

RESOLUTION NO. 681

**A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING A CONDOMINIUM DECLARATION AND OPERATING AGREEMENT FOR THE UNIVERSITY PLACE LIBRARY CIVIC BUILDING**

WHEREAS, the Pierce County Library was the owner of the University Place branch library building previously located on Bridgeport Way in University Place and operated a public library thereon, and

WHEREAS, the City desired to redevelop a Town Center Parking Garage and associated development on the site of the former University Place Library, and

WHEREAS, in 2006, the Library conveyed the former Library Building and property to the City, and the parties entered into a New Library Development Agreement which called for the City to develop a replacement University Place Library, and

WHEREAS, the New Library Development Agreement was amended several times, finally calling for the City to build a new Library/Civic condominium building above the Town Center Garage in which the new University Place Library would be located, and

WHEREAS, both the City and the Library have to date, fully fulfilled all of their respective obligations under the New Library Development Agreement, the new University Place Library is substantially complete, including the shared building atrium, and has been open to the public since February, 2011, and

WHEREAS, the time has now come to finalize the Condominium Declaration and Operating Agreement between the City and Library which will define the ownership of the building between the City and Library, and describe the general parameters of atrium operations.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON AS FOLLOWS:**

Section 1. Approval of Form of Documents. The City Council hereby approves execution of the Condominium Declaration and Atrium Operating Agreement for the new University Place Library/Civic Building in substantially the form of the documents attached to this Resolution.

Section 2. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the already approved New Library Development Agreement as amended, the approved form of documents attached to this Resolution, and this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon passage by the City Council.

**ADOPTED BY THE CITY COUNCIL ON SEPTEMBER 19, 2011.**

  
Debbie Klosowski, Mayor

ATTEST:

  
\_\_\_\_\_  
Debora Nicholas, Deputy City Clerk

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

City of University Place  
3715 Bridgeport Way  
University Place, WA 98466  
Attn: City Attorney

DECLARATION AND COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR UNIVERSITY PLACE CIVIC BUILDING, A CONDOMINIUM

Grantor(s): CITY OF UNIVERSITY PLACE

Grantee(s): PUBLIC

Legal Description (Abbreviated):

Tax Account Numbers:

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UNOFFICIAL DOCUMENT

DECLARATION  
AND  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
UNIVERSITY PLACE CIVIC BUILDING, A CONDOMINIUM

CITY OF UNIVERSITY PLACE (“City” or “Declarant”) makes this Declaration pursuant to the provisions of the Washington Condominium Act, Chapter 64.34 of the Revised Code of Washington (“Act”).

**SECTION I.  
INTERPRETATION**

1.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Condominium under the provisions of relevant Washington statutes. The provisions of the Act referenced herein under which this Declaration is operative, shall be liberally construed to accomplish the intent of this Declaration.

1.2 Interpretation to Conform to Mixed Use Objectives. The provisions of this Declaration shall be interpreted in a manner that facilitates the administration of a mixed-use condominium with a public library located on the ground floor, avoids oppression or inequitable treatment of one Unit or another, supports the successful operation of the Retail Units, preserves the value of the other Units, and ensures the first-class appearance of the Structure and Common Elements so as to retain its attraction to all Owners and Occupants. In any dispute concerning the meaning and effect of this Declaration, the foregoing intent and purposes shall be given primary consideration.

1.3 Immaterial Defects. The creation of the Condominium shall not be impaired and title to the Units and Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration or the Survey Map and Plans or any amendment thereto to comply with the Act.

1.4 Partial Invalidity. If any term, covenant, condition, restriction or reservation contained in this Declaration should be held to be unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate this Declaration as creating a condominium and shall be limited to the extent practicable to the provision so invalidated.

1.5 Terms Consistent With Act. The terminology used herein is intended to have the meaning set forth in the Act unless the context clearly requires otherwise.

1.6 Covenants Running With Land. This Declaration (unless and until terminated as provided herein, or as provided in the Act) shall be operative as a set of covenants running with the Property, or equitable servitudes, supplementing and interpreting the Act, and operating independently of the Act, should the Act be, in any respect, inapplicable.

1.7 Singular/Plural, Etc. The singular may include the plural, and the masculine may include the feminine, or vice versa, unless the context requires otherwise. When the word “include” is followed by listed items it is meant to be a nonexclusive list.

1.8 Declarant Is Original Owner. The Declarant is the original Owner of all Units and will continue to be deemed the Owner thereof except as conveyances or documents changing such ownership regarding specifically described Units are executed and delivered by Declarant.

1.9 Captions and Exhibits. Captions given to the various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.10 Inconsistency with Bylaws. To the extent this Declaration is inconsistent with the Bylaws, the provisions of this Declaration control unless such provisions are contrary to the Act.

1.11 Adjustments for Inflation. Any dollar amounts specified in this Declaration in connection with any proposed action or decision of the Board or Association may, in the discretion of the Association, be increased proportionately by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average, All Items (1982-84=100), prepared by the United States Department of Labor to adjust for any changes in the value of the dollar after the effective date of this Declaration.

1.12 Rule against Perpetuities. The rule against perpetuities may not be applied to defeat any provision of this Declaration. In the event of an express conflict between this Declaration and the Act, the Act shall be controlling.

1.13 Definitions. The following definitions shall apply in this Declaration, unless the context requires otherwise:

1.13.1 “Adjusted Allocated Interests” means the percentages identified and calculated pursuant to Exhibit B.

1.13.2 “Allocated Interests” means the allocation among the Units of the undivided interest in the Common Elements and of the Common Expenses in accordance with the formula stated in Section 5.1 and shown on Exhibit B. The Allocated Interests are stated herein to comply with the requirements of RCW 64.34.224(1). Declarant intends that many expenses will be specially allocated pursuant to Section 9.7 below as permitted by RCW 64.34.224 and RCW 64.34.360.

1.13.3 “Assessments” means all sums chargeable by the Association against a Unit, including, without limitation: (a) general and special Assessments for Common Expenses, Special Allocations and Parking Garage Assessments as defined in and imposed under the CC&Rs for University Place Town Center; (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 Owner’s account.

1.13.4 “Association” or the “Condominium Association” means University Place Civic Building Condominium Association, a Washington non-profit corporation.

1.13.5 “Atrium” means a ground floor atrium which is a Limited Common Element assigned to the Library Unit and the City Unit as more particularly described in Exhibit C and as shown on the Survey Map and Plans.

1.13.6 “Board of Directors” or “Board” means the individuals appointed by the City Manager and Library Director as provided in Section 7.2 to manage and administer the Property in accordance with the Bylaws of the Association, this Declaration, and the Act.

1.13.7 “Building” means the improvements constructed on the Land which are comprised of the Shell and Structure consisting of a three level parking garage, police station (which, if constructed, will be located on a portion of levels two and three of the Parking Garage), ground floor retail, Atrium, public library, public library expansion space and two floors of office space.



1.13.8 “Bylaws” means the Bylaws of the Association as initially promulgated by the Declarant and as amended from time to time, which together with this Declaration provide for the organization and administration of the Association.

1.13.9 “CC&Rs” means the Declaration of Covenants, Conditions and Restrictions for University Place Town Center, to be developed and recorded in the official records of Pierce County, Washington, as the same may be amended from time to time.

1.13.10 “City Unit” means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. Where the context indicates, references to the City Unit include such Unit’s Allocated Interest in the Common Elements.

1.13.11 “Common Element Improvements” mean the Land and all improvements constructed within the Common Elements by or on behalf of the Declarant or Association either at the time of recording of this Declaration or thereafter. Common Element Improvements include the Shell and Structure and Common Systems and Facilities. Common Element Improvements do not include Unit Improvements.

1.13.12 “Common Elements” or “CEs” mean all portions of the Condominium other than the Units. The Common Elements are shown on the Survey Map and Plans and specifically include that portion of the Property which is not within the boundaries of any Unit and all Common Element Improvements. The Common Elements include the Limited Common Elements and references herein to the Common Elements are meant to include the Limited Common Elements unless the context indicates otherwise.

1.13.13 “Common Expenses” mean expenditures made by or financial liabilities of the Association which are related to the management, maintenance, repair, replacement or enhancement of the Common Elements and Common Element Improvements. Common Expenses include any reserves maintained by the Association, subject to the limitations set forth in Section 9.10. Common Expenses are allocated among the Owners in accordance with their respective Adjusted Allocated Interests, which is sometimes referred to as their Common Expense Liability. Common Expenses do not include expenses attributable to individual Units or Unit Improvements.

1.13.14 “Common Expense Liability” means the share of an Owner’s liability for Common Expenses identified as “Adjusted Allocated Interests” on Exhibit B and calculated pursuant to Exhibit B.

1.13.15 “Common Systems and Facilities” means those utilities, services, facilities and equipment and areas reserved for the same which serve the Common Elements or more than one Unit. They may include the following to the extent they serve more than one Unit notwithstanding that a portion of the following may be located within the boundaries of a Unit: Utilities such as water, sewer, gas, electricity and surface water management and related facilities, conduits, ducts, buses, wires, meters, fire control systems including fire command centers, alarms, monitoring equipment, sprinklers; heating, cooling and ventilation systems and areas reserved for the same including boilers and chillers, generators and other mechanical systems, mechanical rooms, electrical rooms, storage rooms, the ventilating tunnel, ventilating shaft and access thereto which serves the Parking Garage, trash chutes, trash compactors, communication systems, public restrooms located on level one of the Building, the Public Pedestrian Walkway (subject to a public sidewalk easement in favor of the City of University Place in its governmental capacity and not in its capacity as Declarant), integrated security systems, emergency exits and stairs, building canopies, elevators and elevator pits, (except to the extent described in Exhibit C), building and elevator lobbies, card readers and related equipment (if applicable).

1.13.16 “Condominium” means University Place Civic Building, A Condominium, situated in Pierce County, Washington and created hereby.

1.13.17 “Conveyance” means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract, but shall not include a transfer solely for security purposes.

1.13.18 “Declarant” means the party creating the Condominium, and where the context requires, includes the Person or Persons to whom the Special Declarant Rights are conveyed.

1.13.19 “Declaration” means this instrument, as amended from time to time.

1.13.20 “Development Rights” means any right, if expressly reserved by Declarant in this Declaration, to: (a) add real property or improvements to the Condominium; (b) create Units, Common Elements or Limited Common Elements within real property included or added to the Condominium; (c) subdivide Units or convert Units into Common Elements; (d) withdraw real property from the Condominium; or (e) reallocate Limited Common Elements with respect to Units that have not been conveyed by Declarant.

1.13.21 “Eligible Mortgagee” means the holder of a Mortgage on a Unit who has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of the Mortgagees.

1.13.22 “First Mortgage” means a mortgage or deed of trust which constitutes a lien against a Unit with priority over all other mortgage or deed of trust liens against that Unit.

1.13.23 “First Mortgagee” means the beneficial owner of a First Mortgage or its designee.

1.13.24 “Foreclosure” shall include a judicial or non-judicial foreclosure, a real estate contract forfeiture, and a deed given in lieu of such foreclosure or sale.

1.13.25 “Land” means the real property legally described in Exhibit A.

1.13.26 “Lease” means any lease, sublease or other occupancy agreement for all or any portion of a Unit.

1.13.27 “Library Expansion Unit” means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. Where the context indicates, references to the Library Expansion Unit include such Unit’s Allocated Interest in the Common Elements.

1.13.28 Purposefully Omitted.

1.13.29 “Library Parking” means eighty (80) parking stalls located on level P-3 and a portion of level P-2 in the Parking Garage as shown on the Survey Map and Plans. Library Parking is a part of the Library Unit. While current City plans for operation of the Parking Garage Unit do not call for limitation or reservation of parking within the Parking Garage Unit other than transit signage in the event limitations or restrictions on parking are put in place, are put in place Library patrons and employees shall retain the right to use up to twenty (20) additional parking stalls in the Parking Garage Unit on a first come/first serve unreserved basis.

1.13.30 “Library Real Estate Contract” means that certain real estate contract between the City as vendor and the Library as vendee relating to the Library’s purchase of the Library Expansion Unit.

1.13.31 "Library Unit" means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. The Library Unit includes the Library Parking and the Book Drop Room. Where the context indicates, references to the Library Unit include such Unit's Allocated Interest in the Common Elements.

1.13.32 "Library" means the Pierce County Rural Library District, a Washington rural library district.

1.13.33 "Limited Common Elements" or "LCEs" means a portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units.

1.13.34 "Manager" means the Person retained by Declarant or the Association to perform such management and administrative functions as are delegated by the Association.

1.13.35 "Mortgage" shall mean a mortgage, deed of trust, or real estate contract creating a security interest or lien on a Unit, the Common Elements or the Property, but so long as Declarant or a municipal corporation or other public entity is an owner of a Unit, does not include any transfer by the Declarant, a municipal corporation or other public entity to a trustee for security purposes (other than a deed of trust under RCW 61.24) or sale and leaseback or lease purchase transaction by Declarant, such municipal corporation or other public entity.

1.13.36 "Mortgagee" shall mean the beneficial owner of a Mortgage or its designee.

1.13.37 "Occupant" shall mean each Owner, and any Person or Persons from time to time entitled to the use and occupancy of any portion of a Unit under any lease, sublease, license or concession agreement or other arrangement pursuant to which such Person acquires rights of use and occupancy of a Unit. Occupants may include Declarant and includes the members, managers, directors, officers, shareholders, employees and agents of any such Persons to the extent that they otherwise meet this definition of Occupant, but does not include members of the general public or any invitee of any Occupant or any customer or patron of any business operated by any Occupant.

1.13.38 "Operating Agreement" shall mean that certain agreement between the City and Library which will set forth certain terms and conditions relating to the operation, management, and maintenance of the Atrium (which is a Limited Common Element assigned to the City Unit and the Library Unit).

1.13.39 "Owner" means any Person who owns a Unit but if ownership is held by a nominee, a trustee for security purposes, a sale-leaseback lessor, a real estate contract vendor or other Person whose interest does not entitle such Person to possession or use of the Unit, such Person shall not be the Owner and the Person who is entitled to possession or use of the Unit shall be considered to be the Owner. The term "Owner" does not include a Person holding an interest in a Unit solely as security for an obligation. For purposes of this definition, until the Library Real Estate Contract has been paid by the Library in full, the City shall be considered the Owner of the Library Expansion Unit and entitled to exercise all voting rights with respect to the Library Expansion Unit. Where this Declaration refers to a decision by the Owner of the City Unit, or the Owner of the Library Unit, that shall be understood as an administrative decision of the City Manager of the City, and an administrative decision of the Library Director of the District respectively.

1.13.40 "Parking Garage Unit" means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. The Parking Garage Unit includes all parking spaces located in the Parking Garage, including the parking spaces designated as Park and Ride Stalls on the Survey Map and Plans but excluding the Library Parking. Where the context indicates, a reference to the Parking Garage Unit includes such Unit's Allocated Interests in the Common Elements.

1.13.41 “Parking Garage” means that portion of the Condominium located on parking levels P1 through P3 as shown on the Survey Map and Plans and which are used for parking and related purposes.

1.13.42 “Person” includes an individual, corporation, partnership, limited partnership, limited liability company, trust, governmental subdivision or agency, municipal corporation or other legal entity.

1.13.43 “Project Standards.” Except as provided below, “Project Standards” means “Library Project Standards” with respect to the Library Unit (and the Library Expansion Unit if used as a public library) and any LCEs assigned to such Units, “City Project Standards” with respect to the City Unit, the City Unit No. 2 (and the Library Expansion Unit if used by the City for governmental purposes during the term of the Library Real Estate Contract) any LCEs assigned to such Units and “First Class” with respect to the Retail Units (and the Library Expansion Unit if used for retail or commercial purposes during the term of the Library Real Estate Contract) and any LCEs assigned to such Units, and Common Elements. “Library Project Standards” means those standards for use, occupancy, operation, maintenance, cleaning, repair, replacement and upgrades of the other branch libraries which it operates (including the Library Expansion Unit following its purchase by the Library). “City Project Standards” means those standards for use, occupancy, operation, maintenance, cleaning, repair, replacement and upgrades of “Class A” city governmental offices and associated governmental purposes (including the Library Expansion Unit, if used by the City for governmental purposes and any police station or emergency operations center constructed by the City within the City Unit No. 2) consistent with the same standards commonly utilized by cities of comparable size to the City located in Pierce and King counties. If the Library Unit or the Library Expansion Unit is no longer used as a public library, or if the City Unit or the City Unit No. 2 is no longer used for either a City hall or office uses, or governmental purposes, respectively, then “Project Standards” shall mean those standards for use, occupancy, operation, maintenance, repair, replacement and upgrades consistent with “Class A” with respect to office components and “First Class” with respect to the remainder of such Units. The Project Standards for the Parking Garage (including the Library Parking) shall be those which are customary for parking garages for comparable mixed-use projects located in the Pacific Northwest. Nothing in this definition shall imply or require that the Library Unit and the Library Expansion Unit be used for library purposes or that the City Unit and the City Unit No. 2 be used for City hall, City office space or governmental purposes, respectively. The Library Unit, the Library Expansion Unit, the City Unit and the City Unit No. 2 may be used for any use not prohibited by law or this Declaration including those restrictions on use set forth in Section XI of this Declaration.

1.13.44 “Project” means all improvements contemplated for the Condominium including the Common Element Improvements and Unit Improvements.

1.13.45 “Property” means the fee simple interest in, over, or under the Land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance.

1.13.46 “Public Pedestrian Walkway” or “Paseo” means the area occupied by that certain walkway, stairs and ramp which are located on the southerly border of the Property, and provide for pedestrian access to and from Dexter Drive West and the main entrance to the Building fronting on Market Square and all improvements located therein and includes, without limitation, the pavers, benches, landscaping, fountain, ramps and stairs (but excludes the Book Drops which are Limited Common Elements appurtenant to the Library Unit). The Declarant has granted the City of University Place a public sidewalk easement in the Public Pedestrian Walkway.

1.13.47 “Requirements of Law” means all applicable local, state and federal laws, ordinances and regulations and other governmental rules, orders and determinations now or hereafter in effect, whether or not presently contemplated (and except as may be vested in the Property, the Condominium or any Unit thereof by operation of law), applicable to the Property, the Condominium or any Unit therein, or their ownership, operation, use or possession including (without limitation), all those relating to parking, subdivision, environmental, air quality, flood hazard, building codes, zoning or other land use matters, the Americans With Disabilities Act of 1990, as amended, life safety requirements, the City of University Place Town Center Overlay Zone, including the design standards and guidelines adopted by the City in connection therewith, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with any or all of the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, covenants, conditions and restrictions which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Property, the Condominium or any Unit therein or any part thereof.

1.13.48 “Retail Unit A” means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. Where the context indicates, references to Retail Unit A include such Unit’s Allocated Interest in the Common Elements.

1.13.49 “Retail Unit B” means the Unit with that designation described on Exhibit B and shown on the Survey Map and Plans. Where the context indicates, references to Retail Unit B include such Unit’s Allocated Interest in the Common Elements.

1.13.50 “Retail Units” means collectively, Retail Unit A and Retail Unit B.

1.13.51 “Shell” means those improvements located above or below grade which physically separate the exterior environment from the interior space and which protect the interior space from weather and other exterior conditions including water penetration. Interior space includes both heated and unheated space. The Shell includes the curtain wall or window wall, and other weatherproofing systems, fireproofing materials, roofs, and all related systems including roof and terrace drains and drainage systems, flashing systems, ventilating systems, roof membranes, and membranes beneath decks or terraces and pavers for the same which protect the interior space below from water penetration.

1.13.52 “Special Allocations” mean expenditures made by or financial liabilities of the Association which are allocated among the Owners pursuant to Section 9.7 below on a basis other than an Owner’s Adjusted Allocated Interest.

1.13.53 “Special Declarant Rights” means rights, if expressly reserved in this Declaration for the benefit of Declarant to:

- (a) Complete improvements indicated on the Survey Maps and Plans filed with the Declaration under RCW 64.34.232;
- (b) Exercise any reserved right under Section 2.3; and
- (c) Use easements through the Common Elements for the purpose of making improvements within the Condominium.

1.13.54 “Structure” means those improvements which provide structural support for the Shell, Units, Unit Improvements and other spaces in the Condominium. The Structure includes foundations, footings, ceiling and floor slabs, bearing columns, shear or bearing walls, braces, tie downs, structural steel, rebar, and other structural elements.

1.13.55 “Survey Map and Plans” means the survey map and plans filed simultaneously with the recording of this Declaration and any amendments, corrections, and addenda thereto subsequently filed.

1.13.56 “The Act” means the Washington Condominium Act (Revised Code of Washington, Chapter 64.34), as amended from time to time.

1.13.57 “Unit Improvements” mean those improvements constructed within the boundaries of a Unit or are otherwise designated in this Declaration as Unit Improvements. Unit Improvements include, to the extent located within the boundaries of a Unit, all non-structural improvements such as interior or tenant improvements, fixtures (such as cabinets) and appliances and equipment which serve only one Unit except to the extent the same are part of the Common Systems and Facilities, permanently-installed wall and floor coverings, interior walls, partitions, any other betterments and improvements, and replacements or upgrades of the same, whether installed by the Declarant, Owner or its Occupant. Unit Improvements do not include Common Elements Improvements (such as the Shell and Structure) even if they may be entirely or partially located within the boundaries of a Unit.

1.13.58 “Unit” and “Condominium Unit” mean a portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 2.3 below.

## **SECTION II. DESCRIPTION OF LAND, BUILDING AND UNITS**

2.1 Land Described. The Declarant is the sole Owner of the Property legally described in Exhibit A hereto which is being developed as a Condominium.

2.2 Description of Building. There is one building in the Condominium. The Declarant hereby certifies pursuant to RCW 64.34.200(2) that all of the Common Element Improvements of the Building containing or comprising any Units that are to form a part of the Condominium have been substantially completed.

2.3 Description of Units.

2.3.1 Description of Units. The number of Units in the Condominium and designation of each Unit are set forth in Exhibit B hereto and on the Survey Map and Plans. Each Owner has the right to construct Unit Improvements within the boundaries of its Unit. These rights are subject to the restrictions stated herein. Declarant reserves the right to file amendments to this Declaration and to the Survey Map and Plans after substantial completion of construction of the Common Element Improvements to show the as-built location of those improvements and to adjust the Unit boundaries to conform to the Common Element Improvements as built. Each affected Owner shall consent to these amendments. The boundaries of the Units are shown on the Survey Map and Plans and are described below.

2.3.2 Boundaries of Units. Except for the Units or portions of Units located within the Parking Garage, the horizontal boundary between the Units and the Shell is the inside surface of the curtain wall, stone, brick, concrete or other material comprising the exterior skin and a vertical plane at the inside surface of exterior doors and exterior windows. Except for the Units or portions of Units located within the Parking Garage the vertical boundaries of the Units are from the top of the unfinished surface of the concrete slab constituting the floor of each Unit to the lower surface of the concrete slab constituting the ceiling of such Unit or the underside of the structural system constituting the roof on level three, including within the Unit all carpets, carpet pads, wood or tile flooring or subflooring on the floors and all lath, furring, wallboard, plasterboard, plaster, paint, and any other materials constituting any part of any suspended ceiling (or false ceiling). All doors (other than exterior doors which constitute part of the Shell) giving access to a Unit

(including hinges and locks) are a part of the Unit, as is all window glass (except glass installed in exterior window frames which becomes part of the Shell). Doorjambes are part of the Common Elements, as are window frames (whether fixed or movable), window hardware and window glass installed in exterior window frames.

2.3.2.1 Any sign mounted on the exterior wall of the Condominium which identifies the Owner of a Unit shall constitute a Limited Common Element appurtenant to the Unit which it identifies. All other signage shall constitute Common Elements.

2.3.2.2 The Library Unit consists of space identified on the Survey Maps and Plans as the "Library Unit" together with those portions of the Parking Garage identified as the "Library Owned Parking" located on parking levels P-2 and P-3 and the "Book Drop" located on parking level P-2, all as identified and depicted on the Survey Maps and Plans. The horizontal boundaries of the portion of the Library Unit in the Parking Garage shall consist of the lower surface of the concrete slab of the Parking Garage on the applicable level, with the upper boundary being the lower surface of the concrete slab which constitutes the floor of the next higher level. The vertical boundaries consist of a vertical plane from the lower level to the higher level of the applicable parking level measured from the boundaries of the Unit as depicted in the Survey Map and Plans and consist of all of the space included within that area.

2.3.2.3 The boundaries of the Parking Garage Unit (which is located entirely below Level 1 of the Building) are as follows: The horizontal boundaries of the portion of the Library Unit in the Parking Garage shall consist of the lower surface of the concrete slab of the Parking Garage on the applicable level, with the upper boundary being the lower surface of the concrete slab which constitutes the floor of the next higher level. The vertical boundaries consist of a vertical plane from the lower level to the higher level of the applicable parking level measured from the boundaries of the Unit as depicted in the Survey Map and Plans and consist of all of the space included within that area.

2.3.2.4 Each Unit contains the Limited Common Elements assigned to that Unit which are depicted on the Survey Map and Plans and are described in Exhibit C to this Declaration. Each Unit also includes the easements which benefit that Unit, and is subject to the easements which burden that Unit as more particularly described in Section XVII hereof.

2.3.3 Physical Boundaries Controlling. The physical boundaries of a Unit constructed in substantial accordance with the original Survey Map and Plans shall constitute its boundaries rather than the metes and bounds expressed in the Survey Map and Plans, regardless of settling or lateral movement of the Building or minor variances between boundaries shown on the Survey Map and Plans and those of the Building.

2.4 Reserved Rights. Declarant reserves, as Special Declarant Rights and Development Rights, the right to complete the initial construction of the Common Element improvements, Unit Improvements, including any improvements constructed within the boundaries of the City Unit No. 2, the right to install the north elevator (and associated elevator shaft, core, pit and associated equipment) at the location designated on the Survey Map and Plans (which, if built, would be a Limited Common Element assigned to the City Unit), and the right to make such changes in those improvements as Declarant determines is appropriate in its sole discretion. Finally, Declarant reserves all easements necessary or convenient for the completion of all construction relating to the exercise of the Special Declarant Rights and Development Rights (collectively, "Rights"). Declarant may assign to an Owner such of the Rights as may be necessary or convenient to allow such Owner to complete that portion of the Common Element Improvements which are assigned as Limited Common Elements to such Owner's Unit(s). All Rights shall terminate on the date which is twenty (20) years after the recording of this Declaration; provided that Declarant or any successor to a Right may voluntarily terminate such Rights at any time by recording an amendment to this Declaration, which amendment specifies which of the Rights are thereby terminated. Any Right may be exercised with respect

to different portions of the Property at different times. No assurances are made regarding the boundaries of portions of the Property which may be subjected to the exercise of a Right or the order in which a Right may be exercised. If a Right is exercised, it is not necessary that the Right be exercised in all or any other portion of the remainder of the Property. Each Owner has the right to complete the Unit Improvements for such Owner's Unit without regard to these Rights provided the Owner complies with the requirements of this Declaration applicable to those construction activities.

### **SECTION III. COMMON ELEMENTS**

The Common Elements consist of all parts of the Condominium other than the Units, and specifically include the Limited Common Elements. The Common Elements are shown on the Survey Map and Plans and specifically include all Common Element Improvements. Each Owner shall have the right to use the Common Elements excluding those Limited Common Elements assigned exclusively to the other Units, in common with the other Owners, including a right of access from its Unit over the Common Elements to a public street. The right to use the Common Elements extends to Occupants of a Unit and their customers and other invitees. The Association may adopt rules and regulations governing the use of the Common Elements subject to the limitations stated herein.

### **SECTION IV. LIMITED COMMON ELEMENTS**

4.1 Description of Limited Common Elements. The Limited Common Elements or "LCEs" assigned to and reserved for the exclusive use of a single Unit or to more than one but less than all Units are described on Exhibit C attached hereto and shown on the Survey Map and Plans.

4.2 Reallocation, Conversion and Incorporation.

4.2.1 Reallocation of Limited Common Element Among Units. A Limited Common Element may only be reallocated between Units with the approval of the Association and by an amendment to the Declaration executed by the Owners of the Units to which the Limited Common Element was or will be allocated as applicable. The Board of Directors shall strive to make a recommendation to the Association on the request of the Owners to such a reallocation within 30 days. The failure of the Board of Directors or the Association to timely act upon such a request shall be deemed disapproval of the request. The Amendment to the Declaration accomplishing such reallocation shall be recorded in the names of the Owners affected thereby and in the name of the Condominium.

4.2.2 Conversion of Common Element to Limited Common Element and Vice Versa. A Common Element may be converted to a Limited Common Element, or a Limited Common Element may be converted to a Common Element, only with the approval of the Association and by an amendment to the Declaration executed by the Owner(s) of the Unit(s) to which the Limited Common Element was or will be allocated as applicable. The Board of Directors shall strive to give its recommendation to the Association and the affected Owners by written notice within thirty (30) days following its receipt of the proposed Amendment to the Declaration of its approval or disapproval thereof, specifying in the case of its disapproval, its reasons therefor. The failure of the Board of Directors or the Association to timely act upon such a request shall be deemed disapproval of the request. The Amendment to the Declaration accomplishing such conversion shall be recorded in the names of the Owners affected thereby and in the name of the Condominium.

4.2.3 Incorporation of Common Element or Limited Common Element Into Unit. A Common Element or Limited Common Element may be incorporated into an existing Unit only by an amendment to the Declaration (with 70% of the Owners approving such change) and by approval of the



Owner(s) of the Unit(s) into which the Common Element or Limited Common Element will be incorporated. Once so approved, the Board of Directors will be authorized to file an amendment to the Declaration and Survey Map and Plans executed by an authorized officer of the Association and the Owner(s) of the Unit(s) into which the Common Element or Limited Common Element will be incorporated, which amendment shall set forth the proposed reallocation of Allocated Interests and Adjusted Allocated Interests among all Units after giving effect to such changes in boundaries of Units. The Board of Directors shall strive to give the Association and affected Owners written notice within thirty (30) days following its receipt of the proposed Amendment to the Declaration and Survey Map and Plans of its recommended approval or disapproval thereof, specifying in the case of its disapproval, its reasons therefor. The failure of the Board of Directors or the Association to timely act upon such a request shall be deemed disapproval of the request. If the Board recommends approval, it will then seek votes from the Owners to approve the Amendment. The Amendment to the Declaration incorporating such conversion and setting forth the revised Allocated Interests and the Adjusted Allocated Interests of all Units, and Survey Map and Plans, if applicable, shall be recorded in the names of the Owners affected thereby and in the name of the Condominium.

4.3 Use of Limited Common Elements. Unless otherwise agreed by the Owners, each Owner shall have the exclusive right to use the Limited Common Elements allocated or assigned solely to the Owner's Unit. The Association may adopt rules and regulations governing the use of the Limited Common Elements which are not inconsistent with this Declaration.

## **SECTION V. ALLOCATED INTERESTS AND VOTES**

5.1 Voting Rights and Allocated Interests. Exhibit B sets forth for each Unit: (i) the Unit areas of each Unit; (ii) the Allocated Interests of each Unit; and (iii) the number of votes allocated to each Unit. The formula for determining the Allocated Interests and allocating voting rights for each Unit is the gross floor area of all Levels for that Unit divided by the total gross floor area of all Units times 100. The gross floor area for each Level is generally measured to the inside face of glazing or masonry for the exterior walls and includes all columns, stairs, elevators, escalators, or other interior construction or equipment included within that Unit's boundaries. Declarant may have rounded some of the percentages, as necessary, to cause the totals to equal 100 percent. The Allocated Interests so established for each Unit shall be deemed to be conveyed with the Units, whether or not mentioned in the instrument evidencing the conveyance. The liability of each Owner for Common Expenses (sometimes referred to as "Common Expense Liability") is such Owner's Adjusted Allocated Interest expressed as a percentage and multiplied by the total Common Expenses.

5.2 Transfer of Units and Common Elements. All rights granted to an Owner under this Declaration, including an unrestricted right of ingress and egress to its Unit, voting rights, Allocated Interests, and assigned LCEs, shall be perpetual and pass with the Unit upon any transfer of ownership. Any transfer of ownership of a Unit shall include a transfer of the Allocated Interests, assigned LCEs and voting rights allocated to that Unit. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements or LCEs will be void unless the Unit to which that interest is allocated is also transferred. A transfer of ownership does not include a pledge for security purposes, grant of security interest, mortgage, deed of trust, or other transfer for security purposes and the holder of the security interest is not an "Owner" as defined herein.

5.3 Library and City First Right of Offer. For so long as the City and Library collectively own at least 70% of the Condominium any sale or other transfer of all or a portion of a City or Library owned Unit, will be subject to a reciprocal first right of offer (ROFO). The party proposing to sell or transfer shall be deemed the "Optionor", and the party with the ROFO shall be termed the "Optionee".

5.3.1 Procedure for Offer. Prior to entering into any agreement to sell or transfer all or part of a Unit (the "Offered Property"), Optionor shall notify Optionee by written notice (the "First Offer Notice")

when and if Optionor desires to sell or transfer all or a portion of a Unit whether on the open market or pursuant to an existing offer to purchase received by Optionor, in any manner. Pursuant to such First Offer Notice, Optionor shall offer to sell the Project or the applicable permitted portion thereof (the "Offered Property") to Optionee in the First Offer Notice. The First Offer Notice shall (A) set forth (i) the purchase price at which Optionor is willing to sell the Offered Property to Optionee (the "ROFO Purchase Price"), which ROFO Purchase Price shall be determined by Optionor, (ii) the required "Deposit" which Deposit shall not exceed three percent (3%) of the ROFO Purchase Price, (iii) the "Contingency Date" which shall in no event be less than thirty (30) days following the "Effective Date" of the Purchase Agreement, and (iv) the Closing Date, which shall in no event be less than sixty (60) days following the Effective Date of the Purchase Agreement; and (B) be executed by Optionor.

### 5.3.2 Procedure for Acceptance.

5.3.2.1 Acceptance of Offer by Optionee. If Optionee wishes to exercise its Right of First Offer in response to a First Offer Notice, then within ten (10) business days following Optionee's receipt of the First Offer Notice (the "Optionee's Notice Period"), Optionee shall notify Optionor in writing either (i) of Optionee's exercise of the Right of First Offer or (ii) of Optionee's interest in exercising the Right of First Offer, subject to a reservation of right to further negotiate the ROFO Purchase Price and/or any other terms of the First Offer Notice ("Optionee's Exercise Notice"). If Optionee does not reserve the right in Optionee's Exercise Notice to further negotiate the ROFO Purchase Price and/or any other terms in the First Offer Notice, Optionee shall deliver to Optionor concurrent with Optionee's delivery of Optionee's Exercise Notice, the Deposit required in the First Offer Notice. If, however, Optionee in Optionee's Exercise Notice reserves the right to further negotiate as provided hereinabove, then Optionor shall negotiate with Optionee during a period not to exceed fifteen (15) business days following Optionor's receipt of Optionee's Exercise Notice (the "Negotiation Period") the terms of the First Offer Notice, including, if requested by Optionee, the ROFO Purchase Price. Optionor will act in good faith as to scheduling and attending meetings with Optionee during the Negotiation Period, provided that nothing herein shall be deemed in any manner to require Optionor to agree to change any terms of Optionor's First Offer Notice, and any such changes may be made or rejected by Optionor, in Optionor's sole and absolute discretion. If, during the Negotiation Period, Optionor and Optionee mutually agree upon a change in the ROFO Purchase Price and/or such other terms in the First Offer Notice, then prior to the expiration of the Negotiation Period, Optionor and Optionee shall execute a purchase agreement reflecting the agreed transaction, the "Effective Date" of the purchase agreement shall be deemed the date on which the purchase agreement is delivered to an escrow holder as fully executed by both parties, and Optionor shall concurrently deliver to the escrow holder the Deposit previously delivered with the Optionee's Exercise Notice. If Optionee's Exercise Notice does not reserve negotiation rights, Optionor and Optionee shall execute a purchase agreement reflecting the transaction described in the First Offer Notice.

5.3.2.2 Non-Acceptance of Offer by Optionee. If Optionee does not timely accept the terms of the First Offer Notice, or if Optionor and Optionee do not mutually agree upon the ROFO Purchase Price and/or such other terms in the First Offer Notice by the expiration of the Negotiation Period, and/or the purchase agreement terminates, in accordance with the terms thereof, then Optionor shall be free to sell the Offered Property, in the same configuration as offered to Optionee, to any third party thereafter on any terms elected by Optionor in its sole discretion.

5.4 Term/Termination of Right of First Offer. The term of the Right of First Offer shall commence upon the recording of the Declaration and shall terminate:

5.4.1 In full, upon termination of the Condominium for any reason.

5.4.2 With respect to any Offered Property, upon Optionee's failure to timely exercise the Right of First Offer with respect to such Offered Property (including timely delivery of a Deposit and execution of a purchase agreement), and, thereafter, the closing of the sale of such Offered Property.

5.4.3 With respect to an Offered Property, after the timely exercise of the Right of First Offer with respect to any Offered Property by Optionee with a request to further negotiate, and the failure of Optionee and Optionor to reach a mutual agreement to proceed with the purchase in accordance with the First Offer Notice and purchase agreement or any amendment thereof prior to the expiration of the Negotiation Period, and, thereafter, the sale of the Offered Property.

## SECTION VI. CONDOMINIUM OWNERS ASSOCIATION

6.1 Form of Association. On or before the date the first Unit is conveyed, Declarant shall form a condominium owners association as a non-profit corporation under the laws of the State of Washington (the "Association"). The name of the Association shall be the "University Place Civic Building Condominium Association."

6.2 Membership. Each of the Owners shall automatically be a member of the Association and shall be entitled to one membership for each Unit so owned.

6.3 Transfer of Membership. The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner.

6.4 Number of Votes. The total voting power of all Owners shall be one hundred (100) votes. The votes are allocated to each Unit as stated on Exhibit B.

6.5 Voting by Owners. If any Unit is owned by more than one Person, those Owners shall designate one representative to represent the ownership group in the Association, by written notice to the Board of Directors. A designated representative need not be an Owner of a Unit. A designation may be revoked at any time by the Owners of the Unit on written notice to the Board of Directors, and the death or judicially declared incompetence of all Persons constituting the Owner of a Unit shall revoke the designation; provided, however, that such revocation shall not be effective until the Board of Directors has been notified. Where no designation is made, or where a designation has been made, but is revoked and no new designation is made, the designated representative of such Unit shall be the group comprised of all Persons constituting the Owner. If a Person owns more than one Unit, such Person shall have the votes for each Unit owned. The Declarant shall be the voting Owner with respect to any Unit owned by it. Natural persons, partnerships, corporations, limited partnerships, limited liability companies, trusts or other legal entities may own or have an ownership interest in Units.

6.6 Pledged Votes. In the event the Owner of a Unit has pledged its votes regarding special matters to a Mortgagee, and written evidence of the pledge has been filed with the Association, only the votes of such Mortgagee will be recognized concerning the special matters for which the votes were pledged. This paragraph shall not be amended without the written consent of all Owners and their respective Mortgagees.

6.7 Joint Owner Disputes. The votes for a Unit must be cast as a single bloc of votes. In the event that joint Owners are unable to agree among themselves as to how their bloc of votes shall be cast, they shall lose their right to vote on the matter in question. In the event that the votes for a particular Unit are not cast as a single bloc of votes, the Unit's votes shall not be counted, and said votes shall be deemed void.

6.8 Annual Meetings. The Association shall hold its annual meeting in the first quarter of each year at such reasonable place and time as may be designated by written notice of the Board of Directors to the Owners no less than ten (10) days prior to the date fixed for the meeting.

6.9 Special Meetings. A special meeting of the Association may be called by any member of the Board or any Owner. Written notice shall be given to all Owners not less than ten (10) days prior to the date fixed for the special meeting, in accordance with the Bylaws. The written notice must specify the matters to be discussed at the meeting.

6.10 Combined Meetings. Declarant has determined the number of directors on the Board by considering the allocation of votes among the Owners, and has provided for Owners to appoint directors. As a result, the voting at Board meetings may mirror the voting at meetings of Owners. The Board may elect to hold combined meetings of Directors and Owners for any matters which require the approval of the Owners. For example, the Board may hold a combined meeting of Directors and Owners for the purpose of adopting and ratifying budgets each year, or approving matters which require an amendment of this Declaration. Owners may participate in a meeting of the Association by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other during the meeting. Participation by such means will constitute presence in person at a meeting.

6.11 Quorum. The quorum at an annual or special meeting of the Association shall be the presence in person or by proxy, of Owners having at least seventy (70) votes. The decision of Owners holding at least seventy (70) votes shall be required to approve any matter, unless otherwise expressly provided herein. In the event a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the notice provision of this Declaration and at the reconvened meeting, the Owners present shall constitute a quorum provided that they have at least seventy (70) votes. Certain decision of the Owners require approval by class voting as provided in Section 7.3 below.

6.12 Votes by the Association. Whenever a decision herein is to be made by the Association, such decision can be made by agreement among the Owners holding at least seventy (70) votes. If there is a vote, then the decision will be the decision of the Association based on the affirmative vote of the Owners holding at least seventy (70) votes.

## **SECTION VII. THE BOARD OF DIRECTORS**

7.1 Adoption of Bylaws. The Declarant shall adopt the initial Bylaws of the Association to provide for the administration of the Condominium consistent with this Declaration and the Act.

7.2 Appointment of the Board of Directors. The Declarant shall call a special meeting of the Association for the purpose of appointing the Board of Directors within sixty (60) days after the recording of this Declaration. The Board of Directors shall be comprised of three (3) directors. The City Manager and Library Director shall appoint directors from among their respective employees as provided in Section 7.3.2 below.

7.3 Decisions.

7.3.1 General. The vote of directors holding two-thirds of the votes shall be required to approve any matter coming before the Board unless this Declaration requires a greater percentage. Each director shall have one vote.

7.3.2 Appointment of Directors. The Owner of the City Unit and the Owner of the Library Unit shall each be able to appoint one (1) director and shall have the right to replace its director(s) upon resignation, removal or at the end of such director's term. The third director shall be selected as follows: (a) so long as the Owner of the City Unit and the Owner of the Library Unit own at least 70% of the Allocated Interest of the Condominium, then the Owner of the City Unit and the Owner of the Library Unit will alternate every two years in selecting the third director, with the Owner of the City Unit having the right to select the third director for the first term of two years; or (b) once the Owners of the City Unit and the Owners of the Library Unit do not own 70% interest in the Condominium, then the remaining Owners (that is, those other than the Owners of the City Unit and Library Unit) may select the third director by a majority vote (based upon Allocated Interest) of those remaining Owners.

7.3.3 Decisions Requiring the Consent of the Affected Owner. The approval of the affected Owner is required for the following:

7.3.3.1 Any reallocation of those Limited Common Elements assigned to a Unit.

7.3.3.2 Any change to the formula utilized for the determination of Allocated Interests, Adjusted Allocated Interest or voting rights. This Section does not require Owner consent to changes in Allocated Interests, Adjusted Allocated Interest, or voting rights which result from changes to the gross floor area of a Unit provided those changes are made in accordance with this Declaration (e.g., changes resulting from the partial condemnation of a Unit).

7.3.3.3 Any change in the boundaries of a Unit must be approved by the Owner of that Unit.

7.4 Officers. The Board of Directors may elect officers in the manner provided in the Bylaws.

7.5 Indemnification. Every director and officer shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been a director or officer of the Association, or any settlement thereof, whether or not he or she is a director or officer at the time such expenses are incurred, except in such cases where a court of competent jurisdiction has entered a judgment against the officer or director for intentional misconduct or gross negligence; provided that in the event of a settlement, the indemnification provided herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

7.6 No Personal Liability. Except as provided in the Act for torts which were committed by the Declarant or for which the Declarant is expressly made liable, and so long as a director, or an Association committee member, or an Association officer, or Declarant exercising the powers of the Board of Directors, has acted in good faith, without willful or intentional misconduct, or gross negligence, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained for the benefit of the members of the Board of Directors or officers or employees of the Association.

7.7 Amendment of Bylaws. The Bylaws may be amended, in whole or in part, by vote of the Owners at any annual meeting or special meeting called for that purpose or by written consent in lieu of a meeting signed by those Owners holding sufficient votes to approve such amendment.

**SECTION VIII.**  
**AUTHORITY OF BOARD OF DIRECTORS AND OTHERS**

8.1 Authority of the Board of Directors. The Board of Directors shall have limited authority and will only have such powers and authority as expressly stated herein or specifically granted from time to time by the Owners holding at least seventy (70) votes. City and Library employees appointed to the Board by the City Manager and library Director respectively shall remain at all times under the supervision and control of their employer. The Board of Directors shall have the following authority:

8.1.1 Utilities. To arrange for all necessary utility services for the Common Elements (including the Limited Common Elements).

8.1.2 Insurance. To obtain policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, for director and officer liability and for fidelity of Association officers and other employees, as required herein.

8.1.3 Workmen's Compensation Insurance. To obtain Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

8.1.4 Preliminary Annual Budget. Pursuant to Section 64.34.308 of the Act, the Board will prepare a proposed annual budget, which is to be approved by the Owners as required by the Act or this Declaration if permitted by the Act.

8.1.5 Professional Services. To arrange for legal and accounting services necessary or proper for the operation of the Condominium or enforcement of this Declaration, the Bylaws and the Association rules and regulations.

8.1.6 Maintenance of Common Elements and Shell and Structure. To arrange for the maintenance, operation, repair, enhancement and replacement of the Common Elements including the Limited Common Elements to the extent the Owner is not responsible to perform the same or has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair is delivered to the Owner by the Board of Directors; provided however, in the absence of an emergency, the Board's authority is limited to the amounts set forth in the approved budget for expenses for such matters.

8.1.7 Repair of Unit. To arrange for the maintenance and repair of any Unit if (1) such maintenance or repair is necessary in the discretion of the Board of Directors to comply with the applicable Project Standards, and (2) the Owner of said Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair is delivered to the Owner by the Board of Directors. The Board of Directors shall levy a special Assessment against such Unit and the Owner thereof for the cost of the maintenance or repair including a reasonable charge for administration of the repairs and the same shall be immediately due and payable to the Association.

8.1.8 Bank Account. The Board is authorized to open a bank account in the Association's name and to manage that account.

8.1.9 Information. The Board will provide such information and documents to the Owners as may be required herein or under the Act.

8.1.10 Other Authority. The Board will also have such other authority as is expressly provided in this Declaration.

8.1.11 Exercise of Board Authority. So long as the City and Library hold at least seventy (70) votes, the Board will to the extent deemed appropriate by the City Manager and Library Director utilize existing City and Library resources, including finance and operating staff in the exercise of the Board's authority and responsibilities.

8.2 Representation by Association. The Association (through agents approved by the Owners holding at least seventy (70) votes) shall represent the Owners in any proceedings related to the condemnation, destruction, or liquidation of all or part of the Common Elements, and shall have the sole authority to participate in all negotiations and enter into all related settlements or agreements on behalf of the Owners with respect to the Common Elements. The Owners hereby appoint the Association as their attorney-in-fact for all such matters. The Owners, however, may represent themselves with regard to their Units, their Unit Improvements and Limited Common Elements.

8.3 Maintenance of Atrium. The Owner of the City Unit and the Owner of the Library Unit are authorized to enter into an Operating Agreement which will set forth certain terms and conditions relating to the operation, management, and maintenance of the Atrium (which is a Limited Common Element assigned to the City Unit and the Library Unit) in accordance with the City Project Standards, the requirements of this Declaration and Requirements of Law. The Operating Agreement will provide, among other things, that the Owner authorizing or permitting the use of the Atrium will be responsible for assuring that the Atrium is used in accordance with applicable laws and the rules adopted with respect to the Atrium and will be liable for any failure to do so and for any damages or injuries that occur during the event or activity to the extent such is not covered by insurance for that event.

8.4 Operation, Use and Management of Parking Garage. So long as the Owner of the Parking Garage Unit operates its parking as public parking, the Library agrees that it will cause the Library Parking to be operated, managed, maintained and repaired in accordance with the Project Standards as public parking open to members of the general public on a first come/first served unreserved basis. The owner of the Parking Garage Unit and the Library, as the owner of the Library Unit are authorized to enter into and from time to time amend an administrative Parking Garage Management Agreement setting forth the terms and conditions under which the Parking Garage shall be operated, managed, maintained and repaired. Until such agreement is entered into, the City shall be solely responsible for maintenance, repair and operation of the Parking Garage.

8.5 No For-Profit Business. Nothing contained herein shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the Owners.

8.6 Exclusive Right to Contract. Except as expressly set forth herein or approved by the Owners holding at least seventy (70) votes, neither the Board nor any individual Owners have the right to contract for goods or services the payment for which is to be made from the funds collected by the Association by way of Assessments.

8.7 Limitation on Liability of Directors and Others. To the extent permitted by law, except to the extent covered by insurance obtained for the benefit of the Board, the Association, the Manager or the Declarant, none of the officers of the Association, the members of the Board, the Manager, or the Declarant shall be held liable for: any failure of any utility or other service to be obtained and paid for by the Association, or for injury or damage to person or property caused by the elements or by another Owner or person; or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the Common Element Improvements, or from any of its pipes, drains, conduits, appliances or equipment, or from any other cause or place, or resulting from loss, damage or theft of articles used or stored by Owners on the Property or in Units. No diminution or abatement of Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements, or from any action taken to comply with any law, ordinance or orders of a governmental

authority. This Section shall not be interpreted to impose any form of liability by any implication upon the Board of Directors or upon the Association.

8.8 Entry For Repair. Subject to compliance with the terms and conditions of any Lease requiring notice and compliance with security and confidentiality procedures, the Association shall have the right to enter any Unit and any Limited Common Element to perform emergency repairs to the Common Element Improvements, and shall have a reasonable right of entry thereupon to complete other repairs, improvements, replacements or maintenance to the Common Element Improvements deemed necessary to comply with the applicable Project Standards. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association at the expense of the common expense fund. Except in the event of an emergency, the Association shall give reasonable advance notice to the affected Owner. In the event of an emergency, the Association shall give notice to the Owner at the time of entry or as soon thereafter as is possible under the circumstances.

8.9 Maintenance of Common Elements. Except as otherwise provided, the Association is responsible for maintenance, repair, and replacement of the Common Elements and each Owner is responsible for maintenance, repair and replacement of the Owner's Unit and the Limited Common Elements allocated to that Owner's Unit consistent with applicable Project Standards. The Association may, as a Common Expense, provide for the inspection of any portion of a Unit or Limited Common Element, the failure of which to maintain properly may cause damage to the Common Element Improvements, Limited Common Elements or another Unit or may cause unnecessary Common Expenses, including, but not limited to, sinks, toilets, hot water tank and plumbing and electrical fixtures. If the inspection discloses the need for repair or replacement, the Association may either require the responsible Owner(s) to make the repair or replacement or to make the repair or replacement itself and allocate the cost thereof to the Owner(s). The Association may contract with any Owner to perform certain of these functions recognizing that such Owner may have the personnel with the necessary qualifications to operate, maintain and repair the Common Element Improvements. The terms of any such maintenance or services agreements with an Owner shall be terminable by the Association upon ninety (90) days' notice without penalty, and the charges for services will be consistent with market conditions. The Board shall have that authority notwithstanding that the Owners of such Unit will likely be affiliated with certain of the directors.

8.10 Failure to Comply with Declaration. The Association and any aggrieved Owner shall have a right of action against any other Owner who fails to comply with this Declaration or the decisions made by the Association. The Association may, by approval of the Owners holding at least seventy (70) votes, establish a schedule of reasonable fines for violations of the Declaration, Bylaws and rules and regulations of the Association and, after notice and an opportunity to be heard by such representative(s) designated by the Association and in accordance with procedures as provided in rules and regulations adopted by the Association, the Board of Directors may levy reasonable fines for violations of the Declaration, the Bylaws or such rules and regulations.

8.11 Right to Grant Easements or Encumber Common Elements. The Association, by approval by the Owners holding at least seventy (70) votes, shall have the right to grant easements, licenses, leases, or other interests through or over the Common Elements; provided, no conveyance or encumbrance of Common Elements pursuant to this Section shall materially impact the access to or support for any Unit, without the prior consent of the impacted Owner.

8.12 Financial Statements and Records. The Association shall keep financial records in accordance with reasonable accounting principles given the nature of the Condominium. All financial and other records of the Association shall be reasonably available for examination by any Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. The annual financial statement shall be audited annually by a certified public accountant who is not a member of



the Board or an Owner unless the Owners holding at least seventy (70) votes elect to waive the audit for each such year. The financial statement shall be completed within 120 days following the end of the fiscal year.

8.13 Inspection of Condominium Documents Books and Records. The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. “Available” shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances, including reasonable notice. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies. Notwithstanding the foregoing, pursuant to RCW 64.34.400(1), no purchaser of a Unit shall be entitled to receive a Public Offering Statement in connection with such purchase since no Unit shall be used for residential purposes.

## **SECTION IX. ASSESSMENTS ACCORDING TO BUDGET**

9.1 Fiscal Year. The Association, by approval of the Owners holding at least seventy (70) votes, may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

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

9.3 Ratification of Budget. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide the proposed budget to all the Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, or unless the Act is amended so that the Budget is not approved until approved by an affirmative vote of the Owners holding 70% of the votes herein, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

9.4 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of Assessments, the Board may prepare a supplemental budget for the remainder of the year and propose the same to the Owners, but the Supplemental Budget must be approved by the Owners holding at least seventy (70) votes.

9.5 Assessments. Subject to Section 9.7, the amounts required by the Association for Common Expenses, including any Parking Garage Assessments and Special Allocations as reflected by the annual budget and any supplemental budgets shall be divided into installments to be paid each quarter or such other period determined by the Owners holding at least seventy (70) votes, over the period of time covered by the budget or supplemental budget. The Assessment for each Unit is the total of (a) Adjusted Allocated Interest (as shown on Exhibit B) of that Unit times the total installment for Common Expenses for all Units, and (b) the Special Allocations for that Unit.

9.6 Common Expenses. Common Expenses shall be allocated to all Owners in accordance with their Adjusted Allocated Interests. Unless otherwise expressly provided herein, Common Expenses shall include the following:

- (a) Expenses of administration;
- (b) Expenses of maintenance, repair, replacement and landscaping of Common Elements;
- (c) Costs of insurance required by the Act, this Declaration or the Bylaws or as obtained at the direction of the Board;
- (d) Bills for any utility services furnished to the Common Elements or to Units that are not separately metered;
- (e) Any general operating reserves established by the Board from time to time;
- (f) Reserves for replacements and deferred maintenance established by the Board from time to time;
- (g) Any deficit in Common Expenses owed to the Association for any prior period; and
- (h) Any other items properly chargeable as expenses of the Association.

However, expenses of operating the Condominium may be specially allocated among the Units pursuant to Section 9.7 below.

9.7 Special Allocations.

9.7.1 General. Any expenses or liabilities attributable to goods or services benefiting fewer than all Units shall be specially allocated, to the extent reasonably practicable, to those Units benefited in proportion to the benefit received. In determining whether a Special Allocation is practicable, the Association shall consider the extent to which certain Units benefit more than other Units with regard to the particular good or service involved in each particular case, whether it is possible to separately contract for the applicable good or service, and the amount of the liability or expense involved. To the extent that any Common Expense is caused by the misconduct of an Owner or Occupant of any Unit, the Association may assess that expense against that Unit.

9.7.2 Parking Garage. The Parking Garage is not a Common Element or a Limited Common Element and no Owner or Occupant of a Unit has a right to park in the Parking Garage by reason of its ownership or lease of a Unit in the Condominium. So long as the City is the Owner of the Parking Garage Unit, the Parking Garage (including all Library Parking which is owned by the Library and is part of the Library Unit), shall be operated as a public parking garage open to members of the public for short term public parking on a first come/first served, unreserved basis pursuant to the terms of the Parking Garage Management Agreement. All costs associated with the management, operation, maintenance and repair of the Parking Garage shall be allocated among the owners of Lots 3, 4, 7, 8, 9 and 10 as shown on University Place Town Center Amended Binding Site Plan recorded September 18, 2009 under Recording No. 200909185003, records of Pierce County, Washington, as part of the Parking Garage Assessments levied on such owners under the terms of the CC&Rs. Any Parking Garage Assessments levied against Lot 9 under the CC&Rs shall in turn be allocated among the various Units in accordance with their Parking Garage Adjusted Allocated Interest as set forth on Exhibit B hereto (determined by excluding from each Owner's

Unit any square footage attributable to parking areas) and shall be included in the Assessments paid by such Owners.

9.7.3 Limited Common Elements. All expenses and liabilities attributable to the operation, maintenance, repair and replacement of the Limited Common Elements, if performed by the Association rather than the applicable Owner, shall be specially allocated to the applicable Owner. If the Association delegates the responsibility for operation, maintenance, repair and replacement of those Limited Common Elements to the applicable Owner to which the same are allocated, then these costs should be incurred directly by such Owner. Those expenses and liabilities to be specially allocated include those relating to those portions, if any, of the Common Systems and Facilities which serve less than all Units.

9.7.4 Atrium. All expenses and liabilities attributable to the operation, maintenance and repair of the Atrium shall be allocated between the Owners of the Library Unit and the City Unit equally unless (a) the Owners of the Library Unit and the City Unit agree, from time to time, otherwise, or (b) the expense is attributable to one of such Owner's (or their agents, guests or invitee's) actions or inactions (in which case, the applicable Owner will be responsible for payment of the expense).

9.7.5 Sewer Capacity Charge, LIDs, Assessments Under CC&Rs. The sewer capacity charge, any Assessments pursuant to CC&Rs or other agreements recorded against the Land, assessments for a business improvement district, or similar charges or Assessments shall be specially allocated among the Units in the same manner as those charges and assessments are levied by the governmental authority or owner's association.

9.7.6 Utilities Serving the Units. Utilities serving the Units shall be separately metered or sub-metered to the extent practicable. All expenses and liabilities attributable to the consumption of those utilities and the operation, maintenance, repair and replacement of the related facilities serving individual Units shall be specially allocated to each Unit in accordance with usage as indicated by the meter or sub-meter. The Association may initially base its allocations on estimates of usage provided the Association reconciles the estimates against actual usage at least annually. All utility charges that are not metered separately to a Unit shall be allocated to all of the Units as a Common Expense, payable in accordance with their respective Adjusted Allocated Interests.

9.7.7 Garbage and Trash. All charges for refuse removal in the ordinary course and the costs of maintaining, repairing and replacing garbage compactors, cardboard balers and similar machinery, including the trash and recycling receptacles in any trash rooms, shall be allocated by the Board in proportion to usage. The cost of utilities related thereto shall, however, be a Common Expense, except to the extent such utilities are separately metered to a Unit.

9.7.8 HVAC. For purposes of this section, the term "HVAC Facility" shall mean any facility that provides heat, ventilation, and air conditioning and the term "HVAC Cost" means all costs of operating, maintaining, repairing and replacing any HVAC Facility, excluding the initial construction costs and the expenses of restoring any damage caused by casualty. All HVAC Costs for an HVAC Facility which serves only a single Unit shall be allocated solely to such Unit. All HVAC Costs for an HVAC Facility which serves more than one Unit shall be allocated among the Units served by such HVAC Facility based on relative HVAC load.

9.7.9 Doors and Windows. Each Unit shall bear the costs of the maintenance, repair, and replacement of all exterior doors and windows serving such Unit.

9.7.10 Misconduct. Any act or omission relating to the University Place Civic Building Condominium taken or permitted by an Owner which violates the terms of this Declaration or law shall be

considered misconduct by that Owner. Any misconduct which results in a claim, charge, or cost against the Association shall be allocated by the Association to the Owner responsible for the misconduct.

9.7.11 Insurance. To the extent the insurance provider calculates the premium on the basis of a separate risk assessment for each Unit, the Board shall specially allocate the cost of insurance in accordance with risk. In allocating risks, each Owner shall be deemed responsible for those risks relating to the Limited Common Elements allocated to such Owner's Unit. In addition, the Board shall allocate all of the cost of a particular endorsement or coverage to the Owner who requested the same notwithstanding that other Owners may also be covered if the Board was not able to limit the requested coverage to the Unit and Limited Common Elements of the requesting Owner.

9.8 Contribution to Initial Working Capital. Upon the approval of the initial budget of the Association, including a designation of the amount of an initial working capital fund, if any, each Owner shall pay to the Association a proportional amount of the identified initial working capital fund, if any, equal to such Owner's Adjusted Allocated Interest. This amount shall be a non-refundable contribution to an initial working capital fund and shall not be considered as an advance payment of regular Assessments.

9.9 Special Assessments. The Association may levy special Assessments for those Common Expenses and Special Allocations which cannot be reasonably calculated and paid with general Assessments, subject to (i) ratification by the Owners holding at least seventy (70) votes and (ii) the Special Allocations set forth in Section 9.7.

9.10 Creation of Reserves. The Association may, with the approval of Owners holding at least seventy (70) votes, create reserve accounts to fund major maintenance, repair and replacement of Common Elements that will require major maintenance, repair or replacement within thirty (30) years; provided (i) no reserves shall be collected for Unit Improvements. If the Association imposes reserves, it shall do so in a nondiscriminatory manner. Any reserve account shall be established in the name of the Association.

9.11 Notice of Assessments. The Board shall notify each Owner in writing of the amount and due date of the general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets which apply to the Unit, on which the general and special Assessments are based, and a brief description of the calculation of the Special Allocations and any special Assessments. The Board shall furnish the same information to an Owner's Mortgagee, if so requested.

9.12 Payment of Assessments. Each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit on or before the due date. Any Assessment not paid by the due date shall be delinquent and subject to late charges, interest charges and collection procedures as provided herein. Prior to the imposition of a late charge or penalty other than interest or the start of any collection procedures, each Owner shall have the right to cure any default in payment of an Assessment within ten (10) days following written notice of the delinquency.

9.13 Reconciliation of Assessments to Actual Expenses. The Association shall establish and maintain its accounts and records in such a manner that will enable it to credit the Assessments for Common Expenses (including special Assessments, Special Allocations, and reserves) and other income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. The accounts of the Association shall be reconciled as necessary to ensure the Owners are correctly assessed for the actual expenses of the Association, and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged to the account of or assessed against) the Owners who paid the surplus (or owe the deficit). Any Owner, after providing reasonable advance notice to the Association and at its own expense, shall have the right to review the books and records of the Association pursuant to RCW 64.34.372 as now effective or hereafter amended.

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

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

9.16 Recalculation of Assessments. If Adjusted Allocated Interests change, then Assessments for Common Expenses and any installment thereof not yet due shall be recalculated in accordance with the changed Adjusted Allocated Interests.

9.17 Assessment Certificates. The Association, upon written request, shall furnish to a Unit Owner and its Mortgagee a statement signed by an officer or authorized agent setting forth the amount of unpaid Assessments against that Owner's Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent known by the recipient to be false.

## **SECTION X. ASSOCIATION'S RIGHTS AND REMEDIES**

10.1 Owner Liability for Assessments. Unpaid Assessments for each Unit shall be the separate, joint and several personal debts of the Owner or Owners of that Unit. In a voluntary conveyance of a Unit, the grantee and the grantor shall be jointly and severally liable for all unpaid Assessments up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing same. The amount of any Assessment against a Unit, plus interest, costs, and attorneys' fees pursuant to Section 10.3, shall constitute a lien upon such Unit prior to all other liens, except (a) liens and encumbrances recorded before the recording of the Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments under this section in the real property records of the county in which the Condominium is located. Notwithstanding the foregoing, the lien for Assessments for Common Expenses excluding amounts for capital improvements shall have priority over the Mortgages specified in (b) of this Section if it is foreclosed judicially. Such priority is limited to Assessments coming due within the six (6) month period prior to the date of any foreclosure sale or the date a declaration of foreclosure is recorded in a real estate contract forfeiture. Provided that in the event the Association fails to give written notice of the delinquency to an Eligible Mortgagee, such priority shall be reduced by up to three (3) months for delinquent assessments relating to a period prior to the date the Association should have given written notice to an Eligible Mortgagee. The holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure or deed in lieu of foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession except as stated above in this Section 10.1. All other unpaid Assessments shall be deemed to be Common Expenses collectible from all Owners, including the Mortgagee or other purchaser of the Unit.

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

10.2.1 Security Deposit. Should an Owner be delinquent in paying any Assessments on a third occasion in any 24 month period, the Board of Directors may, in its discretion, require such Owner from

time to time to make a security deposit not in excess of Assessments for a 12-month period, which may be collected in the same manner as other Assessments. Such deposit shall be held in a separate fund, credited to such Owner, and resort may be made thereto at any time when an Owner is ten (10) days or more delinquent in paying its monthly or other Assessments. The delinquent Owner shall pay all costs of establishing and administering the fund.

10.2.2 Action to Foreclose. Upon the approval of the Association, the Board of Directors may commence an action to foreclose a lien judicially pursuant to RCW 61.12 for Assessments made hereunder, and in any such action shall be entitled to recover attorneys' fees and costs pursuant to Section 10.3, and shall further be entitled to seek the appointment of a receiver as provided in the Act. The judgment in the action foreclosing the lien shall be for an amount equal to all delinquent Assessments and advances, plus all costs and expenses in connection with such action and any receivership, including a reasonable sum as attorneys' fees and for the cost, if any, of obtaining a title report. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure.

10.2.3 Non-judicial Foreclosure. Upon the approval of the Association, the Board of Directors may commence an action to foreclose a lien for Assessments non-judicially pursuant to RCW 61.24 and in such foreclosure may recover its reasonable attorneys' fees and all costs and expenses reasonably incurred in the preparation or prosecution of such foreclosure. For the purposes of permitting such non-judicial foreclosure: (a) each Unit in the Condominium together with the Common Elements and the Limited Common Elements applicable thereto, is granted in trust to Chicago Title Insurance Company (herein the "Trustee") to secure the Owners' respective obligations to pay Assessments when due; (b) the Trustee is granted the power to sell the individual Units; (c) the Units are not used principally for agricultural or farming purposes; and (d) the foregoing power of sale shall be operative with respect to any Unit if the Owner of that Unit fails to pay Assessments with respect to any Unit not paid within ten (10) days following written notice of delinquency.

10.2.4 Receiver. From the time of commencement of any action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the tenant thereof the rent for the Unit as and when due. If the rental is not paid, the receiver may obtain possession of the Unit, refurbish the Unit to the extent necessary to rent the particular Unit consistent with Section XI of this Declaration, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section and a receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

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

10.2.6 Other Remedies. The Association shall have all other remedies for collection of delinquent Assessments not prohibited by law.

10.3 Attorneys' Fees, Costs and Interest. The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. The Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment. Until a different rate is set by the Association, delinquent Assessments shall bear interest from the date of delinquency at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

10.4 Liability of Mortgagee. If after initial sale of any Unit, a Mortgagee acquires any Unit, or if at any time the Mortgagee retains any Unit and grants or leases the same, the Mortgagee shall only be liable for the Assessments for such Unit for the period after such Mortgagee acquires the right of possession of such Unit.

10.5 Liability after Sale of a Unit. The lien for unpaid Assessments shall not be affected by the sale or transfer of a Unit, and the buyer of the Unit shall be jointly and severally liable with the seller of the Unit for all unpaid Assessments up to the time of the sale without prejudice to the buyer's right to recover from the seller the amounts paid for such delinquent Assessments. Provided, however, the buyer is not liable for any Assessments delinquent at the time a resale certificate was provided to the buyer pursuant to RCW 64.34.425 to the extent such delinquent Assessments were not shown in the resale certificate.

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

10.7 Release of a Unit From Liens. Whether perfected before or after the creation of the Condominium, if a lien other than a Mortgage, including a judgment lien, becomes effective against two or more Units, then the Owner of an affected Unit(s) may pay to the lienholder (which may include the Association) the amount of the lien attributable to the subject Unit. The lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that Unit. The amount of the payment by an Owner must be proportionate to the ratio which that Owner's Adjusted Allocated Interest bears to the Adjusted Allocated Interests of all Owners whose Units are subject to the lien. After payment by a Unit Owner, the Association may not assess or have a lien against the subject Unit for any portion of the Common Expenses incurred in connection with that lien. The rights of an Owner stated in this Section may be enforced by a Mortgagee of such Unit.

10.8 No Lien on Public Property. Notwithstanding any other provision of this Declaration to the contrary, if any Unit is owned by an agency of the State of Washington, any political subdivision, any municipal corporation or other public entity, no lien created by this Section X shall attach to the Unit or Units owned by an agency of the State of Washington, any political subdivision, any municipal corporation or other public entity provided that this Section 10.8 shall not affect the liability of any agency of the State of Washington, any political subdivision, any municipal corporation or other public entity for the payment of any Assessment hereunder, which shall, as provided in Section 10.2.5 be the personal obligation of an agency of the State of Washington, any political subdivision, any municipal corporation or other public entity.

## **SECTION XI. REGULATION OF USES**

11.1 Prohibited Uses. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Condominium, which use or operation is unlawful or obnoxious to the development or operation of the Condominium as a first class mixed use project consistent with the objectives listed in Section 1.2 of this Declaration, including but not limited to, the following:

11.1.1 Any public or private nuisance;

11.1.2 Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;

11.1.3 Any obnoxious or offensive odor, noise or sound;

11.1.4 Any noxious, toxic, caustic or corrosive fuel or gas;

11.1.5 Any dust, dirt or fly ash in excessive quantities;

11.1.6 Any unusual fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

11.1.7 Any warehouse (the storage of goods which is ancillary to another permitted use is allowed provided the primary use is not the storage of goods);

11.1.8 Any assembling, manufacturing, refining, waste processing, industrial, agricultural, animal raising or boarding or mining operation; provided that this restriction shall not preclude a pet store or restaurant-brewery;

11.1.9 Any establishment selling or exhibiting primarily pornographic materials or any "adult use" as identified by the City of University Place Zoning Code;

11.1.10 Any motor vehicle, truck, trailer, recreational vehicle or boat sales, leasing or display;

11.1.11 Any mortuary;

11.1.12 Any massage parlor (provided, however, that this restriction shall not apply to a day spa that provides for therapeutic massage among other services), tattoo parlor, bail bonds, pawnshop, check cashing store, gambling operation, bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations; or

11.1.13 Any dumping of garbage or refuse other than that which is generated at the Unit and then only in approved receptacles.

11.1.14 Any Police or correctional institution facility, except that administrative facilities for the City's Police operations and a holding facility used to detain persons for not more than 24 hours are allowed in City Unit No. 2.

11.2 Land Use; Development and Permit Conditions. Each Unit is subject to those restrictions provided in the applicable land use and building codes applicable to the Condominium, and all conditions imposed in connection with the issuance of permits and approvals, including all covenants, conditions and restrictions contained in any development agreements or similar commitments. No Owner shall seek to rezone its Unit or modify any permit or approval to which its Unit or Limited Common Elements are subject without first obtaining the approval of the Association.

11.3 Non-Residential Use; Project Standards. All Units are restricted to non-residential uses. Each Owner shall comply with the applicable Project Standards for its type of Unit and shall ensure such compliance by its Occupants and their customers or other invitees with regard to such Owner's Unit and assigned Limited Common Elements.



11.4 Exterior Appearance. Subject to the provisions of Section 11.12 and Exhibit D regarding signs, the Association may adopt rules and regulations restricting uses of those portions of the Units and Common Elements which are visible from other Units, the Atrium, the Common Elements or public areas to preserve a consistent architectural appearance for the entire Condominium, which is necessary to cause the Project to comply with Project Standards. These restrictions may regulate, among other things, window coverings or displays, timing of seasonal decorations, storage and delivery of materials, screening of trash, recycling, mechanical equipment or landscaping in those areas.

11.5 Compliance with Laws. Each Owner shall comply with all applicable laws, zoning ordinances, regulations, and permit or development conditions applicable to their Unit or the Common Elements. Compliance is required with regard to all development and construction of Unit Improvements and the operation and occupancy of the Unit.

11.6 Actionable or Unlawful Activity. Upon the failure of an Owner to remedy conduct by such Owner prohibited by this Section XI within a reasonable time after notice of the same to such Owner, then the Association may at its option either: (1) attempt to resolve the matter by agreement with the Owner; or (2) submit the matter to mediation conducted pursuant to Section XXII below. If the actionable conduct is by an Occupant, then the Association shall provide the notice required by Section XXII to both the Owner and Occupant and both shall be permitted to participate in the process described in Section XXII.

11.7 Harmful Discharges. No Owner shall permit emissions of dust, gases, or other substances, or the production, storage or discharge of hazardous substances or wastes on or about the Property or into the sewer system, to the extent the same may adversely affect the health, safety or comfort of the other Owners, or to the the extent the same is contrary to laws, regulations or covenants applicable to the Property.

11.8 General Use Restrictions.

11.8.1 Deliveries. The delivery or shipment of materials, supplies, and fixtures to and from each Unit shall be accomplished in a manner that shall not unreasonably interfere with the quiet enjoyment or the security of the other Units. Each Owner shall bear the expenses relating to any changes in electrical, gas or water service necessitated by the use of such Owner's Unit.

11.8.2 Loading Restrictions. All loading and unloading of goods shall be done only from the designated loading zones as determined by the Association from time to time.

11.8.3 Distress Sales. No Unit Owner shall conduct or permit any fire, bankruptcy, auction, or "going out of business" sale in any Retail Unit except pursuant to court order or rule.

11.8.4 Plumbing Facilities. No Unit Owner shall use the plumbing facilities for any purpose other than those for which they were constructed or for any purpose that is inconsistent with this Declaration or applicable law.

11.8.5 Electrical Equipment. No person shall overload the electrical wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or air conditioning system.

11.8.6 Communications Equipment. Except as provided by any easement to which this Declaration is subject or that is granted by the Board, exterior antennas, satellite receivers and transmission dishes and other communication devices shall not be permitted to be placed upon the Common Elements, and may not be placed on any Unit or Limited Common Element except in accordance with the Rules; provided, however, subject to any easements to which this Declaration is subject and the rights of the holders thereof, a

Unit Owner may install, maintain, repair, replace and remove antennas, satellite receivers and transmission dishes and other communication devices on the roof of the Condominium with Board approval and in compliance with all applicable laws, so long as such devices do not require any structural alterations, interfere with reception by pre-existing communications equipment, cause any structural damage to the Building or cause roof leaks and are screened to the extent required under applicable law or by the Board. If any such antennas, receivers, dishes or other devices are required to be relocated as a result of the exercise of rights by the holder of any easement to which this Declaration is subject, such removal shall be undertaken, pursued and completed promptly and with due diligence by and at the expense of the Unit Owner installing such communication equipment. All expenses of installing, operating, maintaining, repairing and removing any such equipment shall be borne solely by the Unit Owner installing such communications equipment and any income therefrom shall belong solely to such Owner.

11.9 Access Over Common Elements. Each Owner shall have the right to use the Common Elements, but excluding those Limited Common Elements assigned to Units owned by others. Those Common Elements shall be used exclusively for normal ingress and egress including access to public streets and for the other purposes for which the improvements therein are intended. No obstructions shall be placed thereon unless permitted by the Board or the Association's rules and regulations.

11.10 Unit Improvements. Each Owner shall, at such Owner's sole expense, maintain, repair, and keep the Unit Improvements comprising such Owner's Unit and the equipment, and appurtenances relating thereto, in a good and sanitary condition, free of rodents and pests, and in good order, condition, repair and appearance consistent with the Project Standards applicable to its Unit and shall do all decorating and painting at any time necessary to maintain the good appearance and condition of the Unit. A Unit Owner may make any improvements or alterations to the interior of such Owner's Unit which do not adversely affect the structural integrity or mechanical or electrical systems, lessen the support of any portion of the Condominium, affect the exterior enclosure (Shell and Structure of the Building) or violate the use restrictions in this Declaration. In the event of major damage by casualty, each Owner shall, with reasonable diligence, either re-construct the Unit Improvements or shall complete such demolition, clearing of debris and or partial reconstruction as is necessary to cause the damaged Unit Improvements to be compatible with the remainder of the Property and not materially detract from the value of the other Units. Each Owner may, at such Owner's sole cost and expense and in compliance with applicable law and development restrictions, construct, reconstruct, alter, or renovate the Unit Improvements subject to any restrictions stated in this Declaration. This Section shall also apply to an Owner's reconstruction of its Limited Common Elements if the Association delegates that responsibility to such Owner as permitted hereunder.

11.10.1 Limited Common Elements. Each Owner shall keep the Limited Common Elements allocated to such Owner's Unit in a neat and clean condition. These Limited Common Elements include windows, store fronts (which include the plate glass, mounting system and window frames, but do not include the building façade), signage, exterior doors and equipment serving the Unit. The Association may adopt minimum standards consistent with the applicable Project Standards for the cleaning, maintenance and repair of those Limited Common Elements including maintenance and repair schedules. If the Association, acting reasonably and after reasonable notice to the offending Owner, determines that an Owner is not maintaining its Limited Common Elements consistent with the requirements of this Section, then the Association may take action to enforce these requirements including performing the required maintenance and charging the applicable Owner for the resulting cost. The Atrium shall be operated and maintained by the City and the Library in accordance with the Operating Agreement.

11.10.2 Impact on the Common Elements or Other Owners. Each Owner must obtain the approval of the Board if any drillings or penetrations are to be made through floors or through the Shell or Structure. An Owner must obtain the approval of the Board before the Owner may block access to the Common Elements, interrupt utilities, or use the Common Elements for construction staging. The Board shall coordinate all such activities for the mutual benefit of all Owners and shall act reasonably and in a nondiscriminatory manner in allocating use of the Common Elements for such purposes. The Board may

impose reasonable conditions in all such matters including scheduling those matters to coordinate with the competing requests of all Owners and to limit the disruption to the other Owners. The Board shall respond to such request in writing within thirty (30) days following receipt of a written request for approval from an Owner, and in the event of disapproval shall specify with particularity its reasons therefor. The failure of the Board of Directors to timely act upon such request shall be deemed disapproval of such request.

11.10.3 Alterations of Common Elements. All alterations of the Common Elements shall require the consent of the Association. Any request for such approval shall be in writing and accompanied by the plans and specifications therefor and the proposed schedule for such work. The Board shall make its recommendation to the Association and respond to the Owner making such request in writing within thirty (30) days and in the event of disapproval shall specify with particularity its reasons therefor. Such objections may address the continuing ability of the Common Elements to perform their intended functions, the avoidance of safety hazards, the avoidance of significant increases in maintenance costs and the like. The failure of the Board or the Association to respond or make a decision within the applicable time period shall be deemed a denial of the request. All alterations requiring the approvals set forth herein shall be performed by contractors and subcontractors reasonably satisfactory to the Board.

11.10.4 Insurance. Each Owner shall maintain and shall ensure that all contractors performing work maintain in effect during construction all normal and customary insurance for the scope of construction work being performed. The insurance shall name the Association and other Owners as additional insureds on all liability policies.

11.10.5 Work Rules and Hours; Notice to the Board. The Association may adopt work rules and work hours provided the same are reasonable, apply to all Owners, are enforced on a nondiscriminatory basis, and serve the primary purpose of ensuring safe and orderly construction, limiting disruption of other Owners and their Occupants, and preventing damage to the Common Elements and Units. All work shall be done by licensed contractors and shall comply with all applicable laws. All work shall be done in a workmanlike manner and in accordance with a sound engineering design. All work affecting the Shell or the Structure shall be approved by a licensed structural engineer. All work which increases the load on Common Systems and Facilities shall be approved by a properly licensed and qualified engineer. Each Owner shall notify the Board (or its designated agent) at least ten (10) days before commencing any work which will (a) affect access to any other Unit, (b) result in noise that can be heard outside of the Unit during normal business and library hours, (c) emit odors which can be detected outside of the Unit during normal business and library hours, or (d) will affect the Shell or the Structure (including work that increases the load on Common Systems and Facilities). The notice must describe the work to be done, the efforts to be taken to minimize the adverse effects on the Owners or Occupants of the other Units or Common Elements, and compliance with any other applicable requirements pertaining to said work. Any such work is subject to the approval of the Board, but the work can commence if the Board, through its designated agent, has not notified Owner within said time of its objection to either the proposed work or of steps to be taken to minimize disruption to other Owners or Occupants.

11.10.6 Best Construction Practices. Each Owner shall ensure all construction of their Unit Improvements utilizes best construction practices including: (i) measures to ensure job site safety and the safety of others such as fencing the site, posting safety rules, and mandating the use of safety equipment; (ii) controlling the amount of dirt and debris traveling from the jobsite; (iii) clearing debris on a regular basis and otherwise keeping the site in an orderly condition; and (iv) complying with all regulations regarding work hours and maximum permissible noise levels.

11.11 Uses Affecting Insurance. No Owner shall permit anything to be done or kept in its Unit or Common Elements which will result in the cancellation of insurance on any part of the Condominium, or would be in violation of any applicable laws or regulations. This restriction shall specifically prohibit any Owner from storing or permitting the storage of explosive or flammable liquids or materials as long if doing so would result in the cancellation of insurance coverage or the increase in insurance premiums. If an Owner

wishes to use or allow the use of its Unit or its assigned Limited Common Elements in any manner which may increase the insurance premiums for the Condominium or any part thereof, then the Owner must first obtain the consent of the Board. The Board may, in its reasonable discretion, specially allocate to such Owner the cost of such increase in insurance premiums as permitted by Section 9.7.11.

11.12 Signs. Owners shall be permitted to install signage subject to City of University Place ordinances.

11.13 Trash Removal. Each Owner shall be responsible for removing all trash or garbage from its Unit and depositing it promptly in proper receptacles as designated by the Association in accordance with such rules and regulations as the Association may adopt.

11.14 Construction Work—Common Elements. Except to the limited extent permitted under Section 11.10.3 above, the Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board of Directors acting in accordance with the Act, this Declaration, and the Bylaws or by the Declarant when exercising rights reserved under this Declaration.

11.15 Leases. Owners may lease all or any portion of their Units for any lawful purpose not prohibited by this Declaration. The terms of any Lease shall be subject to and incorporate the provisions of this Declaration and the Bylaws and Association's rules and regulations which are applicable to the use of the leased premises, and any amendments of the same. No Lease shall relieve the Owner of its obligations hereunder. If any lessee or Occupant of a Unit violates or permits the violation by its guests and invitees of any provisions hereof or of the Bylaws or of the rules and regulations of the Association, and the Association determines that such violations have been repeated and that a prior notice to cease has been given, the Association may give notice to the lessee or Occupant of the Unit and the Owner thereof to forthwith cease such violations; and if the violation is thereafter repeated, the Association shall have the authority, on behalf and at the expense of the Owner, to evict the tenant or Occupant if the Owner fails to do so. The Association shall have no liability to an Owner or tenant for any eviction made in good faith. The Association shall have a lien against the Owner's Unit for any costs incurred by it in connection with such eviction, including reasonable attorneys' fees, which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed hereunder.

## **SECTION XII. INSURANCE**

12.1 General Requirements. Commencing not later than the time of first conveyance of a Unit to a Person other than the Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide: (a) property insurance, (b) commercial general liability insurance, (c) fidelity insurance, (d) worker's compensation insurance to the extent required by applicable laws and employer's liability insurance if applicable, (e) directors' and officers' liability insurance, and (f) such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects, have an A.M. Best's rating of not less than A-/VII, or, if not rated by Best's, with a rating in one of the highest categories maintained by Standard & Poor's Ratings Service and Moody's Investors Service or otherwise approved in advance in writing by the Association and are otherwise authorized to do business in the state of Washington. All such insurance policies shall provide that coverage may not be cancelled or substantially modified without at least 30 days' prior written notice (except for cancellation due to nonpayment of premium which will require not less than 10 days' prior written notice) to any and all insureds named therein, including Owners and Mortgagees of Owners.

12.1.1 Property Insurance. The property insurance shall, at a minimum, provide special cause of loss coverage (sometimes referred to as "direct physical causes of loss" coverage) in an amount

equal to the full replacement cost of the Common Element Improvements (which includes improvements within the Limited Common Elements), the Shell and Structure and personal property of the Association, with an "Agreed Amount" or equivalent endorsement, and be in such amount so that the insured will not be deemed a co-insurer. The Association shall determine, in its discretion, the extent to which the property insurance shall include additional coverage available by special endorsement (e.g., "agreed amount" or equivalent endorsement, construction code endorsements such as demolition cost, building ordinance, and increased cost of construction, and endorsements for earthquake/earth movement, terrorism, mechanical breakdown, flood coverages and business interruption/loss of rents coverage). The property insurance shall cover the Atrium (the cost of which shall be specially allocated to the Owners of the City Unit and the Library Unit) and shall cover Unit Improvements including interior partitions, equipment, fixtures, betterments and improvements only if the Owners of those Unit Improvements request such coverage and such coverage is available. The cost of such coverage shall be specially allocated to the Unit Owner requesting such coverage as a Special Allocation in accordance with Section 9.7.11. Each Owner or its Occupants shall obtain separate insurance to cover those Unit Improvements not covered by the Association's policy and each Owner shall provide to the Board Certificates of Insurance evidencing the coverage required by this Section. The Association's policy must provide for the recognition of any insurance trust agreement if this provision is available. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Certificates of insurance shall be issued to each Owner and each Owner's Mortgagee upon request.

12.1.2 Commercial General Liability Insurance. The liability insurance policy shall insure the Board, Association, Declarant, Manager and the parking garage operator (if different than the Manager), Owners, and any tenant designated by the Owner of a Unit. The policy will cover all of the Common Elements in the Condominium, will provide for a "severability of interest endorsement" or equivalent coverage which would preclude the insurer from denying the claim of an insured party because of the negligent acts of another insured party, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, and such other risks as are customarily covered with respect to mixed-use condominium projects of similar construction, location and use. The limits of liability shall be in amounts generally carried by owners of projects of similar construction, location and use but shall be at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence and \$2,000,000 general aggregate. Any deductible or self-insured retention must be approved by the Board of Directors.

12.1.3 Fidelity Insurance. If deemed advisable by the Association, fidelity insurance which shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, employees and any condominium management company of the Association and all other persons who handle or are responsible for handling funds of or administered by, the Association. All such fidelity insurance shall name the Association as obligee, and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association at any time, or the aggregate of three months' Assessments, whichever is greater. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

12.1.4 Directors' and Officers' Liability Insurance. The directors' and officers' liability insurance shall be in an amount of not less than \$1,000,000 or such greater amount as determined by the Association.

12.2 Owner's Insurance. Each Owner of a Unit, at its own expense, shall obtain and maintain the insurance described above respecting its Unit, the Limited Common Elements allocated solely to its Unit, and those Unit Improvements not covered by the Association's policy and any other insurance as is typically maintained by owners of similar properties; provided, however, an Owner shall not have the right to maintain insurance coverage in any manner which would decrease the amount which the Board of Directors, or any trustee for the Board of Directors, on behalf of all of the Owners, will realize under any insurance policy

which the Board of Directors may have in force on the Condominium at any particular time. Each Owner shall file a Certificate of Insurance for each such policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance, and the Board of Directors shall immediately review its effect with its insurance broker, agent or carrier. All insurance carried by an Owner shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, each Owner, Occupant and their respective agents, employees, lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insureds.

12.3 Insurance Proceeds. Insurance proceeds for damage or destruction to any property insured by the Association including the Common Elements Improvements, shall be paid to the Association which shall hold such proceeds in trust for each Owner and Mortgagees, as their interests may appear, and shall segregate such proceeds from other funds of the Association for use and payment as provided for in Section XIII. The Association acting through its Board (if approved by the Association) or any insurance trustee shall have the exclusive authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board on behalf of the named insureds under the policy.

12.4 Additional Policy Provisions. The insurance obtained by the Association shall name the Association, as trustee for the Owners, as the named insured, and shall contain the following provisions and limitations:

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

12.4.2 The policy shall not provide for contribution by or Assessment against Mortgagees or become a lien on the Property superior to the lien of a First Mortgage.

12.4.3 If, at the time of the loss under a policy, there is other insurance in the name of the Owner covering the same risk covered by the particular policy, the Association's policy(ies) provides primary insurance and shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, pro ration, or contribution by reason of, any other insurance obtained by or for any Owner or Mortgagee.

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

12.4.5 A waiver of subrogation by the insurer as to any and all claims against the Association and its agents, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insureds.

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

12.4.7 All property insurance policies shall contain a standard mortgagee clause which shall: (a) Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit, whether or not named therein; (b) Provide that such insurance as to the interest of any such Mortgagee shall not be invalidated by any act or neglect of the Board or any persons under any of them; (c) Waive any provision invalidating such mortgagee clause by reason of the failure of any such Mortgagee to

notify the insurer of any hazardous use or vacancy, any requirement that such Mortgagee pay any premium thereon, and any contribution clause; and (d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

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

### **SECTION XIII. DAMAGE OR DESTRUCTION; RECONSTRUCTION**

13.1 Scope of the Board's Authority. The procedures stated in this Section XIII apply to damage or destruction of the Common Element Improvements and do not apply to the repair of damage or destruction of Unit Improvements for a Unit. The Owner of each Unit is solely responsible for insuring and rebuilding its Unit Improvements. The Owner of each Unit may determine in its discretion whether to rebuild its Unit Improvements; provided, however, such Owner shall complete those repairs which the Board of Directors deems reasonably necessary to avoid further damage to the Common Element Improvements or Unit Improvements for any other Unit, or substantial diminution in value of the other Unit, and to reasonably protect the Owners from liability from the condition of the site, at such Owner's sole cost and expense.

#### 13.2 Determination to Repair, Modifications.

13.2.1 Estimates and Notice to Owners. In the event of damage to any Common Element or portion of the Condominium covered by the Association's insurance policy, the Board of Directors shall promptly, and in all events within sixty (60) days after the date of damage or destruction, provide to each Owner and each Mortgagee a written notice which (i) summarizes the initial Board of Directors' determinations with regard to the nature and extent of the damage, the estimated cost to repair the same, and the cost in excess of anticipated insurance proceeds, and (ii) sets a date for a combined special meeting of the Owners and Directors to determine whether the damaged improvements will not be repaired and restored. The cost estimates to the extent reasonably possible, shall be separately stated for Limited Common Elements and those portions of the Common Systems and Facilities which serve all Units. If the Board fails to do so within said sixty (60) days, then any Owner or Mortgagee may make these determinations and give the notice required under this Section.

13.2.2 Decision to Rebuild. Those Common Element Improvements which are not Limited Common Elements shall be rebuilt unless the Owners holding eighty percent (80%) or more of the voting rights elect not to rebuild. Similarly, the Limited Common Elements assigned to a Unit(s) shall be rebuilt unless such Owner(s) elect(s) not to rebuild. The Owner of any Unit may decide whether to rebuild its Unit Improvements. Unless the required supermajority of votes required to not rebuild has been achieved, then the repair or restoration work shall be done unless such work would be illegal under any state or local health or safety statute or ordinance and modifications cannot be made to comply with those laws without substantially changing the character of improvements or unless the Condominium is terminated pursuant to the Act. No repair or restoration work shall be commenced by any Owner prior to the combined special meeting except for work (referred to as "Emergency Work") which the Board deems reasonably necessary to avoid further damage to the Common Element Improvements or Unit Improvements or Limited Common Elements for any Unit and to reasonably protect the Owners from liability from the condition of the site or to provide continued access to a Unit or Unit Improvements which have not been damaged subject to all applicable Requirements of Law, including the right of the permitting jurisdiction to restrict access to the Condominium or any Unit thereof as it may deem necessary in the exercise of its police power to protect

public health or safety. Even if the Owners elect not to repair, the Board shall still have the authority to perform Emergency Work. If the cost to repair or rebuild or perform Emergency Work exceeds the insurance proceeds available and the Association's reserves, such cost shall be a Common Expense. For example, if the Owner of the Parking Garage Unit elects not to rebuild its Unit Improvements, then the Association shall rebuild the Shell and Structure and Common Systems and Facilities as may be necessary for lateral or vertical support of the other Units or to provide continued access to any Unit.

13.2.3 Decision to Modify the Improvements. The Board may authorize changes to the Common Element Improvements, including the Limited Common Elements, necessary to comply with applicable laws without Owner approval as long as the improvements substantially conform to their prior condition in terms of utility and value. Owners may elect to modify their Limited Common Elements and Unit Improvements as long as the improvements substantially conform to their prior condition in terms of utility and value, provided, however, any Limited Common Elements necessary for the structural support or occupancy of any Unit or its Limited Common Elements may not be modified in a manner which would deprive such Owner of the structural support and systems necessary for occupancy existing prior to the casualty event absent the approval of the affected Owner.

### 13.3 Restoration.

13.3.1 Authority to Contract; Delegation. The Board of Directors shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Board of Directors, by means of insurance proceeds and sufficient Assessments, has made provision for the cost thereof. The Board of Directors may further authorize the insurance carrier to proceed with repair and restoration upon satisfaction of the Board of Directors that such work will be appropriately carried out. The Association may delegate to any Owner these rights and responsibilities with regard to the Limited Common Elements assigned to that Owner's Unit.

13.3.2 Insurance Trustee. The Board of Directors may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company that such firm or institution shall act as an insurance trustee to collect the insurance proceeds and carry out the provisions of this Section XIII. Any such insurance trustee shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance.

13.4 Decision Not to Restore; Disposition. In the event of a decision under Section 13.2.2 by the Owners to not repair and restore the damage and destruction, provided the Condominium has not been terminated pursuant to RCW 64.34.268, as it may be amended, the Board of Directors may nevertheless expend such of the insurance proceeds and common funds as the Board of Directors deems reasonably necessary for Emergency Work, which may include removal of the damaged or destroyed improvements and clearing, filling and grading the Land. The remaining funds, if any, shall thereafter be held and distributed as follows:

13.4.1 Repair of Common Element Improvements. The insurance proceeds attributable to the damaged Common Element Improvements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

13.4.2 Remaining Proceeds. The remainder of the proceeds shall be distributed to all the Owners or their Mortgagees, as their interests may appear, as follows: (i) the insurance proceeds attributable to Unit Improvements and Limited Common Elements for a particular Unit which are not rebuilt shall be distributed to the Owner of that Unit or to Mortgagees and other lienholders, as their interests may appear; (ii) the remainder of the proceeds shall be distributed to all Owners or to Mortgagees and other lienholders, as their interests may appear, in proportion to the Adjusted Allocated Interests.



13.4.3 Reallocation of Interests. The Allocated Interests, Adjusted Allocated Interests and votes shall be reallocated in the manner described in Section 14.5.4 below as if that portion of the Unit which is not rebuilt had been condemned. There shall be a similar reallocation if the Owner subsequently decides to rebuild the Unit.

13.5 Allocation of Costs Not Covered by Insurance. Liability for the amount of damage within the limits of any applicable insurance deductible, costs for damage not covered by insurance, and costs of repair or restoration which exceed the amount paid by the insurance provider are referred to collectively as “Uninsured Costs.” Uninsured Costs attributable to Unit Improvements and improvements within Limited Common Elements for a particular Unit shall be collected from the Owner of that Unit as a Special Assessment. Uninsured Costs attributable to the other Common Element Improvements shall be Common Expenses and shall be collected from the Owners in accordance with their Adjusted Allocated Interests.

#### **SECTION XIV. CONDEMNATION**

14.1 Consequences of Condemnation. If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the Association shall represent the Owners in all negotiations and proceedings with the condemning authority with regard to the Common Elements exclusive of the Limited Common Elements, and the Owners may represent themselves with regard to their Units, Unit Improvements, and Limited Common Elements. If any Unit or portion thereof or the Common or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Board of Directors shall provide the Owners and their Mortgagees written notice of any such proceeding or proposed acquisition.

14.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the “Condemnation Award,” shall be payable to the Association. The Board shall apportion the Condemnation Award, after first deducting therefrom all of its reasonable expenses including attorneys’ fees incurred in obtaining such Condemnation Award, as required by this Section XIV.

14.3 Partial Versus Complete Taking. In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership thereof shall terminate. In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate.

14.4 Allocation of the Condemnation Award. Each Owner shall be entitled to a share of the Condemnation Award from a partial or complete taking determined in the following manner:

14.4.1 Allocation of Award. As soon as practicable the Board of Directors shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds.

14.4.2 Apportionment Among Owners. Except as provided in Section 14.4.6 below, the Board of Directors shall apportion the amounts so allocated to the taking of or injury to the Common Elements excluding the Limited Common Elements which, in turn, shall be apportioned among Owners in proportion to their respective Adjusted Allocated Interests. Any amount apportioned to the taking of or injury to Limited Common Elements shall be apportioned to the Owners of Units to which those Limited Common Elements were assigned

14.4.3 Severance Damages. The total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned.

14.4.4 Damage to a Unit; Unit Improvements. The respective amounts allocated to the taking of or injury to a particular Unit or its Unit Improvements shall be apportioned to the particular Unit involved.

14.4.5 Consequential Damages. The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable under the circumstances.

14.4.6 Agreed Allocation. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Board shall employ such allocation to the extent it is relevant and applicable; otherwise, the Condemnation Award shall be allocated among the affected Units based upon their then relative appraised fair market values, excluding the value of any readily removable trade fixtures and personal property. Any portion of the award attributed to the acquisition of a Limited Common Element must be divided among the Owners of the Unit to which that Limited Common Element was allocated at the time of acquisition in the same manner.

14.4.7 Distribution of Proceeds. The Board of Directors shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. After first paying out of the respective share of each Owner, to the extent sufficient for the purpose, all Mortgages and liens on the interest of such Owner, the balance remaining in each share shall then be distributed to each Owner respectively.

14.5 Reductions of Condominium Upon Partial Taking. In the event that (a) a partial taking occurs which pursuant to Section 14.3 does not result in a termination of Condominium ownership hereunder, and (b) at least one (1) Unit is taken or condemned and (c) the condemning authority elects not to hold, use and own said Unit as an Owner subject to and in accordance with the Declaration, then the provisions of this Section 14.5 shall take effect immediately upon the condemning authority taking possession of the Unit or Units so taken or condemned.

14.5.1 Reduction of Declaration. The Units subject to this Declaration shall be reduced to those Units or partial Units not taken or condemned (or not sold or otherwise disposed of in lieu of or in avoidance thereof).

14.5.2 Reduction of Common Elements. The Common Elements subject to this Declaration shall be reduced to those Common Elements not taken or condemned.

14.5.3 Remnant of a Unit. Any remnant of a Unit remaining after part of such Unit was condemned such that the Unit may not practically or lawfully be used for a purpose not prohibited hereunder shall become a Common Element upon such condemnation.

14.5.4 Recalculation of Allocated Interests, Adjusted Allocated Interests and Votes. The votes and Allocated Interests appurtenant to each Unit not so taken or condemned shall be reallocated in proportion to the relative votes and Allocated Interests of those remaining Units. Provided however, if a portion of any Unit is condemned, but the remaining portion of that Unit may still be practically and lawfully used for a purpose not prohibited hereunder, then the votes and Allocated Interests and the Adjusted Allocated Interests of that Unit as set forth on Exhibit B shall be reduced in the same proportion as the reduction in the gross floor area of the Unit resulting from the partial condemnation. In the later case, the votes and Allocated Interests and the Adjusted Allocated Interests shall be reallocated among all Units in proportion to their relative votes and Allocated Interests and Adjusted Allocated Interest with the partial

Unit participating on the basis of its reduced vote and Allocated Interest. In each case, the allocations shall be rounded such that the totals are 100.

14.5.5 Interest of Owner of Condemned Unit. Except with respect to the share of proceeds apportioned pursuant to Section 14.4, no Owner or Mortgagee of a Unit so taken or condemned (except for a Unit only partially condemned which may still be practically and lawfully used) shall have, nor shall there be appurtenant to any Unit so taken or condemned, any right, title, interest, privilege, duty or obligation in, to or with respect to the Association and any Unit or Common Elements which remain subject to this Declaration and which are not so taken or condemned.

14.5.6 Interest of Owners of Remaining Units. Except as otherwise expressly provided in Section 14.5, the rights, title, interests, privileges, duties and obligations of an Owner and Mortgagee in, to or with respect to a Unit not so taken or condemned (and in, to or with respect to the Association and the Common Elements appurtenant to said Unit) shall continue in full force and effect as provided in this Declaration.

14.5.7 This Section Binding. The provisions of Section 14.5 shall be binding upon and inure to the benefit of all Owners and Mortgagees. All such Owners, Mortgagees and other persons covenant to execute and deliver any documents, agreements or instruments (including appropriate amendments to the Declaration and Survey Map and Plans) as are reasonably necessary to effectuate the provisions of Section 14.5.

14.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section XIII above, provided that the Board of Directors may retain and apply such portion of each Owner's share of the Condemnation Award as is necessary to discharge said Owner's liability for any special Assessment arising from the operation of Section XIII.

**SECTION XV.  
[INTENTIONALLY DELETED]**

**SECTION XVI.  
COMPLIANCE**

16.1 Enforcement. Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws, and the administrative rules and regulations made pursuant thereto as they may be lawfully amended from time to time. Failure to comply shall be grounds for an action to recover sums due for damages, the right of the Association to impose fines for violation thereof or injunctive relief or both, maintainable by the Board of Directors on behalf of the Owners. If the Board fails to act with reasonable diligence to enforce this Declaration, any aggrieved Owner may take all lawful enforcement action provided such Owner shall comply with those notice and mediation procedures stated in Section XXII below. Failure to comply shall also entitle the Association or the Board of Directors to recover any costs and reasonable attorneys' fees incurred by reason of such failure whether or not such activities result in suit being commenced or prosecuted to judgment. In addition, the Association or the Board of Directors shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

16.2 No Waiver of Strict Performance. The failure of the Association or the Board of Directors in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association or the Board of Directors of any sum from an Owner, with knowledge of any such breach shall not be deemed a waiver of

such breach, and no waiver by the Association or the Board of Directors of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association or the Board of Directors, as applicable.

## **SECTION XVII. EASEMENTS**

17.1 In General. In addition to rights under the Act, the Units are benefited by those easements described in this Section. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law. All such easements shall be located as such features are located in the Building as built, or as they may become located due to settling or repair or reconstruction.

17.2 Utility and Other Easements. All Owners and their respective customers and invitees shall have an easement over the Common Elements, as reasonably necessary for access to and from such Owner's Unit and public streets and for access to and from Drexler Drive W. and those portions of the Parking Garage, if any, that such Owner has a right to use.

17.3 Association Functions. There is hereby reserved to the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration, the Bylaws, or the Association's rules and regulations.

17.4 Encroachments. Each Unit and all Common Elements are hereby declared to have an easement over all adjoining Units and Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the improvements, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Unit or Common Elements are partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit.

17.5 Right of Entry for Maintenance, Repairs, Emergencies or Improvements. Subject to compliance with the requirements set forth in Section 8.8, the Association shall have the right to have access to each Unit from time to time as may reasonably be necessary for maintenance, repair or replacement or improvement of any of the Common Elements accessible therefrom, or for making repairs necessary to prevent damage to the Common Elements or for any emergency situations. Except in the event of an emergency, the Association shall give reasonable advance notice to the affected Owner or the Person(s) occupying the Unit pursuant to any Lease.

17.6 Easement for Access to Common Systems and Facilities. The Association shall have an easement for reasonable access through the Units to install, maintain, repair, replace and improve the Common Systems and Facilities to the extent the only practical access is through such other Units. In addition, each Unit shall have an easement for reasonable access through other Units to install, maintain, repair, replace and improve those portions of the Common Systems and Facilities assigned as Limited Common elements to that Unit to the extent the only practical access is through such other Unit(s). Except in the event of an emergency, the Association or entering Owner shall give reasonable advance notice to the affected Owner or the affected Occupant by providing reasonable advance notice in writing at its premises.

In the event of an emergency the Association or entering Owner shall give notice to the affected Owner and Occupant at the time of entry or as soon thereafter as is possible under the circumstances.

17.7 Easement for Lateral and Vertical Support. Each Unit and the Common Elements are burdened by an easement in favor of every other Unit for support to the extent any portion of the subject Unit or the Common Elements is necessary for lateral or vertical support, including engineering elements necessary for bearing, shear, or seismic purposes. Each Owner and the Association shall maintain any such structural elements which comprise a portion of its Unit or the Common Elements and shall not take or permit any modifications or other action which would undermine or adversely affect the structural integrity of the Common Elements or any other Unit without the consent of the Association and those Owners benefiting from such easement for support.

17.8 Easement for Access to Book Drop. The Owner of the Library Unit is hereby granted an easement for ingress, egress and parking of the driveway leading up to and adjacent to the Book Drop on Level P2, which easement is to be used in connection with the use of the Book Drop.

## **SECTION XVIII. PROCEDURES FOR SUBDIVIDING OR COMBINING**

### 18.1 Submission of Proposal to Subdivide or Combine Units.

No Unit or Units shall be subdivided or combined either by agreement or legal proceedings, except as provided in this Section XVIII. All subdivided or combined Units are subject to the use restrictions set forth in Section XI.

Any proposal for subdivision or combination of Units must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Survey Map and Plans which amendments shall be executed by the Owner(s) of the Unit(s) to be subdivided or combined upon approval pursuant to Section 18.2, and which amendments assign an identifying number to each Unit created, and reallocate the Allocated Interests, the Adjusted Allocated Interests and liabilities formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by the Owner of the subdivided Unit. The Allocated Interests and the Adjusted Allocated Interests of the new Unit resulting from a combination of Units shall be the aggregate of the Allocated Interests (and the Adjusted Allocated Interest, respectively) formerly allocated to the Units being combined. The Owner(s) of the Unit(s) to be subdivided or combined shall bear all costs of the subdivision or combination.

18.2 Approval Required for Subdivision or Combination. A proposal that contemplates subdivision or combination of a Unit or Units shall be approved so long as the proposed subdivision and/or combination does not violate the Condominium Declaration or Requirements of Law and is approved in writing by all Owners of the Unit or Units to be subdivided or combined, and the affirmative votes of two-thirds of the members of the Board of Directors. The Board of Directors shall strive to give the affected Owners written notice within thirty (30) days following its receipt of the proposed subdivision or combination of its approval or disapproval thereof, specifying in the case of its disapproval, its reasons therefor. If approved, the Board shall, at the applicant's expense, prepare, execute and record an amendment to this Declaration and the Survey Map and Plans to accomplish the subdivision or combination.

**SECTION XIX.  
AMENDMENT OF DECLARATION,  
SURVEY MAP AND PLANS, ARTICLES OR BYLAWS**

19.1 Declaration Amendment. Amendments to the Declaration shall be made by an instrument in writing substantially entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by the Owners holding at least seventy percent (70%) of the votes. The Board or Owners may act without any meeting by executing a written consent to such amendment provided the same is signed by those Owners holding sufficient votes to approve the matter. In all events, the amendment when adopted shall bear the signature of the President of the Association attesting that the amendment was properly adopted. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices. It is specifically consented and understood that any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or Survey Map and Plans unless otherwise specifically provided in the Section being amended or the amendment itself. Except as otherwise specifically provided for in this Declaration, amendments to the Declaration require the approval of Owners holding seventy percent (70%) or more of the votes.

19.2 Survey Map and Plans Amendment. Except as otherwise provided herein, the Survey Map and Plans may be amended by means of an amendment to this Declaration which references by recording number the amendment to the Survey Map and Plans. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for the examination of every Owner. Such amendment to the Survey Map and Plans shall be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

19.3 Amendments to Conform to Construction. In addition, Declarant, upon Declarant's sole signature, may at any time until one year after the completion of all Common Element Improvements and Unit Improvements and punch list or warranty work, and the satisfaction of all permit or development conditions and requirements of lenders with regard to those improvements, file amendments to the Declaration and to the Survey Map and Plans to conform them to the actual location of those improvements, to establish, vacate and relocate utility easements, access easements, and dedicate portions of the Property for right of way purposes. Any such amendment need not otherwise comply with the requirements of this Section XIX.

19.4 Special Declarant/Development Rights. No amendment may restrict, terminate or otherwise modify any Special Declarant or Development Right provided in this Declaration without the consent of Declarant and any Mortgagee of record with a security interest in the Special Declarant or Development Rights in any real property subject thereto, excluding Mortgagees of Units owned by persons other than Declarant.

**SECTION XX.  
TERMINATION OF CONDOMINIUM STATUS**

The Condominium may be terminated voluntarily by the vote of the Owners voting in favor of termination and holding at least seventy percent (70%) of the votes. Following termination, the Owners shall comply with the procedures, hold title to the real property formerly constituting the Condominium, and be entitled to disbursement of proceeds all as provided in RCW 64.34.268.

**SECTION XXI.**  
**[INTENTIONALLY DELETED]**

**SECTION XXII.**  
**DISPUTE RESOLUTION**

22.1 Claims. The following provisions of this Section 22.1 shall apply to any claim, controversy or dispute by or among the Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the Manager or one or more Unit Owners, or any of them, arising out of or related to the Declaration, the Bylaws or the Condominium.

22.1.1 Mediation.

22.1.1.1 Except as otherwise provided in this Section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Pierce County, Washington. The written offer must be hand delivered or mailed by certified mail, return receipt requested, to the address contained in the records of the Association for the other party.

22.1.1.2 If the party receiving the offer does not accept the offer within ten (10) days after receipt by written notice hand delivered or mailed by certified mail, return receipt requested, to the address contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

22.1.1.3 If a qualified dispute resolution program exists within Pierce County, Washington, and an offer to use the program is made as required under subsection 22.1.1.1, litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this subsection, both parties shall participate in the dispute resolution process.

22.1.1.4 Unless a stay has been granted under subsection 22.1.1.3, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

22.1.1.5 Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

22.1.1.6 The requirements of this Section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines, nor shall such requirements preclude the issuance of temporary restraining orders or injunctions.

22.1.2 Arbitration. Any such claim, controversy or dispute shall be first subject to mediation as provided above or otherwise, and, if not timely settled by mediation, resolved by arbitration in accordance with this Section. The decision and award of the arbitrator shall be final, binding and nonappealable.

22.1.3 Excluded Matters. Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Section (but shall be subject to the applicable provisions of this Section below): (i) actions, trustee's sales and foreclosures relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), (ii) actions to enforce any order, decision or award rendered by arbitration or any action or remedy initiated by or against any Mortgagee. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Washington or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this section.

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

22.3 Arbitration. Any arbitration under this Declaration shall be conducted in Pierce County, Washington, pursuant to the arbitration statutes of the State of Washington, and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action.

22.3.1 The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within thirty (30) days after a party's demand for arbitration, upon application of any party, the Presiding Judge of the Pierce County Superior Court shall designate the arbitrator.

22.3.2 Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration; provided, however, if any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

22.3.3 The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Pierce County Superior Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions, including, without limitation, awards against a party for failure to comply with any order.



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

22.4 Survival. The mediation and arbitration provisions of this section shall survive the transfer by any party of its interest or involvement in the Condominium and any Unit and the termination of this Declaration.

### **SECTION XXIII. MISCELLANEOUS**

23.1 Notice. Except as may be specifically provided herein, all notices, requests, demands, statements, advice, Assessments, notifications and other communications contemplated hereunder or given pursuant hereto shall be in writing and shall be deemed given and effective when delivered personally, or twenty-four (24) hours after a copy has been deposited in the U.S. mail, first class postage prepaid. A notice to an Owner may be delivered to the address specified in a notice from that Owner or, in the absence of such a notice, to the address on file with the Pierce County Assessor for sending property tax statements. A notice to the Association may be directed to the President or the Secretary of the Association at such officer's Unit or any other address specified in a notice from that officer.

23.2 Remedies Not Exclusive. No right or remedy conferred or reserved by this Declaration is exclusive of any other right or remedy, but each is cumulative, and shall be in addition to every other right or remedy given hereby or hereafter existing at law or equity or by statute.

23.3 Severability. If any term or provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, and the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent.

23.4 Effective Date. The Declaration shall take effect upon recording.

23.5 Governmental Rights. Notwithstanding any provision of this Declaration to the contrary, nothing contained herein is intended or shall be interpreted to diminish the governmental or police powers of any Owner so long as such Owner is a political subdivision or agency of the State of Washington, a municipal corporation or any other governmental entity.

23.6 Reference to Survey Map and Plans. The Survey Map and Plans were filed with the Recorder or Auditor of Pierce County, Washington, simultaneously with the recording of this Declaration under File No. \_\_\_\_\_.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DECLARANT:

CITY OF UNIVERSITY PLACE, a Washington municipal corporation

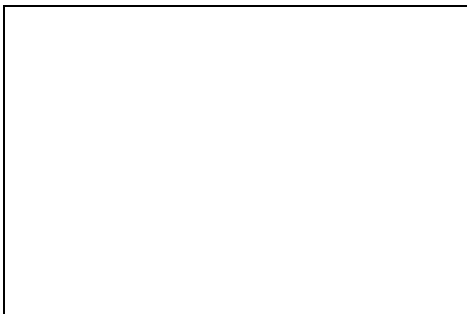
By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON )  
                                  ) ss:  
COUNTY OF PIERCE     )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute this instrument and acknowledged he is the \_\_\_\_\_ of CITY OF UNIVERSITY PLACE, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_, 20\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

EXHIBIT A  
Legal Description of Property

Certain real property situated in the City of University Place, Pierce County, Washington, more particularly described as follows:

LOT 9 AS SHOWN ON UNIVERSITY PLACE TOWN CENTER AMENDED BINDING SITE PLAN, RECORDED SEPTEMBER 18, 2009 UNDER RECORDING NO. 200909185003, RECORDS OF PIERCE COUNTY AUDITOR, PIERCE COUNTY, WASHINGTON;

TOGETHER WITH SIDEWALK EASEMENT PER AMENDED BINDING SITE PLAN RECORDING NO. 200909185003;

TOGETHER WITH BUILDING OVERHANG EASEMENT ADJOINING THE EAST SIDE OF LOT 9 PER AMENDED BINDING SITE PLAN RECORDING NO. 200909185003;

TOGETHER WITH BUILDING OVERHANG EASEMENT ADJOINING THE WEST SIDE OF LOT 9 PER AMENDED BINDING SITE PLAN RECORDING NO. 200909185003;

TOGETHER WITH AMENITY EASEMENT PER AMENDED BINDING SITE PLAN RECORDING NO. 200909185003;

TOGETHER WITH BUILDING OVERHANG EASEMENT PER RECORDING NO. 200808060441;

TOGETHER WITH AN EMERGENCY STAIR ACCESS EASEMENT PER RECORDING NO.

TOGETHER WITH AN INGRESS AND EGRESS EASEMENT FOR ENTRY AND EXIT FROM THE PARKING GARAGE PER RECORDING NO.

TOGETHER WITH A VENTILATION AND MECHANICAL SYSTEMS EASEMENT PER RECORDING NO.

SUBJECT TO EASEMENT IN FAVOR OF LOT 10 PER AMENDED BINDING SITE PLAN RECORDING NO. 200909185003.

SUBJECT TO PUBLIC SIDEWALK EASEMENT PER RECORDING NO.

SUBJECT TO PUBLIC PLAZA EASEMENT PER RECORDING NO.

EXHIBIT B

Description of the Units, Allocation of Interests and Votes

Unit Description	Floor Level	Unit Area (square feet)	Votes and Allocated Interests	Parking Garage Assessment Allocations	
				Adjusted Square Footage (excludes Parking Areas)	Adjusted Allocated Interest
City Unit	2-3	27,046	17.00%	27,046	43.62%
Library Unit	1, P-2, P-3	50,259	31.52%	15,515	25.02%
Library Expansion Unit	1	4,981	3.12%	4,981	8.03%
Retail Unit A	1	2,621	1.64%	2,621	4.23%
Retail Unit B	1	2,241	1.40%	2,241	3.61%
Police Station Unit	P-2, P-3	9,602	6.02%	9,602	15.49%
Parking Garage Unit	P-1, P-2, P-3	62,708	39.30%	0	0
Totals		159,458	100.00%	62,006	100.00%

EXHIBIT C  
Description of Limited Common Elements

[Note to be finalized upon substantial Completion of Building]

The Limited Common Elements and certain easement areas are shown on the Survey Map and Plans to the extent feasible, and are further described as follows;

1. Signage. All signage shall be assigned as a Limited Common Element to the Unit which it identifies. All signage shall conform to the design criteria stated in the Signage Plan and are subject to applicable City of University Place ordinances and permit requirements.
2. Book Drops. The Book Drop room located on parking level P2 is part of the Library Unit. The owner of the Library Unit is granted an easement over the driveway leading to and adjacent to the Book Drop on level P2.
3. Atrium. The Atrium is a Limited Common Element assigned to the Library Unit and the City Unit. The Owner of the City Unit shall operate and maintain the Atrium in accordance with the terms set forth in that certain Operating Agreement between the Owners of such Units, as the same may be modified or amended from time to time.
4. Parking Garage. Eighty (80) parking stalls on the first two levels of the Parking Garage and designated Library-Owned Parking on the Survey Map and Plans are part of the Library Unit. All other parking stalls, including, but not limited to the parking stalls designed as Park and Ride Stalls on the Survey Map and Plans are part of the Parking Garage Unit. The Park and Ride Stalls are reserved for use by transit customers only between the hours of 6 a.m. and 10 a.m. weekdays.
5. Entries, Storefronts and Canopies. The entries, entry doors, and store fronts (which include the plate glass, mounting system and window frames, but do not include the building façade) and canopies over the entries are Limited Common Elements assigned to the Units they primarily serve. The canopy over the main entry to the Building from Market Place West is a Common Element.
6. Security Systems. The Building is equipped with an integrated security system which is a Common Element. Any separate, supplemental security system serving only one Unit is a Limited Common Element assigned to the Unit served.
7. Emergency Access. The Stairways are Common Elements except for the Garage Stairs labeled garage stairs (E) which are a Limited Common Element assigned to the Parking Garage Unit and the north stairs labeled \_\_\_\_\_ which provide for pedestrian access to and from the Atrium and Levels 2 and 3 within the Building and is a Limited Common Element assigned to the City Unit. All Units are benefited and burdened by a perpetual, nonexclusive easement over all stairways, corridors, exits and other access ways to the extent necessary to provide legal ingress and egress including fire and other emergency access under those codes applicable to the Building at the time the Common Element Improvements were permitted and constructed. The Owners whose Units or assigned Limited Common Elements are burdened by this easement may install panic hardware, emergency exit signage and other access restrictions to the extent the same comply with applicable codes governing required ingress and egress for these purposes and shall maintain all emergency signage, lighting, fire department access, and other features required by applicable fire codes and other laws.
8. Elevators. The south elevator, elevator core, shaft and pit and all elevator-related equipment which serves all levels within the Building or which provides elevator access to and from the Parking Garage and all levels within the Building is a Common Element. The garage elevator located on parking level P1 which

provides elevator access to and from the Parking Garage and the public streets and sidewalks adjoining Drexler Drive West and its associated elevator core, shaft, pit and elevator-related equipment is a Limited Common Element assigned to the Parking Garage Unit. If the north elevator (currently labeled “need not be built” on the Survey Map and Plans) is built, it will provide for access to and from the Atrium and Levels 2 and 3 within the Building and will be a Limited Common Element assigned to the City Unit.

9. Terrace. The terrace on level 3 of the Building is a Limited Common Element assigned to the City Unit.

UNOFFICIAL DOCUMENT

**OPERATING AGREEMENT RE ATRIUM AT  
UNIVERSITY PLACE CIVIC BUILDING, A CONDOMINIUM**

THIS OPERATING AGREEMENT (the "Operating Agreement") dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date") is entered into by and between the CITY OF UNIVERSITY PLACE, a Washington municipal corporation ("City") and the PIERCE COUNTY RURAL LIBRARY DISTRICT ("Library"). The City and the Library are sometimes collectively referred to as the "Parties" and separately as a "Party."

RECITALS

A. This Operating Agreement pertains to the Atrium located within the Mixed Use Building at the University Place Town Center.

B. The City and Library entered into a Second Amended and Restated New Library Development Agreement dated August 12, 2009 and amendments thereto pertaining to the construction of the Mixed Use Building and the construction of the New Library within the Mixed Use Building (the "Development Agreement"). Under the Development Agreement, the Mixed Use Building (and the Transit Center) will become a condominium and the Library will acquire the New Library Unit. The Library and the City will then co-own (as limited common elements of the condominium) the Atrium.

C. The Mixed Use Building and the New Library have been constructed. The Library has taken possession of and is operating its library facility in the New Library. However, various items need to be completed before the Library will complete its acquisition of the New Library.

D. In light of the foregoing, the Parties now wish to establish standards and procedures for managing the Atrium. Further, until the end of the Interim Period (defined below), the Parties wish to agree on how to maintain the adjacent areas consisting of the restrooms, hallway, security office, custodial room as well as the interior of the elevator cab, the sidewalk and stairwells from the Atrium to P-2 (the "Adjacent Areas," with the Atrium and the Adjacent Areas being collectively referred to as the "Atrium Area"; after the Interim Period, the "Atrium Areas" will only refer to the Atrium). These standards and procedures will be effective immediately and will remain in effect after the Library acquires the New Library Unit, with those applicable to the Interim Period being in effect only during the Interim Period.

E. The Parties have drafted a proposed Declaration and Covenants, Conditions, and Restrictions for University Place Civic Building, A Condominium (the "Condominium Declaration") for the Mixed Use Building (and Transit Center). Drafts of a Survey Map and Plans for the proposed condominium have also been prepared (the "Survey Map and Plans"). Unless otherwise indicated herein, capitalized terms herein will have the meaning given them in the Condominium Declaration (in the current draft form and then in the final form once finalized and recorded) or in the Development Agreement, as applicable.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

1. Recitals; Definitions. Each of the recitals set forth above is incorporated into this Operating Agreement as though fully set forth herein. Where reference is made in this Operating Agreement to advice or recommendations to, or consents from the Library and/or City, such advice and recommendations shall be made and consent secured or withheld at the administrative level from the Library Director and City Manager or their respective designees.

2. Designation of the Management Team of Atrium Area. The City, in its capacity as the Owner of the City Unit and the Library, in its capacity as the owner of the Library Unit, shall each appoint one representative from their respective staff to work together in managing the day to day operation of the Atrium Area (the "Management Team"). The Management Team may allocate and reallocate specific responsibilities between the two members as they see fit. Any disputes between the members of the Management Team will be addressed in the manner provided in Section 7 herein.

3. Duties and Responsibilities of the Management Team with Respect to Maintenance of Atrium Area.

(a) General Standards.

(i) The Management Team shall keep the Atrium Area in clean and orderly condition and repair and in compliance with the Project Standards set forth in the Condominium Declaration and the standards set forth below.

(ii) The Management Team shall order, make or supervise all custodial services, maintenance and repairs required in connection with maintaining the Atrium Area, including preventive and recommended maintenance required under service contracts or warranties in connection with the HVAC and other systems pertaining to the Atrium Area in accordance with the approved Budget. The Management Team shall use its best efforts to carry out its responsibilities under this Operating Agreement within the approved Budget;

(iii) The Management Team shall not make any purchase or do any work the cost of which is not set forth in the approved Budget without obtaining the prior approval of the City and the Library, except for (i) the services described in subsection 3(h)(i)(1) below pertaining to the Interim Period, and (ii) circumstances which the Management Team deems an emergency requiring immediate action for the protection of the Atrium Area, the safety of Occupants of the Condominium or adjoining property or to avoid the interruption of utilities or other services to the Atrium Area. The Management Team shall notify the City and the Library immediately of the necessity for, the nature of, and the cost of any such emergency repairs or replacements, and shall be entitled to reimbursement for all reasonable costs and expenses incurred in responding to such emergency situations. The Management Team shall also recommend to the City and the Library any additional repairs to the Atrium Area or the property located therein (including the need for periodic replacement of obsolete or worn out



furniture, fixtures and equipment) that the Management Team believes are necessary to maintain the Atrium Area in accordance with the Project Standards. If approved by the City and the Library and to the extent set forth in the approved Budget, the Management Team shall order, make or supervise any such additional repairs, maintenance or replacement to the Atrium Area and related furniture, fixtures and equipment.

(b) Service Contracts. Services pertaining to the Atrium Area may be performed by either the City or the Library by agreement or by third parties.

(i) Any agreement to provide services by one of the Parties shall be confirmed in a writing describing the nature of the services to be provided. The party providing the service will maintain records on the fully-loaded cost of providing the service by its employees. The “fully loaded costs” shall consist of the hourly cost of the wages and fringe benefits of any employee providing the service. These costs, plus out of pocket expenses, will be reimbursed by the Parties in the proportions set forth herein.

(ii) The Management Team shall have the right to enter into service contracts with third parties in the name of the City and the Library for operating and maintaining the Atrium Area in the ordinary course of business, including contracts for utilities and janitorial, in amounts that do not exceed that set forth in the approved Budget. The Parties agree that the Management Team shall contract for such services in accordance with the City’s or the Library’s then existing public procurement process and purchasing policies as may be established from time to time or as may be otherwise required by law. The Parties specifically recognize that the Management Team may choose, but is not required to, contract for these services as part of a contract that City enters into for similar services at other City-owned facilities. Such service contracts shall specifically identify the cost of providing any services to the Atrium Area separately from the cost of providing such services to the remainder of the City’s or the Library’s facilities. All contracts will include a requirement that the service providers pay the prevailing wage to workers, laborers and mechanics as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the geographical area where the Property is located.

(c) Capital Expenditures. The Management Team shall recommend to the City and the Library the purchase and installation of major items of new or replacement equipment, furniture or fixtures when the Management Team believes such purchases to be necessary or appropriate. Any capital expenditure must be specifically approved by the City and the Library.

(d) Payment of Suppliers. The Management Team shall promptly pay for all supplies, merchandise, material, labor or other items ordered, furnished or used by it in accordance with this Operating Agreement.

(e) License and Permits; Compliance with Laws.

(i) The Management Team shall obtain and renew as necessary from funds set forth in the approved Budget, all licenses and permits which may be required under applicable law in connection with the operation, maintenance or repair of the Atrium Area. The

Management Team will ensure that any users of the Atrium Area have obtained any applicable licenses or permits for their use of the Atrium Area.

(ii) The Management Team shall advise the City and the Library of the need for any unbudgeted expense required in order to comply with applicable laws, rules, regulations and other governmental requirements, which work shall be undertaken only after securing the City and the Library's prior written approval thereof.

(f) Notices. The Management Team shall promptly notify the City and the Library of any notice(s) of violation(s) or alleged violation(s) of any governmental requirements, any defects in the Atrium Area and any fire or other damage to the Atrium Area (together with copies of supporting documentation, if any). In the case of any serious damage to the Atrium Area, the Management Team shall also immediately provide telephonic notice to the City and the Library so that they can view the damage before repairs are started and complete customary loss reports in connection with such damage. The Management Team shall also notify the City and the Library promptly of any personal injury or property damage occurring to or claimed by any person with respect to the Atrium Area and promptly forward to the City and the Library, any summons, subpoena or other legal document served upon the Management Team relating to actual or alleged potential liability of the City or the Library with respect to the Atrium Area.

(g) Repairs. The Management Team shall supervise any repairs to the Atrium Area approved by the City and the Library. The Management Team shall take no steps (such as the admission of liability) which will operate to bar the City or the Library from obtaining any protection afforded by any policies of insurance which any of them may hold, or which operates to prejudice the defense in any legal proceeding involving the Condominium or the Property. The City and Library shall represent themselves in any litigation involving the Common Elements or the Common Element Improvements.

(h) Financial Matters.

(i) Cost Sharing. The Parties agree that, except as provided below, the costs incurred with regard to the Atrium Area will be shared equally unless the cost is the responsibility of only one Party as provided herein or the cost was not authorized as set forth herein.

(1) During the Interim Period (defined below), the City will perform the custodial services in the Atrium Monday through Friday and the Library will perform the custodial services in the Atrium on the weekend. The parties will not share the costs of these custodial services. Custodial services consist of the activities described in the memo of March 25, 2011, attached.

(2) During the Interim Period and for 10 years thereafter (or until remodeled with the approval of the Library, whichever occurs first), the City will be solely responsible for the cost of maintaining and repairing the restrooms in the Atrium Area.

(3) The Interim Period is the period from the Effective Date until either the City occupies all or a portion of the City Unit or a tenant occupies all or a portion of Retail Units A or B.

(ii) Budget. The Management Team shall provide the City and the Library each year with an accounting of all funds expended by the Management Team during the previous calendar year, including the amount of any surplus or deficit carried over from the preceding year and the amount of income received, if any, and a report describing the services provided by the Party (along with documentation of the services and the costs incurred in connection with those services). The time expended by members of the Management Team will not be compensated. In addition, by November of each year, the Management Team shall also provide the City and the Library with its estimate of all Operating Costs which should be included in the Budget for the Atrium Area for the upcoming year, including its recommendation regarding Special Assessments, if any, and creation or funding of reserve accounts for anticipated expenses for repairs, replacement, enhancement and other improvements to the Atrium Area which will occur in the future in order to accumulate sufficient funds to pay such expenses when they occur. After receiving this information, the City and the Library will then establish a Budget for the upcoming year.

(iii) Funding and Joint Bank Account. The Management Team shall establish an operating account in the joint name of the City and the Library at a federally insured financial institution designated or approved by the City and the Library (the "Joint Account"). Within thirty (30) days after the Budget has been approved, each Party will deposit into the Joint Account an amount equal to one-half of that Party's share of the annual budgeted expenses. On or before June 15 of each year, each Party will deposit into the Joint Account an amount equal to the remaining half of that Party's share of the annual budgeted expenses.

(iv) Disbursement of Funds from Joint Bank Account. The designation of those employees of the Management Team authorized to sign checks on the Joint Bank Account shall be subject to the approval of the City and the Library. If requested by the City or the Library, all such employees of the Management Team, or their designees, shall be bonded or otherwise insured by the City and Library, respectively, for the designees of each. The City and Library shall use the funds deposited in the Operating Account to reimburse the Management Team for expenses incurred by the Management Team in connection with operations and maintenance.

(i) Books and Records. The Management Team shall maintain accurate books of accounts fully reflecting all monies paid by the Management Team in the discharge of its obligations under this Operating Agreement. Such books, records and accounts shall be kept on a calendar year basis and based on the cash method of accounting (except as the City and the Library may otherwise direct) in accordance with generally accepted accounting principles, consistently applied. To the extent that particular items of expenditure with respect to the Atrium Area are to be billed separately to the Owner of a Unit (such as, for example, janitorial services provided for an event sponsored by the Library), the Management Team shall maintain books, records and accounts in such a manner as will enable the City and Library to separately account for such expenditures on a calendar year basis and bill such expenses to individual Owners as a Special Allocation in accordance with the requirements of the Condominium Declaration.

(j) Property of Association. The records, books of account and other documents and materials relating to the management, operation and maintenance of the Atrium Area by the Management Team shall be the property of the City and Library.

(k) Settlements. Within thirty (30) days following the effective date of termination of this Operating Agreement, the Management Team shall provide the City and the Library a final accounting for all Operating Costs incurred by the Management Team or which the Management Team may be obligated to pay pursuant to the terms of service and management contracts previously entered into by the Management Team for the then current fiscal year through the date of termination. The Management Team shall deliver to the City and Library all records, contracts, plans, specifications, correspondence, unpaid bills and all other papers and documents which pertain to this Operating Agreement.

4. Use of Atrium.

(a) Not a Public Forum. Initially, the City and the Library do not intend to make the Atrium a public forum, or otherwise make it available for use, rental or license by third parties and desire to impose certain restrictions on the use of the Atrium.

(b) Administrative Regulation of Atrium Activities. Subject only to the foregoing restrictions on public forum and use under rental or license by third parties, the City Manager and the Library Director shall have full administrative authority, to allow activities in the Atrium by mutual written authorization.

(c) Permitted and Restricted Activities. The permitted activities described below may be scheduled by the City or Library without the necessity of a written mutual authorization of the City Manager and Library Director for each event. The restricted activities described below may not be scheduled without the prior mutual written authorization of the City Manager and Library Director.

(i) Permitted Activities. The following activities are permitted (the “Permitted Uses”):

(1) Events organized directly by the City or Library and which begin and end while the City and Library are closed to the public (that is, after hours events) and are conducted in compliance with the most current administrative rules for Atrium use.

(2) Events organized by other organizations are limited to those that begin and end while the City and Library are closed to the public (that is, after hours events) and are authorized only if permitted by the Permitting Authority (as defined below).

(3) Bulletin Boards, information racks and information booths or kiosks approved by the City and the Library, managed by either the City or the Library and that are maintained in a clean and orderly fashion and do not interfere with access to or visibility of the entrance to the Library. Before installation of these facilities, the parties will agree on who will manage that facility. Once so agreed, then the party agreeing to manage it will have the

responsibility to manage that facility in compliance with the applicable rules as well as the applicable laws.

(4) Any other use authorized in writing by both the Library Director and City Manager.

(ii) Restricted Activities. The following activities are prohibited in the Atrium unless specifically approved in writing by the City Manager and the Library Director (the “Restricted Uses”):

(1) A use that would interfere with direct access from the front doors of the Atrium to the front doors of the Library Facility or access to City Offices. As used herein, the “Library Facility” consists of the Library Unit except for the Library Parking.

(2) A use that interferes with the visibility of the entrance to the Library Facility or City Offices from the front doors of the Atrium.

(3) Any activity that constitutes a public nuisance by emitting an obnoxious or offensive odor or noise which can be heard or smelled inside the City Offices or the Library. An obnoxious or offensive odor or noise is one that interferes with several City or Library patrons’ use or enjoyment of the facility. If four (4) or more City or Library District patrons complain to City or Library District staff, the noise or odor will be presumed to be obnoxious or offensive, except where the odor or noise arises from an outright permitted activity or an activity otherwise administratively authorized by the City Manager and Library Director occurring in the Atrium.

(4) Any activity that is prohibited by law or the land use regulations applicable within the zone in which the Atrium is located.

(c) Scheduling and Permitting of Events by the City and Library.

(1) Responsibility of Organizing Party. If an event is organized by the City or the Library (the “Organizing Party”), then the Organizing Party will be responsible for complying with the applicable rules, obtaining appropriate insurance and setting up the facility, cleaning the facility after the event, and repairing any damage that occurs as a result of the event. The Organizing Party will also be liable for any damages or injuries that occur during or as a result of the event that are not covered by insurance.

(2) Responsibility of Permitting Party. An event not organized by the City or the Library may be permitted by the City or the Library (acting as the “Permitting Authority”) according to their respective policies and procedures.. When acting as the Permitting Authority the City or Library will be responsible for complying with applicable laws in permitting the event. The Permitting Authority will also be responsible for assuring that its permittees comply with the applicable rules and obtain appropriate insurance, as well as setg up and cleaning the facility after the event in accordance with Atrium Rules, and repair any damage that occurs as a result of the event. The Permitting Authority will be

liable to the extent its permittee fails to obtain the appropriate insurance, fails to repair the facility, or fails to comply with Atrium Rules. The Permitting Authority will also be liable for any damages or injuries that occur during or as a result of the event that are not covered by insurance.

(3) Scheduling. The City and the Library shall each notify the Management Team no later than September 1 of each year with a schedule of its priority uses for the upcoming calendar year, and shall work together in good faith to minimize scheduling conflicts when establishing meeting or event dates for the upcoming calendar year. If a priority scheduled meeting is canceled or rescheduled, such Owner shall promptly notify the Management Team so that the Atrium can be made available to the other Owner.

(d) Rules of Conduct. The Management Team will develop administrative rules of conduct for persons using the Atrium and will implement procedures for the users of the Atrium to be aware of those rules.

5. Term of Operating Agreement. This Operating Agreement shall remain in effect until it is terminated by either Party. The Agreement can be terminated by either Party on sixty (60) days' notice to the other. Notwithstanding the foregoing, this Operating Agreement shall automatically terminate without the need for additional notice as of the date that the City is no longer the Owner of the City Unit.

6. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any Party shall be in writing and shall be validly given or made to the other Party if delivered either personally, or by overnight delivery service of recognized standing, or by United States Mail, certified, registered, or express mail with postage prepaid, or by facsimile transmission with electronic confirmation of receipt. If such notice is personally delivered or delivered by facsimile during normal business hours, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by facsimile after normal business hours or is delivered by overnight delivery service, it shall be deemed given one (1) business day after receipt thereof (if sent by facsimile transmission) or one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, notice shall be deemed given three (3) business days after the deposit thereof in the United States Mail. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City of University Place  
3715 Bridgeport Way West, Suite B  
University Place, WA 98466  
Attn: City Manager  
Fax: (253) 460-2546

To Library: Pierce County Rural Library District  
3005 – 112<sup>th</sup> Street East  
Tacoma, WA 98446  
Attn: Library Executive Director  
Fax: (253) 537-4600

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party hereto.

7. Dispute Resolution. If a dispute arises between the Parties concerning the performance of any provision of this Operating Agreement or the interpretation thereof, the Parties agree to follow the procedure set forth herein. It is the goal of the Parties to resolve differences as early in this step-process as possible.

(a) Step One – Informal Discussions. The Management Team shall meet and attempt to resolve the dispute. This may involve more than one meeting.

(b) Step Two – Written Notification and Resolution. If informal discussions between the members of the Management Team are not successful then the aggrieved Owner shall mail, via certified mail, written notice of dispute to the other Owner. The notice shall set forth the nature of the dispute and the desired outcome. A written response shall be provided by the recipient of the notice within ten (10) days of receipt of the notice. The City Manager and Library Director shall meet within ten (10) business days following respondent's answer to determine whether the dispute can be resolved amicably. If the dispute is amicably resolved, the Parties shall sign a memorandum of understanding with regard thereto.

(c) Step Three – Mediation. If the Parties are unable to resolve their differences at Step Two, the Parties will endeavor to settle the dispute by mediation under such mediation rules as shall be agreeable to the Parties. Such mediation will be non-binding but a condition precedent to having the dispute resolved pursuant to litigation. Mediation shall commence, unless otherwise agreed, within thirty (30) days of a Party's written request to the other Party for mediation of a dispute. Any resolution of the dispute at this stage shall be reduced to writing and, if the resolution involves an interpretation of the Operating Agreement herein, the Operating Agreement herein shall be amended to include the interpretation.

(d) Step Four – Litigation. In the event any action is brought to enforce any provision of this Operating Agreement, the Parties agree to be subject to exclusive in personam jurisdiction in the Pierce County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively in Pierce County.

8. Miscellaneous.

(a) Captions. The captions and paragraph headings contained in this Operating Agreement are for convenience of reference only and in no way limit, describe, extend or define the scope or intent of this Operating Agreement, nor the intent of any of the provisions hereof.

(b) Amendments; Waivers. No modification or amendment of this Operating Agreement may be made except by written agreement or as otherwise may be provided in this

Operating Agreement. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Operating Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Operating Agreement and each and every covenant, agreement, term and condition of this Operating Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(c) Entire Agreement. This Operating Agreement and exhibits hereto constitute the entire agreement among the Parties with respect to the management of the Atrium Area and supersedes all prior and contemporaneous agreements and understandings between the Parties hereto relating to the subject matter hereof.

(d) Severability. If any one or more of the provisions contained in this Operating Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Operating Agreement shall be construed as if such invalid, illegal or unenforceable term or provision had never been contained herein.

(e) Successors and Assigns. This Operating Agreement shall apply to, bind and inure to the benefit of the successors and permitted assigns of the Parties hereto. No Party hereto may assign its rights under this Operating Agreement without the prior written consent of the other Party, which consent may be withheld by the other Party in its sole and absolute discretion.

(f) No Partnership or Joint Venture. It is not intended by this Operating Agreement to, and nothing contained in this Operating Agreement shall, create any partnership, joint venture or other arrangement by or among any of the Parties except that of owners of Units in a Condominium and parties to a contract providing for management services in connection with the Atrium Area. No term or provision of this Operating Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(g) Time is of the Essence. Time is hereby expressly declared to be of the essence of this Operating Agreement and of each and every term, covenant, agreement condition and provision hereof.

(h) Neutral Authorship. In connection with the execution and delivery of this Operating Agreement, each Party has been represented by counsel. Each of the provisions of this Operating Agreement has been reviewed and negotiated, and represents the combined work product of the Parties hereto. The language in all parts of this Operating Agreement shall be construed as a whole according to its fair meaning. No presumption or other rules of construction which would interpret the provisions of this Operating Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Operating Agreement.



(i) Attorneys' Fees. Each Party shall be responsible for payment of the legal fees of its counsel in the event of any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Operating Agreement.

(j) Counterparts. This Operating Agreement may be executed in counterparts, each of which constitutes an original and all of which shall constitute but one original.

(k) Memorandum of Operating Agreement. Neither Party hereto shall record this Operating Agreement without the written consent of the other Parties.

(l) Governing Law. This Operating Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. In the event of any litigation to enforce or interpret the rights, duties and obligations of the Parties set forth in this Operating Agreement, venue of any such legal action shall lie exclusively in Pierce County Superior Court and the Parties waive the right to file suit elsewhere.

IN WITNESS WHEREOF, the Parties hereto have executed this Operating Agreement as of the day and year first above written.

“CITY”

CITY OF UNIVERSITY PLACE, a Washington  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“LIBRARY”

PIERCE COUNTY RURAL LIBRARY  
DISTRICT, a Washington rural library district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney