve funding expressed on a per Lot basis.

#### **14.5 Special Assessments**

In addition to the regular Assessments authorized above, the Association may levy in any fiscal year as the Board designates, a special Assessment for the purposes of defraying, in whole or in part, the cost of (a) any unplanned or unforeseen maintenance, litigation or similar unexpected event or emergency not included in the annual budget, as the Board in its discretion shall determine is necessary or appropriate, or (b) any construction, reconstruction, repair, acquisition or replacement of a capital Improvement upon the Common Areas, including fixtures and personal property related thereto. Any special Assessment shall be adopted only pursuant to a special budget, approved pursuant to the procedures set forth in Section 14.4. No aggregate special Assessment for construction, reconstruction, repair, acquisition or replacement of a capital Improvement upon the Common Areas in excess of \$20,000 shall be levied against Lot Owners except upon a majority affirmative vote of the Lot Owners in attendance at a meeting duly called for said purposes, or in excess of \$25,000 except upon a sixty-seven percent (67%) affirmative vote of the Lot Owners in attendance at a meeting duly called for said purpose. The limitation on maximum annual Assessments and special Assessments shall not apply to an assessment levied against a Lot Owner which is imposed by the Board to reimburse the Association for costs incurred in bringing the Member or the Lot owned by the Member into compliance with the provisions of this Declaration or the Bylaws.

#### **14.6 Initial Payment for Working Capital**

The Association shall collect from each initial residential purchaser of each Lot an amount equal to at least two (2) months' Assessments at the time of the first conveyance of each Lot to establish a sufficient initial working capital fund. Where title to an Affordable Lot's underlying land and Improvements has been severed, the initial working capital contribution shall be made by the purchaser of the Affordable Lot Improvements, not HRB or other purchaser of the underlying land. This initial payment into the fund shall be in addition to any Assessments which each purchaser of a Lot from Developer will pay at the time of closing of the sale. Each Lot's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Lot for the use and benefit of the Association. The purpose of the fund is to ensure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payments of regular Assessments. The Developer shall not use any of the working capital fund to defray any of its expenses or construction costs, or to make up any budget deficits prior to the date that control of the Association is transferred to the Lot Owners.

#### **14.7 Reserve Study**

The Board shall comply with the requirements set forth in the Act for reserve studies for the Common Areas and portions of the Lots which the Association must maintain, repair or replace pursuant to Section 4.1. Unless the Board, in its reasonable discretion, determines that that the Association has only nominal reserve costs or if the cost of the reserve study or update exceeds ten percent (10%) of the Association's annual budget, the Association shall prepare and annually update a reserve study. A "reserve component" means any physical component of Wallace Way Cottages which the Association is obligated to maintain, repair, or replace, which has an estimated useful life of less than thirty (30) years, and for which the cost of such maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget. An initial reserve study conducted by a reserve study professional must be prepared and based upon a visual site inspection or a review of plans and specifications of or for unbuilt improvements, or both when construction of some but not all of the improvements is complete. At least every three (3) years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional. If more than three (3) years have passed since the date of the last reserve study prepared by a reserve study professional, the Owners of Lots to which at least twenty percent (20%) of the votes are allocated may demand, in a record delivered to the Board, that the cost of a reserve study be included in the next budget and that the study be obtained by the end of the budget year. The demand shall refer to RCW 64.90.555 of the Act. Unless the Board determines that preparing a reserve study would impose an unreasonable hardship on the Association and the Lot Owners, the Board shall, upon receipt of the written demand, include the costs of a reserve study in the next budget and, if the budget is not rejected by the Lot Owners pursuant to Section 14.4, will arrange for the preparation of the reserve study.

#### **14.8 Liability for Assessments**

Except as otherwise set forth below, all Common Expenses shall be assessed against all Lots according to the Common Expense allocations set forth in **Exhibit B**. Each Lot's Common Expense liabilities are based on an equal share, except that the liability for Affordable Lots is seventy-five percent (75%) of a share. Notwithstanding the foregoing, Assessments against a specific Lot Owner imposed by the Board to reimburse the Association for costs incurred in bringing the Lot Owner or Lot into compliance with the provisions of this Declaration, the Bylaws, or the Association's rules and regulations, or as otherwise provided in this Declaration shall be assessed solely against such Owner's Lot.

#### **14.9 Payment By Lot Owners**

Each Lot Owner shall be obligated to pay its regular and special Assessments to the Treasurer of the Association. Regular Assessments shall be paid annually or in equal monthly or other periodic installments on or before the due date established by the Board. Special Assessments shall be paid annually or in equal monthly or other periodic installments or before the first day of each month during each year or at such time and in such other reasonable manner as the Board designates.

#### **14.10 Interest; Late Charges**

As part of its collection of delinquent Assessments, the Association shall be entitled to recover interest for the period of delinquency, late charges, interest and expenses of collection, including but not limited to and attorneys' fees. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment. The Association may, from time to time, establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. Delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent. The Association may impose a late charge in an amount not exceeding twenty-five

percent (25%) of any unpaid Assessment or charge which had remained delinquent for more than fifteen (15) days.

#### **14.11 Payment by Mortgagees**

Subject to Section 15.2.2, the holder of a Mortgage or other purchaser of a Lot who obtains the right of possession of the Lot through foreclosure shall not be liable for Assessments or installments of Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Lot Owners, including such holder of the Mortgage or other purchaser of such Lot. Foreclosure of a Mortgage does not relieve the prior Lot Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale.

#### **14.12 Surplus Funds**

Any surplus funds of the Association remaining after the payment or of provision for Common Expenses and any prepayment of reserves must be paid annually to the Lot Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Assessments.

#### **14.13 Record of Assessments; Reconciliation**

The Association shall keep an accurate record of its receipt and expenditures in chronological order. Such record shall specify and itemize the operation, maintenance, replacement and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing such payments shall be available for examination by the Lot Owners for any proper purpose at any reasonable time. To assure that the Lot Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association must be reconciled at least annually unless the Board determines that a reconciliation would not result in a material savings to any Lot Owner.

#### **14.14 Owner Misconduct**

14.14.1 To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee, or occupant, the Association may assess that expense against the Lot Owner's Lot after notice and an opportunity to be heard, even if the Association maintains insurance with respect to that damage or Common Expense.

14.14.2 To the extent that any expense of the Association is caused by the negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee, or occupant, the Association may assess that expense against the Lot Owner's Lot after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association.

### **ARTICLE 15 - LIEN FOR ASSESSMENTS; COLLECTION**

#### **15.1 Lien in Favor of Association**

The Association has a lien on a Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due. Attorney's fees, collection costs, late charges, fines, and interest charged by the Association are enforceable as Assessments and are subject to the Association's lien on said Lot.

## **15.2 Priority of Association Lien**

15.2.1 General Priority. The lien of the Association under this Section shall be prior to all other liens and encumbrances on a Lot, except: (a) liens and encumbrances recorded before the recording of the Declaration; (b) except as provided in Section 15.2.2, a Mortgage on the Lot recorded before the date on which the Assessment sought to be enforced became due; or (c) liens for Real Property taxes and other governmental assessments or charges against the Lot. Where the ownership of an Affordable Lot's underlying real estate and Improvements has been severed, the Association's rights and remedies under this Section 15.2 shall apply to both the Affordable Lot's Improvements and the underlying land, and to the owners thereof, to the extent permitted by the Act and all other applicable laws, codes and ordinances.

### 15.2.2 Priority Over Mortgages Encumbering Individual Lots.

(a) If the Association elects to foreclose its lien under Section 15.5 of this Declaration, the lien shall also be prior to the Mortgages described in Section 15.2.1(b) to the extent of an amount equal to Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to this Declaration, along with any specially allocated Assessments, which would have become due, in the absence of acceleration, during the six (6) months immediately preceding (i) the date of recording of a notice of trustee's sale by a deed of trust beneficiary; (ii) the date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the Association or by the holder of a recorded security interest; or (iii) the date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract.

(b) In addition, the lien shall also be prior to the Mortgages described in Section 15.2.1(b) to the extent of the Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the notice described in Section 15.2.2(c); provided, however, that the costs and reasonable attorneys' fees that will have priority under this Section 15.2.2(b) shall not exceed two thousand dollars (\$2,000) or an amount equal to the amounts described in Section 15.2.2(a), whichever is less.

(c) The amounts described in Section 15.2.2(b) shall be prior only to the security interest of the holder of a security interest on the Lot recorded before the date on which the unpaid Assessment became due and only if the Association has given that holder not less than sixty (60) days' prior written notice that the Owner of the Lot is in default in payment of an Assessment. The notice shall contain the name of the borrower, the recording date of the deed of trust or mortgage, recording information, the name of the plat, Lot owner, and Lot number, the amount of unpaid Assessment, and a statement that failure to, within sixty (60) days of the written notice, submit to the Association payment of six (6) months of Assessments as described Section 15.2.2(a) will result in the priority of the amounts described in Section 15.2.2(b).

(d) Upon payment of the amounts described in Section 15.2.2(a) by the holder of a security interest, the Association's lien shall thereafter be fully subordinated to the lien of such holder's security interest on the Lot.

## **15.3 Recording Not Required**

Recording of this Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this Section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under

this Section in the Real Property records of the County in which the Property is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 15.2.2 of this Declaration.

#### **15.4 Limitations on Enforcement**

15.4.1 The Association may not commence an action to foreclose a lien on a Lot unless the Lot Owner, at the time the action is commenced, owes a sum equal to at least three (3) months of Assessments and the Board approves commencement of a foreclosure action specifically against that Lot.

15.4.2 A lien for unpaid Assessments is extinguished unless legal proceedings to enforce the lien are instituted within six (6) years after the full amount of the Assessments sought to be recovered becomes due.

#### **15.5 Enforcement of Lien**

15.5.1 The lien arising under this Section may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW or nonjudicially in the manner set forth in Chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Lot in trust to Chicago Title Insurance Company or its successors and assigns ("Trustee"), to secure the obligations of each Lot Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Lot so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Lot, which becomes operative in the case of a default in a Grantor's obligation to pay assessments. The Lots are not used principally for agricultural or farming purposes.

15.5.2 The Association or its authorized representative shall have the power to purchase the Lot at the foreclosure sale, whether judicial or nonjudicial, and to acquire, hold, lease, mortgage, or convey the Lot to a third party. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight (8) months. Nothing in this Section shall prohibit the Association from accepting a deed in lieu of foreclosure from the Owner of the Lot subject to the lien.

#### **15.6 Appointment of Receiver**

In an action by the Association to collect Assessments or to foreclose a lien on a Lot under this ARTICLE 15, the court may appoint a receiver to collect all sums alleged to be due and owing to a Lot Owner before commencement or during pendency of the action. The receivership is governed by Chapter 7.60 RCW. During pendency of the action, the court may order the receiver to pay sums held by the receiver to the Association for any Assessments against the Lot. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

#### **15.7 Personal Liability of Lot Owners**

In addition to constituting a lien on the Lot, each Assessment shall be the joint and several obligation of the Lot Owner of the Lot to which the same are assessed as of the time the Assessment is due. A Lot Owner may not exempt himself or herself from liability for Assessments. Where title to an Affordable Lot's Improvements and underlying real estate has been severed, neither the Owner of the Improvements nor the owner of the underlying land may exempt themselves from liability for Assessments and the Owner

of the Lot Improvements and the owner of the underlying land are each jointly and severally liable for Assessments. In a voluntary conveyance other than by foreclosure, the grantee of a Lot is jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

### **15.8 Statement of Assessment**

The Association, upon written request, shall furnish to a Lot Owner or a Mortgagee of a Lot a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Lot. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Lot Owner, unless and to the extent known by the recipient to be false. The liability of a recipient who reasonably relies upon the statement must not exceed the amount set forth in any statement furnished pursuant to this Section 15.8 or any resale certificate.

## **ARTICLE 16 - MORTGAGEE PROTECTION**

The following provisions shall apply to and benefit each holder of a Mortgagee of a deed of trust given for the purpose of obtaining funds for the construction or purchase of a Residence on any Lot or the improvement of any Lot, notwithstanding and prevailing over any other provisions of this Declaration, the Bylaws, or any rules, regulations or management agreements.

### **16.1 Before Possession**

Prior to the time a Mortgagee is entitled to possession of a Lot, the Mortgagee shall not be personally liable for the payment of any Assessment or charge, or for the observance or performance of any covenant, restriction, regulation, rule, Bylaw or management agreement, except for those matters which are enforceable by injunctive or other equitable relief, not requiring the payment of money, as hereinafter provided.

### **16.2 During Foreclosure**

During the pendency of any proceeding to foreclose said mortgage or deed of trust, the Mortgagee may exercise any or all of the rights and privileges of the Lot Owner of the mortgaged Lot, including, but not limited to, the right to vote as a member of the Association to the exclusion of the Lot Owner's exercise of such rights and privileges.

### **16.3 During Possession**

At such time as said Mortgagee shall become entitled to possession of the Lot, the Mortgagee shall be subject to all of the terms and conditions of this Declaration and the Bylaws, including, but not limited to, the obligation to pay for all Assessments and charges accruing thereafter, in the same manner as the Lot Owner; provided, however, the Mortgagee shall acquire the title to said Lot free and clear of any lien authorized by or arising out of any provisions of this Declaration which secures the payment of any Assessment for charges accrued prior to the date said Mortgagee became entitled to possession of the Lot.

#### **16.4 Unpaid Assessments**

If it is deemed necessary by the Association, any unpaid Assessment against a Lot foreclosed by a Mortgagee may be treated as a common expense of the other Lots. Any such unpaid Assessments shall continue to exist as a personal obligation of the defaulting Lot Owner of the respective Lot.

#### **16.5 Subordination**

A breach of any of the provisions contained in this Declaration or any reentry by reason of such breach shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said premises or any part thereof; but said provisions shall be binding upon and effective against any Lot Owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

### **ARTICLE 17 – AFFORDABLE LOTS**

#### **17.1 Severance of Improvements**

HRB, as the Owner of an Affordable Lot, shall have the right to sever the Improvements from the underlying real estate comprising the Affordable Lot upon which the Improvements are constructed, to sell such Improvements separately from the underlying real estate, and to lease the underlying real estate to the owner of the Improvements on such Affordable Lot.

#### **17.2 Rights and Obligations of Owners of Improvements**

Except as otherwise set forth in this Declaration, the owner of Improvements which have been severed from the underlying real estate on an Affordable Lot shall have the same rights and obligations set forth in this Declaration as the Owner of the Affordable Lot on which such Improvements are located.

#### **17.3 Restrictions**

As of the initial recording of this Declaration, the sales price of the Improvements on an Affordable Lot and/or the amount an Owner may receive from a sale of the Improvements on an Affordable Lot, is capped in accordance with the City of Bainbridge Island Municipal Code or other requirements of the City of Bainbridge Island, any ground lease between the Owner of the Improvements on a Lot and HRB or the City of Bainbridge Island, and/or the Plat (the “Affordability Requirements”). Eligibility to purchase or rent the Improvements on an Affordable Lot, the sales price of the Improvements on an Affordable Lot and/or the amount an Owner may receive from a sale of the Improvements on an Affordable Lot, and permitted rent for any leased Affordable Lot, is determined in accordance with the Affordability Requirements and shall be interpreted and enforced by HRB, not by the Association.

### **ARTICLE 18 – AMENDMENT OF DECLARATION**

#### **18.1 Developer's Reserved Rights**

The Developer reserves the right and, on behalf of all Lot Owners, is hereby authorized to execute and to have recorded any amendments to this Declaration it deems necessary prior to the termination of the Development Period. All Lot Owners hereby grant to the Developer a full and complete power of attorney to take those actions and agree that said amendments shall be binding upon their respective Lots and them and their assigns to the same extent as if they had personally executed said amendments. All Lot Owners

hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

### **18.2 Amendment by Members**

After termination of the Development Period, this Declaration may be amended only by vote or agreement of Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, *provided that* any amendment that alters the provisions of any easement set forth in ARTICLE 3 shall require the approval of the party benefited by said easement. After such approval, the President and Secretary of the Association, for and on behalf of the Lot Owners, shall certify that the amendment was properly adopted and execute and record said amendment.

### **18.3 Exceptions**

Except to the extent expressly permitted or required by the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Lots, change the boundaries of any Lot, or change the allocated interests of a Lots without the consent of Lots Owners to which at least ninety percent (90%) of the votes in the Association are allocated, including the consent of any Lot Owner of a Lot, the boundaries of which or allocated interest of which is changed by the amendment.

### **18.4 Submission of Certain Amendments to City**

The City is an intended beneficiary of the following provisions of this Declaration: Sections 3.1, 3.3, 4.3.4, 5.7, 5.13, 5.16, 5.17, 5.18, 7.2, 7.7, ARTICLE 8, and ARTICLE 9. Notwithstanding any provision in ARTICLE 18 to the contrary, no amendment or modification of ARTICLE 9 or Section 4.3.4 may be recorded or shall be effective unless expressly approved in writing by the City's Planning Director. In the event of any proposed modifications to ARTICLE 9 or Section 4.3.4, such proposed modifications shall be submitted to the City Planning Director for review. In the event said Director transmits a written objection within ten (10) days of the Director's receipt of such proposed modification, ARTICLE 9 or Section 4.3.4, respectively, shall not be amended until such objection is resolved. The Owner or the Association, as the case may be, shall also be required to submit any application that may be required under City ordinances or codes in connection with such amendment of ARTICLE 9 or Section 4.3.4 or any plat condition which was the subject of ARTICLE 9 or Section 4.3.4 and approval must be received before any such amendment may be recorded or take effect.

### **18.5 Corrective Amendments**

Upon thirty (30) days' advance notice to Lot Owners, (a) the Developer may, without a vote of the Lot Owners or approval by the Board, and within five (5) years after the recordation or adoption of the Governing Documents containing or creating a mistake, inconsistency, error, or ambiguity, or (b) the Board may, upon a vote of two-thirds (2/3rds) of the members of the Board: adopt, execute, and record a corrective amendment or supplement to the Governing Documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the Governing Documents with respect to an objectively verifiable fact. Any such amendment or supplement may not materially reduce what the obligations of the Developer would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

### **18.6 Limitation of Action**

In the absence of fraud, any action to challenge the validity of an amendment adopted pursuant to this Section may not be brought more than one (1) year after the amendment is recorded.

## ARTICLE 19 - LIMITATION OF LIABILITY; INDEMNIFICATION

### 19.1 Limitation of Liability

No person who serves as a member of the Board (including the initial Board) or as an officer of the Association (including Developer) shall be personally liable to the Association or any Lot Owner or any other party for conduct as a member of the Board and shall be protected to the fullest extent permitted by law. If Washington State Law is amended after adoption of this Declaration, then the liability of each Board member and officer of the Association shall be limited to the full extent permitted by Washington State Law, as so amended. No repeal or modification of this Section 19.1 shall adversely affect any right or protection of a Board Member existing at the time of such repeal or modification.

### 19.2 Indemnification

19.2.1 Board Members. The Association shall indemnify and hold all persons who serve as a member of the Board or the initial Board or as a Board member and officer of the Association (including Developer, to the extent Developer acts in any such capacity), harmless to the full extent permitted by Washington State Law as it now exists or as it is amended hereafter. This indemnification shall continue as to a person who has ceased to be a Board Member and/or officer and shall inure to the benefit of that person's heirs, personal representatives, or assigns. The Association may, upon written request, advance expenses incurred by the Board Members and/or officers entitled to this indemnification. If a claim for indemnification or advance of expenses is not paid within sixty (60) days after a written claim has been received by the Association, the claimant may sue the Association to recover any unpaid amount. If successful, the claimant shall be entitled to reasonable costs and attorneys' fees.

19.2.2 Officers. In addition, the Association shall have the power to indemnify an officer who is not a Board member, as well as employees and agents of the Association who are not Board Members (including the Developer), to the full extent permitted by Washington State Law as it now exists or is amended hereafter. Whether an officer, agent or employee who is not a Board member should be indemnified and the amount of indemnification to be provided shall be determined by general or specific action of the Board of Directors.

19.2.3 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Board member, officer, employee, or agent of the Association against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of Washington State Law.

19.2.4 Guarantees. The Association shall indemnify, defend and hold any Board Member or officer harmless for any obligation of the Association which the Board Member or officer personally guaranteed, so long as that Association obligation has been authorized and/or ratified by the Board of Directors as provided for in the Bylaws.

19.2.5 Conformance with Law. If any provision of this Section 19.2 is in violation of the Washington State Law in effect at the time of the request for indemnification, then that provision shall be automatically modified to provide the broadest indemnification available under the existing Washington State Law.

19.2.6 Not Exclusive. The rights to indemnification, limitation of liability, and to the advancement of expenses conferred in Sections 19.1 and 19.2 shall not be exclusive of any other right which

any person may have or hereafter acquire under any statute, the Association's Articles of Incorporation, Bylaws, agreement, or vote of Members, disinterested Board Members or otherwise.

## **ARTICLE 20 - GENERAL PROVISIONS**

### **20.1 Covenant Running with the Land**

The provisions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Lot Owners, their respective legal representatives, heirs, successors and assigns.

### **20.2 Termination**

Except as otherwise set forth in the Act, Wallace Way Cottages and this Declaration may be terminated by agreement of Lot Owners of Lots to which at least eighty percent (80%) of the votes in the Association are allocated, pursuant to the terms and procedures set forth in the Act.

### **20.3 Severability**

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

### **20.4 Gender**

This Declaration is to be read and understood with all appropriate changes of a number and gender as required by the context.

### **20.5 Headings**

The captions in this Declaration are for convenience only and do not in any manner affect, limit, or amplify the provisions hereof.

### **20.6 Inflationary Increases in Dollar Limits**

The dollar limits specified in this Declaration may, in the discretion of the Board, be increased proportionately to adjust for any inflation in the value of the dollar by the Consumer Price Index for all Urban Consumers (1982 – 1984 = 100 (semi-annual)) specified for “All Items,” relating to Seattle-Tacoma-Bremerton, Washington and issued by the Bureau of Labor Statistics of the United States Department of Labor, or any successor index. If the index for Seattle-Tacoma-Bremerton is discontinued, the National Index shall be used in this calculation. In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the increase shall be made with the use of such conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the index shall cease to be published, then there shall be substituted for the index such other index as the Board deems reasonable.

[Signature page follows.]



## EXHIBIT A

### DESCRIPTION OF PROPERTY

Resultant Parcels 1 and 2 of the Boundary Line Agreement recorded under Kitsap County Auditor's File No. 201905160135, being a portion of the Northeast quarter of Section 27, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington.

Lots B and C of City of Bainbridge Island Short Plat No. W-78 recorded under Kitsap County Auditor's File No. 9204280006, being a portion of the Southeast quarter of the Northeast quarter of Section 27, Township 25 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap County, Washington.

EXHIBIT B

ALLOCATION OF COMMON EXPENSES AND VOTES

Lot	Percentage of Common Expenses	Votes
1	5.4054	1
2	5.4054	1
3	5.4054	1
4	5.4054	1
5	5.4054	1
6	5.4054	1
7	5.4054	1
8	5.4054	1
9	5.4054	1
10	5.4054	1
11	5.4054	1
12	5.4054	1
13	5.4054	1
14	5.4054	1
15	5.4054	1
16	4.0541	1
17	4.0541	1
18	5.4054	1
19	5.4054	1