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CONDOMINIUM DECLARATION
CONTAINING
COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATIONS
FOR
FLEXSPACE NORTH CONDOMINIUM

TITLE OF DOCUMENT:	CONDOMINIUM DECLARATION FOR FLEXSPACE NORTH CONDOMINIUM
GRANTOR/GRANTEE/DECLARANT:	FLEXSPACE NORTH, LLC, a Washington limited liability company
ABBREV. LEGAL DESCRIPTION:	LOTS 1 AND 2 PORTAL WAY SHORT PLAT AF # 2141101546
FULL LEGAL APPEARS:	EXHIBIT "A"
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ARTICLE I
INITIAL MATTERS REQUIRED UNDER WUCIOA

1.1. Name and Type of the Community and its Association.

The name of the community is Flexspace North Condominium. The community is a Condominium, as defined in the Governing Law. The community's association, described with greater particularity in Section 7.1 hereof, is a Washington Nonprofit Corporation known as Flexspace North Condominium Owners Association.

1.2. Description and Dedication of Real Property Included in Condominium.

The real estate included in the Condominium is legally described in the attached Exhibit "A", Section 1, attached hereto, as may be amended by the Declarant upon the withdrawal of any of the Subsequent Phase Property as provided in this Declaration. Flexspace North, LLC, a Washington limited liability company, hereinafter referred to as the "Declarant," hereby submits said land, together with all legally associated easements, rights, appurtenances and improvements, collectively referred to hereinafter as "the Property," to the provisions of the Washington Uniform Common Interest Ownership Act ("WUCIOA," or "Governing Law", i.e., Chapter 64.90 of the Revised Code of Washington).

1.3. Reference to Survey Map.

Contemporaneously with the recordation of this Declaration, the Declarant has recorded with the Auditor of Whatcom County, Washington a record of survey showing the location and dimensions of the land described in Exhibit "A" and the location and dimensions of the improvements constructed or contemplated to be constructed thereon, together with other information required by the Governing Law; this instrument is hereinafter together referred to as the "Survey Map"; the Survey Map is recorded at Auditor's File No. 2024-0201397.

1.4. Purposes of Declaration.

This Declaration states covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the Condominium development of the Property mutually beneficial to all of the described Units. The covenants, conditions, restrictions, reservations and plan, including without limitation the lien for Assessments described at Subsection 10.15.2 hereof, that may be foreclosed by the Association nonjudicially under the power of sale granted herein, are binding upon the entire Property and upon each such Unit created therein as a parcel of realty, and upon its Owners and their heirs, personal representatives, family members, guests, invitees, tenants, licensees, successors and assigns, through all successive transfers of a Unit or of any other any part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Units under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.5. Applicability of Governing Law.

Pursuant to Sections 9.1.1 of this Declaration, the Condominium Units are restricted to non-residential use. WUCIOA provides that for condominiums where all Units are restricted to non-residential use, the Declarant may elect whether to have the entirety of WUCIOA apply or just Articles 1 and 2 thereof. For this Condominium, the Declarant has elected that only RCW 64.90.010 through 64.90.330 and 64.90.900 apply to the Condominium. Provided, pursuant to this Declaration, by contract, the Declarant has re-inserted certain components of the portions of WUCIOA that may have been removed.

ARTICLE II DEFINITIONS

- 2.1. "Allocated Interest" means the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit by the provisions of Sections 5.3, 7.4.2 and 10.5 of this Declaration, pursuant to RCW 64.90.235.
- 2.2. "Assessment" means all sums chargeable by the Association against a Unit including, without limitation: (a) Regular and Special Assessments for Common Expenses, and Specially Allocated Assessments for other expenses, charges, or fines imposed and levied by the Association; (b) interest and late charges on any delinquent account; and (c) all costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.
- 2.3. "Association" means the Flexspace North Condominium Owners Association that is described in Article VII of this Declaration.
- 2.4. "Board" means the body with primary authority to manage the affairs of the Association.
- 2.5. "Building(s)" mean the building(s) containing the Units and comprising a part of the Property.
- 2.6. "Bylaws" means the bylaws of the Association as amended from time to time.
- 2.7. "Common Elements" means all portions of a Condominium other than the Units.
- 2.8. "Common Expense" means any expense of the Association, including allocations to Reserves, allocated to all of the Unit Owners in accordance with Common Expense Liability.
- 2.9. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to the Governing Law and Section 10.5 of this Declaration.

- 2.10. "Condominium" means Flexspace North Condominium, created by this Declaration and Survey Map.
- 2.11. "Declarant" means Flexspace North, LLC, a Washington limited liability company, and any successor Declarant or any person specifically defined at RCW 64.90.010(17).
- 2.12. "Declaration" means this document, which creates the Condominium by setting forth the information required by Governing Law, and any amendments to this document.
- 2.13. "Development Rights" means any right or combination of rights reserved by the Declarant in the Declaration: (a) to add real property or improvements to the Condominium; (b) to create Units, Common Elements, or Limited Common Elements within real property included in or added to the Condominium; (c) to subdivide or combine Units or convert Units into Common Elements; (d) to withdraw real property from the Condominium; or (e) to reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant. Development Rights are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant.
- 2.14. "Electronic transmission" or "electronically transmitted" means any electronic communication (a) not directly involving the physical transfer of a Record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.
- 2.15. "Eligible Mortgagee" means the holder of a mortgage on a Unit that 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 mortgagees.
- 2.16. "Foreclosure" means a statutory forfeiture or a judicial or nonjudicial foreclosure of a security interest or a deed or other conveyance in lieu of a security interest.
- 2.17. "Governing Documents" means the Declaration, the Survey Map, any Rules or resolutions adopted by the Board of Directors, and any amendments to any such instruments.
- 2.18. "Governing Law" means the Washington Uniform Common Interest Ownership Act (Chapter 64.90 RCW) or any successor statute, and any amendments thereto.
- 2.19. "Identifying Number" means a symbol or address that represents the designation of each Unit or, in some cases, a Common Element component, in the Condominium. A list of Identifying Numbers for all the Units in the Condominium in existence as of the effective date of this Declaration, along with other information required by

the Governing Law, is attached as Exhibit "B" to this Declaration, where such Identifying Numbers are listed in a column below the words "Unit No."

- 2.20. "Limited Common Element" means a portion of the Common Elements allocated by Article VI of the Declaration or by operation of law for the exclusive use of one or more but fewer than all of the Units.
- 2.21. "Manager" or "Managing Agent" shall mean a natural person or business entity designated by the Board to act as agent of the Condominium.
- 2.22. "Mortgage" means a mortgage, deed of trust or real estate contract.
- 2.23. "Notice" means a notice provided under the provisions of RCW 64.90.515.
- 2.24. "Organizational Documents" means the instruments filed with the Secretary of State to create the Association and the instruments governing the internal affairs of the Association including, but not limited to, its Articles of Incorporation and Bylaws.
- 2.25. "Person" means an individual, corporation, business trust, estate, the trustee or beneficiary of a trust that is not a business trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal entity.
- 2.26. "Phase 1" means the portion of the Property described in Exhibit "A", Section 2, which includes one (1) Building with eight (8) Units, as shown on the Survey Map as Building G.
- 2.27. "Preventative Maintenance" means such Upkeep as shall be necessary from time to time to prevent premature failure of any component of a Unit or the Common Elements.
- 2.28. "Purchaser" means any Person, other than the Declarant or a dealer, who or which by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than as security for an obligation.
- 2.29. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 2.30. "Reserve" or "Reserves," when used as a noun, means money on deposit in a reserve fund or reserve account, which terms are synonymous.
- 2.31. "Rule" means a policy, guideline, restriction, procedure, or regulation of the Association, however denominated, that is not set forth in the Declaration or

Organizational Documents and that governs the conduct of Persons or the use or appearance of property.

- 2.32. "Security interest" means an interest in real estate or personal property, created by contract or conveyance that secures payment or performance of an obligation. "Security interest" includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.
- 2.33. "Special Limited Common Elements" means those Limited Common Elements that shall be repaired, replaced and subjected to periodic maintenance by the Association **at the expense of the Owner of the Unit to which such Limited Common Element is allocated**, under Sections 6.2.3 and 10.7 of this Declaration. In this Condominium, the Special Limited Common Elements consist of any items described in Subsection 6.1.3 and 6.2.2 hereof.
- 2.34. "Special Declarant Rights" means rights reserved for the benefit of the Declarant as described in Section 3.4 herein.
- 2.35. "Specially Allocated Expense" means any expense of the Association, including allocations to Reserves, allocated to some or all of the Unit Owners and assessable against their respective Units.
- 2.36. "Specially Allocated Assessment" means an Assessment made or deemed to be made by the Association against Units to which Specially Allocated Expenses are allocated under Section 10.7 of this Declaration.
- 2.37. "Subsequent Phase" means the creation by the Declarant of additional Units and associated Limited Common Elements and Common Elements on all or a portion of the Subsequent Phase Property pursuant to Article 3 and other provisions of this Declaration.
- 2.38. "Subsequent Phase Amendment" means an amendment to this Declaration and/or Survey Map executed and recorded by the Declarant unilaterally pursuant to RCW 64.90.250(a) in order to exercise a Special Declarant Right to bring a new Subsequent Phase of the Condominium into being on all or a portion of the Subsequent Phase Property as provided in Article 3 and other provisions of this Declaration.
- 2.39. "Subsequent Phase Property" means that portion of the Property included in the Condominium upon which the Declarant has the right to create Units or Common Elements, assign Limited Common Elements or withdraw from the Condominium, as described in Exhibit "A", Section 3, and shown on the Survey Map.

- 2.40. "Survey Map" means the Map for the Condominium and any amendment thereto prepared in accordance with the Governing Law. Pursuant to RCW 64.90.245(1), the Survey Map is to be construed as comprising a part of this Declaration.
- 2.41. "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.
- 2.42. "Unit" means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 4.2 hereof
- 2.43. "Unit Owner" means the Declarant or any other Person who owns a Unit, but does not include a Person who has an interest in a Unit solely as security for an obligation. "Unit Owner" means the vendee and not the vendor of a Unit under a real estate contract.
- 2.44. "Upkeep" means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is necessary to maintain property in a decent, safe and sanitary condition, in keeping with standards established in the Governing Documents of the Condominium.
- 2.45. "Writing" does not include an electronic transmission.
- 2.46. "Written" means embodied in a tangible medium.

ARTICLE III
DESCRIPTION OF LAND, BUILDINGS, DEVELOPMENT RIGHTS
AND SPECIAL DECLARANT RIGHTS

3.1 Land and Street Address.

The Building and other improvements of this Condominium are constructed on the Property located at 6445 Portal Way, Ferndale, Whatcom County, Washington.

3.2 Project Type – Building and Phasing.

- 3.2.1 Project Type. As of the recording of this Declaration, Building G is designed for active use storage. The rest of the project is intended to be a storage facility with Units that are to be used for varying purposes, provided other purposes may be included, subject to City of Ferndale requirements, including storage, business and other commercial uses (as described with more particularity in Subsection 9.1.1 of this Declaration). The Declarant reserves the right to change uses as to Buildings as they are developed and added to the Condominium.

3.2.2 Buildings. The Condominium currently contains one (1) Building known as Building G with associated driveways and landscaping as shown on the Survey Map. Building G contains eight (8) Units and is a steel/wood framed construction with concrete floors and no basement. All Units in Building G include a mezzanine.

3.2.3 Development in Phases. The Declarant intends to develop the Condominium as a multi-building park in multiple Subsequent Phases on the Property described in Exhibit "A", Section 1, as it may be amended to withdraw property. Phase 1 consists of eight (8) Units in one (1) Building as shown on the Survey Map and located on the portion of the Property described in Exhibit "A", Section 2. The Declarant has reserved Development Rights and Special Declarant Rights that allow the construction of additional Buildings and Units on the Subsequent Phase Property in one or more Phases, including the right to withdraw all or a portion of the Subsequent Phase Property. The Declarant may create up to an additional one hundred twenty-nine (129) Units in multiple Buildings in one or more Subsequent Phases by recording a Subsequent Phase Amendment to the Declaration in accordance with Subsection 3.3.2(b). The size of Units and features may change as Phases are created. Whether Declarant develops additional Subsequent Phases on the Subsequent Phase Property, is in Declarant's sole discretion.

3.3 Development Rights.

3.3.1 Description. Pursuant to RCW 64.90.225(1)(g), the Declarant has reserved Development Rights that are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant as follows.

3.3.1.1 The right to add improvements to the Condominium. This includes but is not limited to parking areas and other improvements in Phase 1, as well as the infrastructure and Buildings in Subsequent Phase(s).

3.3.1.2 The right to create Units, Common Elements, and Limited Common Elements, including but not limited to, the right to create an additional one hundred twenty-nine (129) Units and associated Common Elements and Limited Common Elements in one or more Subsequent Phases. In addition, the right to create airspace Units with no structures located for the purpose of financing or title insurance and such Units will be considered development Units and the Declarant may amend this Declaration to include language consistent with the creation of development Units.

- 3.3.1.3 The right to subdivide or combine Units and/or relocate their common boundaries.
- 3.3.1.4 The right to assign portions of the Common Elements as Limited Common Elements pursuant to RCW 64.90.225(1)(f) or to reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant.
- 3.3.1.5 The right to withdraw any portion of the Subsequent Phase Property included with this is the right to withdraw or reserve any easements necessary for the use of the withdrawn property.
- 3.3.1.6 All of the above-described Development Rights apply to the entire project and the rights in Section 3.3.1.1, 3.3.1.2, and 3.3.1.5 apply to the Subsequent Phase Property. These Development Rights may be exercised with respect to different portions of Property at different times. The Declarant makes no assurance with regard to the timing and order of adding Subsequent Phases or the withdrawal of real property. If the Declarant exercises any Development Right as to any portion of the Subsequent Phase Property, the Declarant is not required to exercise any Development Right as to the remainder of the Subsequent Phase Property.

Without limiting the foregoing, the Declarant reserves the right to expand the scope of development within the Condominium through phased development. The Declarant reserves the right to create Subsequent Phases of development in its sole discretion. These Phases may have different designed Units and features. Declarant's decision in this regard will be market-driven.

3.3.2 Procedure for Exercise. The following procedures govern the exercise of Development Rights:

(a) General Procedure. To exercise any reserved Development Right, the Declarant must prepare, execute, and record an amendment to the Declaration, including if applicable, a Subsequent Phase Amendment and Survey Map in accordance with the requirements of RCW 64.90.245 and RCW 64.90.285(3). The Declarant is the Unit Owner of any Units created.

(b) Subsequent Phase Amendment to Declaration. A Subsequent Phase Amendment to the Declaration shall assign an identifying number to each new Unit created, and shall reallocate the Allocated Interests among all Units in existence following the amendment, using the same formulas or factors for allocation specified in Sections 5.3, 7.4.2 and 10.5 hereof. In general, the initial Allocated Interests would abate, pro rata, as new Units are added. The Subsequent Phase Amendment shall amend Exhibit "A" to

remove that portion of the property upon which Units being created are located from the Subsequent Phase Property and amend Exhibit "B" listing the Units in the Condominium, including those being created, together with all of the information called for by that exhibit and reallocating the Allocated Interests among all of the Units in accordance with this Declaration, and by filing an amendment to the Survey Map of the Units created by that Subsequent Phase, the Limited Common Elements assigned thereto and any remaining Subsequent Phase Property. In addition, the Subsequent Phase Amendment shall describe any Common Elements and any Limited Common Elements thereby created and, in the case of Limited Common Elements, designate the Unit to which each is allocated to the extent required under RCW 64.90.240.

(c) Subdividing or Combining Units. If the Declarant exercises a Development Right to [i] subdivide a Unit into two or more Units or [ii] combines two or more Units into a lesser number of Units, whether or not any part of a Unit is converted into Common Elements, or Common Elements are converted Units, the amendment to the Declaration shall reallocate all the Allocated Interests of the original Unit[s] among the Unit[s] created by the subdivision or combination in any reasonable and equitable manner prescribed by the Declarant at the time of such subdivision or combination.

- 3.3.3 Time Limits on Development Rights. The Declarant may exercise the Development Rights described in Subsection 3.3.1 of this Declaration within ten (10) years from the date of the conveyance by the Declarant of the first Unit in the Condominium to a Person other than the Declarant. Declarant may commence construction of any improvements relating to such Development Rights at any time prior thereto, under the Easement Rights and Special Declarant Rights reserved in Sections 16.4 and 3.4 of this Declaration.
- 3.3.4 Sequence of Exercise of Rights. Subject to the time limitations stated in Subsection 3.3.3 hereof, and except as otherwise expressly provided elsewhere in this Declaration, the Development Rights described in Subsection 3.3.1 of this Declaration may be exercised with respect to different parcels of real property at different times, at any time, at different times and in any order, without further assurances or limitation of any sort, either in all or in any portion of the remainder of any such property subject to such Rights. In this regard, the Declarant states pursuant to RCW 64.90.225(h), that no assurances are made with reference to the sizes or location of any parcels of land that may be added to or withdrawn from the Condominium, the sequence in which they might be added or withdrawn, or whether if any Development Right is exercised in any portion of specified real estate subject to that Development Right, that Development

Right must be exercised in all or in any other portion of the remainder of that real estate.

3.3.5 Declarant's Liability for Expenses. The Declarant alone is liable for all expenses in connection with real estate subject to Development Rights and no other Unit Owner and no other portion of the Condominium is subject to a claim for payment of those expenses. However, the expenses associated with the operation, maintenance, repair, and replacement of a Common Element that the Unit Owners have a right to use must be paid by the Association as a Common Expense. Unless the Declaration provides otherwise, any income or proceeds from real estate subject to Development Rights inures to the Declarant.

3.3.6 Election to Withdraw Land. The Declarant may at any time or times elect to withdraw from the Condominium all or a portion of the Subsequent Phase Property, as it may be described in Exhibit "A", Section 3, at that time, by (a) recording an Amendment to Declaration describing the withdrawal signed only by the Declarant which describes the land withdrawn; (b) recording an amendment to Exhibit "A" describing the Property remaining in the Condominium; (c) recording an amendment to Exhibit "A" describing any remaining Property subject to Development Rights; and (d) filing an amendment to the Survey Map showing the Property remaining in the Condominium. The Declarant shall be the owner of any property withdrawn from the Condominium and the Unit Owners will have no beneficial or legal interest in the withdrawn property. Any liens that arise in connection with the Declarant's ownership of or construction of improvements on any property withdrawn from the Condominium shall attach only to the Declarant's interest in the withdrawn property and shall not adversely affect the rights of Unit Owners or the priority of any security interests on the Units. All taxes and costs relating to the withdrawn property after it is withdrawn shall be paid by or allocated to the Declarant. In that connection, the Declarant reserves the right to execute, on behalf of the Unit Owners and the Association, any applications to governmental agencies or other documents or instruments necessary to establish the Subsequent Phase Property, or any portion thereof, that the Declarant desires to withdraw as a legal lot. Declarant may take any actions to create individual lots of record for the purpose of withdrawal, including but not limited to, platting or lot line adjustment.

3.4 Special Declarant Rights.

Pursuant to RCW 64.90.225(1)(g), the Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Condominium: To complete any improvements indicated on the Survey Map or described in the Declaration; to exercise any Development Right under Subsection 3.3.1 hereof (or any other provision); to maintain sales offices, management offices, signs advertising the

Condominium, and models within the Common Elements and unsold Units; to use easements through the Common Elements for the purpose of making improvements within the Condominium; to make the Condominium subject to a master association; to merge or consolidate the Condominium with another condominium; to attend Meetings of the Unit Owners and, except during an executive session, the Board; to have access to the records of the Association to the same extent as a Unit Owner; and to appoint or remove any officer or Board member of the Association or to veto or approve a proposed action of the Board or Association or any master association during the Declarant Control Period described in Section 8.1 hereof. A failure by the Declarant to veto or approve any such proposed action within thirty (30) days after receipt of written Notice of the proposed action shall be deemed to constitute approval thereof by the Declarant. Except with respect to the right to exercise Development Rights, which is governed by Subsection 3.3. hereof, or as limited in Section 8.1 hereof with respect to Declarant Control, Special Declarant Rights shall terminate ten (10) years from the date of the conveyance of the first Unit in the Condominium to a purchaser other than the Declarant. To the extent that these Special Declarant Rights deviate from RCW 64.90.010(5), it is to address the election made by the Declarant in Section 1.5 hereof.

ARTICLE IV UNITS

4.1 Number and Identification of Units.

4.1.1 Initial Units. The Condominium contains eight (8) Units in Phase 1. The Identifying Number and the approximate square footage of each Unit, as well as the level or levels on which each Unit is located is set forth in Exhibit "B". Because the Units are restricted to non-residential use, the information required by RCW 64.90.210(1)(d)(ii) and (iii) is omitted. The location and dimensions of the Units as so numbered is set forth in the Survey Map.

4.1.2 Units Created by Phased Development. The Declarant reserves the right to create an additional one hundred twenty-nine (129) Units pursuant to Development Rights reserved in Subsection 3.3.1 of this Declaration. The total amount of Units that could be created is one hundred thirty-seven (137). Reference should be made to that Subsection for additional information.

4.2 Unit Boundaries.

The boundaries of each Unit are as follows: (i) The vertical boundaries of the Units are the unfinished interior surfaces of the perimeter walls; (ii) the lower boundary is the surface of the concrete floor slab or subflooring material as the case may be; and (iii) the top boundary is the bottom surface of the structural portions of the ceiling. Accordingly, a Unit shall include all panels, wallboards or any other materials constituting any part of the finished surfaces of the walls, floors and ceilings within the Unit. All other portions of the walls, floors and ceilings

are a part of the Common Elements. All spaces, interior partitions, and other fixtures or improvements within the boundaries of a Unit and which are not otherwise defined herein as a Common or Limited Common Element are part of such Unit, including any mezzanines or lofts constructed within the Unit.

4.3 Monuments as Boundaries.

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

4.4 Additional Items Included in Units.

Each Unit contains: (i) all nonstructural interior partition walls located within the boundaries of the Unit; (ii) any mezzanine or loft constructed within a Unit; (iii) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements; and (iv) all interior doors and all immediately visible fixtures, appliances, built-in cabinetry, and mechanical, electrical and communication systems and equipment, commencing at the point of disconnection from the structural body of the Building, or from utility lines, pipes or systems serving another Unit or the Common Elements.

4.5 Items Excluded from a Unit.

A Unit shall be deemed not to include: pipes, wires, conduits and other utility lines, ventilation or other ducts, bearing walls and structural portions of the Building running through a Unit that are utilized for or serve another Unit or the Common Elements, and all other property and fixtures of any kind that are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Condominium.

4.6 Maintenance of Units.

4.6.1 General Maintenance. Each Unit Owner, at his or her sole expense, shall have the right and the duty to keep the interior of his or her Unit and its fixtures, equipment, and appurtenances in good order, condition and repair and shall do all Preventative Maintenance, repairs and/or replacements at such times as are necessary to maintain the good appearance and condition of such Unit. Each Owner shall also be responsible for the maintenance, repair or replacement of any individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Unit, and of any other device or equipment lying outside the boundaries of the Unit but installed for the sole and exclusive use of the Unit, and of any other fixtures, appliances, systems or equipment described in Section 4.4(iii) hereof. This Section shall not be construed as permitting any interference with or damage to the structural integrity of the

Building(s) or interference with the use and enjoyment of the Common Elements or of the other Units or any of them, nor shall it be construed to limit the powers or obligations of the Board hereunder.

4.6.2 Maintenance Rules. The maintenance requirements for individual Units may be modified or expanded pursuant to Rules adopted by the Board. Such Rules are only guidelines to be followed by the Unit Owners. Maintenance of individual items and equipment should be evaluated by the Unit Owner with the assistance of competent professionals. The Board of Directors may deliver to each Unit Owner along with the annual meeting notice a copy of a maintenance checklist. Each Unit Owner shall fill out the maintenance checklist and return it to the Board within thirty (30) days after the annual meeting is held. In the event a Unit Owner fails to comply with this provision and return the maintenance checklist then the Association may hire a private inspector to conduct the inspection. In such an event the Unit Owner will be responsible for the cost of the inspection as well as a fine established on the fine schedule adopted by the Board. Unit Owners agree to provide access to their Unit for the purpose of the inspection, including providing legal notice to any Occupants or tenants of the Unit.

4.6.3 High Risk Components. The Board may from time to time determine that certain portions of the Units or certain fixtures or appliances within the Units (collectively, "High Risk Components"), pose a particular risk of damage to other Units and/or to the Common Elements or a heightened risk of harm to lawful Occupants of the Condominium if they are not properly inspected, maintained, repaired or replaced. By way of example, but not of limitation, these portions, fixtures, or appliances may include smoke detectors, electric wall heaters, washer hoses, dryer vents and/or water heaters. The Board may require one or more of the following with regard to any High Risk Component located within a Unit:

- (i) That it be inspected at specified intervals by the Board or an inspector or inspectors designated by the Board.
- (ii) That it be replaced or repaired at specified intervals, or with reference to manufacturers' warranties, whether or not the individual component is deteriorated or defective.
- (iii) That it be replaced or repaired with items or components meeting particular standards or specifications established by the Board.
- (iv) That when it is repaired or replaced, the installation includes additional components or installations specified by the Board.
- (v) That it be replaced or repaired by contractors having particular licenses, training, or professional certification or by contractors approved by the Board.
- (vi) If the replacement or repair is completed by a Unit Owner, that it be inspected by a person designated by the Board.
- (vii) If the replacement or repair is completed by Association, the costs so incurred shall be assessed to the Owner(s) of the affected Unit(s) pursuant to Section 10.7 hereof.

4.7 Alteration of Units by Unit Owner.

Subject to the provisions of this Declaration, including Section 4.10 and other provisions of law, a Unit Owner:

- 4.7.1 May make improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical, electrical or other utility systems of any other Unit or the Common Elements, or lessen the support of any portion of the Condominium.
- 4.7.2 May not change the appearance of the Common Elements or alter structural components of a Unit without the advance written permission of the Board.
- 4.7.3 May, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, and following approval of the Board of Directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems of any other Units or the Common Elements, or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not a relocation of boundaries. The Board of Directors shall approve a Unit Owner's request, which request shall include the plans and specifications for the proposed removal or alteration, within thirty days from delivery of the request, unless the proposed alteration does not comply with the Governing Law or the Declaration or if it would impair the integrity of any structural, mechanical, plumbing or electrical systems in the Condominium. The failure of the Board of Directors to act upon a request within such period shall be deemed approval thereof.

4.8 Relocation of Unit Boundaries.

- 4.8.1 Combining Units and Relocation of Boundaries between Units. Subject to the provisions of any applicable building, zoning or other applicable regulations, and with the consent of any Eligible Mortgagees holding mortgages in the affected Units pursuant to Section 15.3, the boundaries between adjoining Units may be relocated, but only by an amendment to the Governing Documents as provided in Article XVII hereof, following application to the Board by the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Where two or more entire Units are combined, the Allocated Interests allocated to the resulting Unit shall equal the sum of the Allocated Interests formerly allocated to each of the Units that were combined. Unless the Board of Directors determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed

boundary relocation does not comply with the Declaration, RCW 64.90.255, or other provisions of law, the Board must approve the application and prepare any amendments to the Declaration and Survey Map in accordance with the requirements of Subsection 4.8.3 below.

4.8.2 Relocation of Boundaries between Units and Common Elements.

(a) Relocation Permitted. Subject to the other provisions hereof and to other provisions of law, boundaries between Units and Common Elements may be relocated to incorporate Common Elements within a Unit by an amendment to the Declaration upon application to the Association by the Unit Owner of the Unit who proposes to relocate a boundary. The amendment may be approved only if the Unit Owner of the Unit, the boundary of which is being relocated, and Persons entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units, agree to such relocation.

(b) Payment of Fees or Charges. The Association may require payment to the Association of a one-time fee or charge, or continuing fees or charges, payable by the Unit Owners on whose behalf the boundaries are relocated.

4.8.3 Amendments to Declaration and Survey Map. In any circumstance described in this Section 4.8, the Association shall (i) prepare an amendment to the Declaration that identifies the Units involved, states the reallocations, is executed by those Unit Owners and the Association, contains words of conveyance between them, and is recorded in the name of the grantor, the grantee and the Association as appropriate and as required under RCW 64.90.285(3), in the Office of the County Auditor; and (ii) obtain and record an amendment to the Survey Map complying with the requirements of RCW 64.90.245, as necessary to show the altered boundaries between adjoining Units, and their dimensions and Identifying Numbers.

4.8.4 Costs to be Assessed to Affected Unit Owners. All costs, including reasonable attorneys' fees, incurred in preparing and recording amendments to the Governing Documents shall be paid to the Association by the Owners of the affected Units prior to recordation of the required amendments to the Governing Documents.

4.9 Subdivision of Units.

Any Unit that has been previously combined with another Unit may be subdivided. All other Unit subdivision is prohibited, except by the Declarant pursuant to Development Rights.

4.10 Design Review. All construction related to improvements to a Unit must be approved in writing in advance by the Board.

- 4.10.1 ARC Review. No new construction or improvements shall be constructed within any Unit by any Person until detailed plans depicting all such improvements have been reviewed and approved by the Board. Two copies of such plans, specifications and related data must be submitted to the Board, along with a review fee of up to \$300.00. Upon approval, one set of plans shall be retained among the permanent records of the Association and one copy shall be returned to the Owner, appropriately marked. The builder and/or Unit Owner are encouraged to submit plans to the Board at the earliest possible date but not prior to receiving authorization from the Board to do the work.
- 4.10.2 Time for Approval - No Construction Prior to Approval. The Board shall approve or disapprove plans, specifications and details within the time described herein. No construction activity by other Person other than the Declarant or its Affiliate(s) may commence prior to such approval. The Board shall approve or disapprove plans, specifications and details within six weeks of receipt thereof. Upon a failure to respond within such period, then the plans shall be deemed approved. No construction activity may commence prior to such approval. By regulation, the Board may establish more specific time-frames for the granting of approval following the termination of the Declarant Control Period.
- 4.10.3 No Liability for Architectural Review. Neither the Declarant nor the Association nor any permitted designee shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration, with respect to elements of architectural control or otherwise.
- 4.10.4 Work Done. The work shall be done by licensed and bonded contractor and the contractor shall be subject to Association's approval, not to be unreasonably withheld. The Owner shall not substitute contractors without obtaining advance Association approval. The Association reserves the right to conditions approval upon Owner providing a performance found satisfactory to the Association. The work shall not be done until after the Board has issued its written approval of the application and issued authorization for the work to proceed. Just because the Board approves of the work does not mean that it is acceptable to the City of Ferndale. The applicant is responsible for obtaining all necessary governmental approvals, including building permits from the City of Ferndale. Such approval and permits are a prerequisite to commencing the work.

ARTICLE V
COMMON ELEMENTS

5.1. Description of Common Elements.

Except as otherwise specifically reserved, assigned or limited by the provisions of Article VI hereof, the Common Elements of the Condominium consist of the following:

- 5.1.1. The Property above-described on which the Building(s) is situated, as depicted on the Survey Map.
- 5.1.2. The roofs, foundations, columns, girders, studding, joists, beams, supports, main walls (as opposed to nonbearing interior partitions of Units), and all other structural parts of the Building(s), to the boundaries of the Units as described above in Section 4.2.
- 5.1.3. Installations of services for common use such as main power lines, exterior lighting, main water or sewer lines, pipes, conduits, and wires, wherever they may be located, whether in partitions or otherwise; any tanks, pumps, motors, fans, compressors, heating or cooling units, filtration systems, chutes or ducts serving common areas; any common trash receptacles, containers or "dumpsters," any common mailbox facilities, and in general any and all apparatus and installations existing for common use rather than for any one Unit.
- 5.1.4. The landscaped areas, retaining walls, fences, driving areas and walkways which surround and provide access to the Buildings.
- 5.1.5. Any parking spaces that are not allocated as Limited Common Elements pursuant to Article 6.
- 5.1.6. The riser room for Building G as shown on the Survey Map.
- 5.1.7. All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

5.2. Partition, Conveyance, or Encumbrance.

- 5.2.1. Except as permitted by this Declaration or the Governing Law, the Common Elements shall remain undivided and are not subject to partition; any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. No Unit Owner or other Person may bring any action for partition or division of the Common Elements, except as provided in Section 6.4 hereof. Portions of the Common Elements that are not necessary for the habitability of a Unit

may be conveyed or subjected to a Security Interest by the Association, but only as provided below in this Section 5.2, if the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, along with that percentage of Eligible Mortgagees specified in Article XV of this Declaration consent to this action; but all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest.

- 5.2.2. The Association, on behalf of the Unit Owners, may contract to convey or dedicate an interest in the Condominium, but the contract is not enforceable against the Association until approved pursuant to Subsections 5.2.1 and 5.2.3 hereof. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- 5.2.3. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as required for deeds, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is situated and is effective only upon recording.
- 5.2.4. If the consent of Eligible Mortgagees holding security interests on at least eighty percent of the Units subject to security interests held by Eligible Mortgagees on the day the Unit Owners' agreement under Subsection 5.2.3 hereof is recorded, is obtained, then:
 - (a) A conveyance of Common Elements pursuant to this Section 5.2 terminates both the undivided interests in those Common Elements allocated to the Units and the security interests in those undivided interests held by all Persons holding security interests in the Units; and
 - (b) An encumbrance of Common Elements pursuant to this Section 5.2 has priority over all preexisting encumbrances on the undivided interests in those Common Elements held by all Persons holding security interests in the Units.
- 5.2.5. The consents of Eligible Mortgagees, or a certificate of the Secretary affirming that the requisite percentage of Eligible Mortgagees have consented, may be recorded at any time before the date on which the agreement under Subsection 5.2.3 becomes void. Such consents or certificates recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting eligible mortgagees, regardless of later conveyance or encumbrances on those Units. If the required percentage of Eligible Mortgagees consent, a conveyance or encumbrance

of Common Elements does not affect interests having priority over the Declaration or created by the Association after the Declaration was recorded.

5.2.6. Proceeds of the sale or a loan are an asset of the Association, but the proceeds of the sale of Limited Common Elements must be distributed equitably among the Unit Owners of Units to which the Limited Common Elements were allocated. This Section 5.2 does not apply to the incorporation of Common Elements into Units as a result of relocating Unit boundaries pursuant to Subsection 4.8.2 hereof, to subdividing Units pursuant to Subsection 4.9 hereof or to eminent domain proceedings, which are described in Article 12 to this Declaration.

5.2.7. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section 5.2, is void. A conveyance or encumbrance of Common Elements pursuant to this Section 5.2 shall not deprive any Unit of its rights of access and support.

5.3. Allocated Interests in the Common Elements.

5.3.1. Initial Allocation. Pursuant to RCW 64.90.235, the Declarant has allocated to each existing Unit in the Condominium an undivided interest in the Common Elements of the Condominium, which is known as the Unit's Allocated Interest in the Common Elements. These undivided interests have been allocated among the Units generally in proportion to of the size of each Unit relative to the other Unit in the Condominium. Each Unit's Allocated Interest in the Common Elements is expressed as a percentage and is stated with particularity on the attached Exhibit "B."

5.3.2. Reallocation on Exercise of Development Rights. In the event that the Declarant exercises a Development Right to create additional Units in the Condominium, these initial Allocated Interests shall be reallocated pursuant to Subsection 3.3.2 hereof.

5.4. Maintenance, Repair and Replacement – Association.

The Condominium Association is responsible for maintenance, repair, and replacement of the Common Elements, including the Limited Common Elements, except as may be provided in Subsections 6.2 hereof.

5.5. Schedules for Preventative Maintenance, Other Routine Maintenance and Reserves.

The Board, with the assistance of the Association's Manager and/or other competent professionals, should develop a schedule of routine Preventative Maintenance for all components of the Common Elements.

5.6. Right of Access.

5.6.1. Owners' Rights of Use of Common Elements. Subject to the provisions of Section 5.7 below and other provisions of the Governing Documents, the Unit Owners have a right to use the Common Elements that are not Limited Common Elements for the purposes for which the Common Elements were intended.

5.6.2. Units Subject to Rights of Access. Each Unit Owner shall afford to the Association and, as needed, to other Unit Owner(s), and to their respective agents or employees, access through such Owner's Unit and any appurtenant Limited Common Elements reasonably necessary for the purposes stated herein, and for repairs to other Units or to Limited Common Elements serving same. If damage is inflicted on the Common Elements, or on any Unit through which access is taken, the Unit Owner responsible for the damage, or the Association if it is responsible, shall be liable for the repair thereof, as provided in Section 8.2 hereof.

5.7. No Interference with Common Elements.

No Person shall obstruct any of the Common Elements nor shall any Person place or cause or permit anything to be placed or stored on or in any of the Common Elements (except those areas designated for storage by the Governing Documents) without the approval of the Board. Nothing shall be damaged, altered, constructed in, or removed from the Common Elements except with the prior written consent of the Board of Directors.

5.8. Parking Spaces.

5.8.1. Number, Assignment. There are two parking spaces shown on the Survey Map. Unit Owners can park inside their Unit as well as the limited right provided in Section 9.1.3. Some parking spaces have been or may be assigned for the exclusive use of individual Unit Owners pursuant to Article 6 of this Declaration. The use of all parking spaces shall be governed by the provisions of Subsection 9.1.3 hereof.

5.8.2. Restrictions on Usage of Parking Spaces - Size and Location. The Condominium contains parking spaces of various sizes; some spaces may be too small or may be located in areas that present maneuverability hazards due to encroaching structures, or equipment, or insufficient room in driveway areas, making such spaces unsafe within which to park larger vehicles. Each Owner or occupant shall be responsible for determining whether the Owner or occupant's motor vehicle will comfortably and safely fit in any parking space, and each Owner or occupant shall be liable for any damage caused to the parking space, or to any equipment or structure lying adjacent to the parking space, and/or to any other motor vehicle or other

property that may suffer loss or damage as a result of a failure to comply with these requirements. No Owner or occupant whose vehicle is too large for a parking space shall park or attempt to park such vehicle in such space. An Owner or occupant with a vehicle too large for a parking space assigned to such Owner or occupant's Unit shall not park in the allocated space and instead shall attempt to utilize the opportunities for exchanging spaces afforded under Section 6.3 hereof. There are fire lanes throughout the project. No parking of any kind is allowed in the fire lanes.

- 5.8.3. Lease of Common Element Parking. The Board may lease any Common Element parking spaces but only to Unit Owners or any other tenant occupying a Unit. The Common Element parking leases are a way to reduce Common Expenses of the Association. The Board may adopt further Rules or regulations regarding parking leases, including creation of a waitlist process.

ARTICLE VI LIMITED COMMON ELEMENTS

6.1. Description of Limited Common Elements.

Limited Common Elements are those portions of the Common Elements allocated to and reserved for the exclusive use of one or more, but fewer than all of the Units. They consist of:

- 6.1.1. All exterior doors, windows, and large warehouse overhead doors are Limited Common Elements allocated exclusively to the Unit they serve. These items are Special Limited Common Elements.
- 6.1.2. If any chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column, or any other fixture (including without limitation any individual heating, ventilating or air conditioning equipment) lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. See also Subsection 6.2.2 hereof.
- 6.1.3. The numbered uncovered parking spaces, which are shown on the Survey Map, and which are assigned as indicated on Exhibit "C" to this Declaration. The Declarant has made an initial allocation of some parking on Exhibit "C" hereto. Provided, certain parking spaces are labeled as subject to assignment and may be allocated as Limited Common Element at a later date by the Declarant. Such additional allocation may be at any time when the Declarant may assign parking spaces for the exclusive use of a Unit, through an amendment to this Declaration requiring only the Declarant's signature. Pursuant to Development Rights reserved in Section 3.3 of this Declaration, such spaces constitute portions of the

Common Elements, which may be allocated as Limited Common Elements through an amendment to Exhibit "C" to the Declaration executed by the Declarant. At any time the Declarant may reallocate parking spaces between Units that the Declarant owns.

- 6.1.4. The boundaries of the Limited Common Elements are defined by the interior surfaces of any walls, floors, ceilings, doors, windows, ground, railings, painted striping, fence, curb or other structure that may support or enclose the same, but shall not include any of the exterior surfaces of the exterior walls of the Building.

6.2. Maintenance and Installation of Limited Common Elements.

- 6.2.1. General Responsibility as Between Owner and Association. Each Owner of a Unit to which any of the above-described Limited Common Elements are appurtenant shall be responsible for cleaning and caring for such Limited Common Elements, and keeping them in slightly condition. Except as provided in Subsection 6.2.2 below, the Board shall have exclusive control of painting, decorating, repairing, replacing and performing necessary periodic maintenance to all Limited Common Elements.
- 6.2.2. Owners' Special Rights and Responsibilities. Any mechanical equipment comprising any heating, ventilating or air conditioning system serving only one Unit but lying outside the boundaries of the Unit, or any other form of equipment installed by or for the Owner of a Unit within the Common Elements and serving only such Unit, shall be maintained, repaired and replaced by the Unit's Owner in a functional, clean and tidy condition.
- 6.2.3. Financial Responsibilities as Between Owner and Association. Maintenance, painting, repair or replacement of the structure and finish of the Limited Common Elements, other than those described in Subsection 6.2.2 above, shall be a Common Expense. Notwithstanding the foregoing, the Board shall recover the costs of repairs to and replacement of the Special Limited Common Elements (described in Article II hereof), through Specially Allocated Assessments levied pursuant to Section 10.7 hereof.

6.3. Reallocation between Units.

A Limited Common Element may be reallocated between Units, but only with the approval of the Board of Directors and by an amendment to the Declaration executed by the Owners of the Units to which the Limited Common Element was and will be allocated, respectively. The Board of Directors shall approve the request of the Owner or Owners under this Subsection within thirty (30) days, unless the proposed reallocation does not comply with the Governing Law or this Declaration. The failure of the Board of Directors to act upon a request within

such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Condominium.

- 6.3.1. Temporary Exchange or Rental of Parking or Storage Spaces. An Owner may rent a Limited Common Element parking space allocated to the Owner's Unit, or exchange such Limited Common Element with another Owner but (a) the affected Unit Owners shall provide Notice to the Board of the rental or exchange, and (b) such rental or exchange shall be terminated automatically and without notice upon the transfer of title of the Unit to which such space or area is allocated in the Governing Documents. For security purposes, no rental of a parking space may be made to a Person who is not an Owner, tenant or other lawful Occupant of a Unit in the Condominium.

6.4. Change in Character.

A Limited Common Element may be (a) created from and reallocated to one or more Units from the General Common Elements, or (b) incorporated into an existing Unit or Units, only on the following conditions. Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including the Owner(s) of the Unit(s) to which the Limited Common Element will be assigned or incorporated, along with that percentage of Eligible Mortgagees specified in Article XV of this Declaration, must agree to reallocate a Common Element as a Limited Common Element or to incorporate a General Common Element or a Limited Common Element into an existing Unit. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and Survey Map.

ARTICLE VII
UNIT OWNERS ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be "Flexspace North Condominium Owners Association." The Association has been incorporated by the Declarant as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of this Declaration.

7.2. Powers & Duties of Association.

- 7.2.1. Duties & Responsibility of Association. The purposes for which the Association was formed are to maintain, repair, replace and manage the Common Elements of the Condominium, to provide necessary insurance coverage, and to enforce provisions of the Governing Documents, so as to protect the safety and well-being of Owners and tenants of the Condominium and preserve the long-term value of the Condominium Property for the benefit of the Unit Owners.

7.2.2. Powers Exercised by Board of Directors. Except for rights of Unit Owners explicitly reserved in the Governing Documents, the Board of Directors shall have the exclusive right and power to govern the Association. Such powers are set forth with particularity in the Bylaws of the Association and, except as otherwise expressly provided herein are not limited in this Declaration.

7.2.3. Power to Assign Future Income. Without limiting the foregoing, the Association also shall have the power to assign its right to future income (including the right to collect and receive Common Expense Assessments), provided that any specific assignment is ratified in advance by the Owners under the following procedures authorized by the Governing Law:

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

(b) In the Notice, the Board must set a date for a Meeting of the Unit Owners, which must not be less than fourteen and no more than sixty days after providing the Notice, to consider ratification of the borrowing.

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

7.2.4. Rights of Association Lenders. A lender who has extended credit to the Association secured by an assignment of income or an encumbrance on the Common Elements may enforce its security agreement in accordance with its terms, subject to the requirements of the Governing Law and other law. A requirement that the Association must deposit its periodic common charges before default with the lender to which the Association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, does not violate the prohibitions on lender approval contained in RCW 64.90.295(1), but lender requirements for deposits of Association income must be consistent with the provisions of RCW 64.90.530(3) and (4).

7.3. Membership in Association.

Membership in the Association is automatically associated with and appurtenant to the ownership of a Unit in the Condominium. Except in the case of a termination of the Condominium, the membership of the Association at all times consists exclusively of all Unit Owners. Rights and privileges of membership are specified in the Bylaws of the Association.

7.4. Voting.

7.4.1. Voting Process. The manner of voting shall be as prescribed in the Bylaws.

7.4.2. Allocated Interests for Voting. The Declarant has allocated to each Unit in the Condominium a vote in the Association which is known as the Unit's Allocated Interest for voting or "vote". The allocation of voting power among the Units has been determined generally on the basis of the size of each Unit (at the ground level) relative to all other Units in the Condominium. Each Unit's Allocated Interest for voting is expressed as a percentage of the total voting power and is stated with particularity on the attached Exhibit "B".

7.5. Bylaws of Association.

Bylaws for the administration of the Association and the Condominium, and for other purposes not inconsistent with this Declaration, have been or will be prepared by the Declarant. The Bylaws may contain supplementary, not inconsistent, provisions regarding the operation of the Condominium administration of the Property. The Bylaws shall establish such provisions for quorum, ordering of meetings, and details regarding the giving of notice as may be required for the proper administration of the Association of the Condominium.

ARTICLE VIII
MANAGEMENT OF CONDOMINIUM ASSOCIATION

8.1. Management by Declarant – Period of Declarant Control.

8.1.1. General Provisions for Declarant Control. Pursuant to Section 3.4 hereof, the Declarant has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known herein as the "Declarant Control Period," which shall not to exceed ten (10) years.

8.1.2. Limitations on Declarant Control. Notwithstanding the period of time specified above, the period of Declarant Control shall terminate no later than the earliest of:

(a) Sixty days after conveyance of one hundred percent (100%) of the Units that may be created to Unit Owners other than the Declarant; or

(b) The day the Declarant, after giving Notice in a Record to Unit Owners, records an amendment to the Declaration voluntarily surrendering all rights to appoint and remove Officers and Board Members. Such Notice may include a requirement that that during the remainder of the Declarant Control Period, specified actions of the Association or Board, as described in a recorded amendment to the Declaration executed by the Declarant, be approved by the Declarant before they become effective.

8.2. Authority of the Board.

8.2.1. General Authority. The Board, for the benefit of the Condominium and the Owners, shall have the authority to manage the project and enforce the provisions of the Governing Documents and Bylaws. The Board has all powers and authority granted to the Association pursuant to this Declaration that are not expressly subject to the approval of Unit Owners.

8.2.2. Common Expenses. The Board shall acquire and shall pay for, as Common Expenses, all goods and services requisite for the proper functioning of the Condominium, including, but not limited to the following items. Common Expenses of the Association include, but are not limited to the following, as and when applicable to the Condominium or its Association:

(a) Common water and sewer, common electrical, common garbage and/or trash collection, common gas, and any other necessary utility service as required for the Common Elements. See Section 10.7 of the Declaration for Specially Allocated Assessment items.

(b) Policies of insurance or bonds required by Article XI.

(c) The services of persons or firms as required to properly manage the affairs of the Condominium to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Elements, whether such personnel are employed directly by the Board or are furnished by a Manager.

(d) The services of attorneys, along with bookkeepers and accountants qualified to maintain Association records in the manner required by the Bylaws, and to perform the independent audit required under the Bylaws.

(e) Painting, maintenance, repair and replacement of the Common Elements, landscaping work, governmentally required inspections or maintenance and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments that the Board is required by law to pay or procure or that in its opinion shall be necessary or proper for the operation of the Condominium, the maintenance, repair or replacement of the Common Elements, or for the enforcement of this Declaration.

(g) Maintenance and repair of any Unit, its Limited Common Elements, other appurtenances and appliances, if such maintenance or repair is reasonably necessary, in the opinion of the Board, to protect the Common Elements or to preserve the appearance and value of the Condominium development, and the Owner of said Unit has failed or refused to perform said maintenance or repair as required by Sections 4.6 and 6.2 of the Declaration, within a reasonable time after written Notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner. The cost of such maintenance or repair shall constitute a Specially Allocated Assessment against the Unit of such Owner, pursuant to Section 10.7 of the Declaration.

8.2.3. Liens or Encumbrances. The Board may also pay any amount necessary to discharge any lien or encumbrance that is claimed to constitute a lien against Common Elements or any portion thereof. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally guilty of willful misconduct or gross negligence and thus liable for the cost of discharging it, and any costs and expenses incurred by the Board by reason of such lien or liens shall constitute Specially Allocated Assessments against the Units responsible, to the extent of their responsibility.

8.2.4. Acquisition of Property. The Board may acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise. Such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct.

8.2.5. No Business Authority. Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

8.3. Right of Entry - Allocation of Responsibility for Damage to Unit upon Entry.

8.3.1. Right of Entry - Notice Generally Required. The Board and its agents or employees may enter any Unit or Limited Common Elements appurtenant thereto when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or elsewhere in this Declaration, or in the event of a *bona fide* emergency. Except in the case

of an emergency related to a violation hereof, or other reason indicated herein, reasonable advance Notice shall be given to the Unit Owner and, if applicable, to any lawful tenant in the Unit. Such entry shall be made with as little inconvenience to the Owner as practicable.

8.3.2. Allocation of Responsibility for Damage to Unit upon Entry. Any damage caused by such entry shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or a tenant of the Unit entered, in which case the cost shall constitute a Specially Allocated Assessment against the Unit entered) or for the purpose of Upkeep to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the Upkeep was necessitated by conditions within the Unit or performed at the request of its Owner or its lawful Occupants, the costs thereof shall constitute a Specially Allocated Assessment against such Unit.

8.3.3. Unit Owner to Afford Access to Association and Other Owner(s). Each Unit Owner shall afford to the Association and, as needed, to other Unit Owner(s), and to their respective agents or employees, access through such Owner's Unit and any appurtenant Limited Common Elements reasonably necessary for the purposes stated hereof, including necessary inspections by the Association, and for repairs to other Units.

8.4. Board as Attorney in Fact.

Each Owner, by the act of becoming an Owner of a Unit, shall be deemed to have irrevocably appointed the Board of Directors as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to deal with the Unit upon damage or destruction, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds.

8.5. Board or Association as Trustee.

With respect to a third person dealing with the Board or the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

8.6 Governmentally Required Maintenance, etc.

Any maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one Owner, shall be the sole and exclusive responsibility of the Association (not the Declarant) and any cost incurred in connection therewith shall be a Common Expense. The Association shall defend, indemnify and hold Declarant harmless from any expense or claim arising from or relating to any Association's breach of this provision; and promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by Declarant as a result of the Declarant performing, or the Association's failure to perform, such work (including any work necessary to obtain a release, or avoid a forfeiture, of any cash deposit or other bond made by Declarant).

In furtherance of the generality of the foregoing paragraph, and not by way of limitation, such work shall include stormwater maintenance as described in the next paragraph as well as any required maintenance related to the landscaping buffer described in Section 16.7 herein.

The Association is responsible for all maintenance and inspections of the stormwater facilities. The Association shall conduct inspections and certify the adequacy of the stormwater facilities, including treatment and conveyance systems as required by the stormwater manual. Should the inspections identify any deficiencies, an engineering professional shall identify measures required to rectify the deficiency in the report to the City of Ferndale. Any required repair, maintenance, or restoration shall be the responsibility of the Association. The inspections and maintenance of the Stormwater Facilities shall be conducted in accordance with the requirements of the Stormwater Operations and Maintenance Manual dated February, 2024 prepared by Freeland & Associates, Inc. ("Stormwater Manual"), a copy of which is attached as Exhibit "D" and is available from the City of Ferndale. As detailed in the Stormwater Manual, there are certain conditions for determining if maintenance actions are required, as identified through inspection. Such maintenance must be conducted by a qualified and licensed maintenance contractor. Any inspection of the stormwater facilities shall be conducted by a qualified and licensed person and the inspection will be as outlined in the Stormwater Manual. All costs associated with the stormwater facilities maintenance will be the responsibility of the Association as a Common Expense. The Association shall cooperate in transferring any and all obligations related to stormwater to the Association as needed.

ARTICLE IX
PERMITTED USES

9.1. Permitted Uses.

9.1.1. Use of Units. The Units and Common Elements may be used only for storage purposes and ancillary activities, provided, office uses, and/or other lawful light commercial uses and purposes may be permitted as long as all such use or purposes are consistent with the City of Ferndale zoning code and building codes as well as all other applicable laws, ordinances and regulations of any governmental authority with jurisdiction. In addition, any office uses and light commercial uses must be approved by the Board, taking into consideration whether reasonable and appropriate insurance protecting the Association may be obtained.

9.1.2. Residential Use. No residential purposes (as defined in RCW 64.90.010(b)(8)) or uses residential in nature of any sort are permitted on the Property. Residential purposes or uses is intended to be construed broadly and includes any overnight occupancy of any type. The City of Ferndale does not allow overnight use of the Units. The Board may adopt additional Rules to enforce this policy, including fines. The Board may, at any time, inspect Units to see if appurtenances and other items in the Unit are what typically exist in a dwelling type situation, including but not limited to bedrooms, sleeping furniture, cooking facilities, and other items. Based on the City policy the Board may take an aggressive approach on enforcement and the Board may take enforcement action if there is enough evidence that there is an appearance overnight occupancy in any Unit. The burden is on the Unit Owner to prove that they are not occupying the Unit on an overnight basis.

9.1.3. Vehicle Parking and Operation. Except as elsewhere provided in this Declaration, parking spaces are restricted to use for parking of operable, properly licensed automobiles, motorcycles, light trucks and family vans; other items and equipment may be parked or kept therein only if expressly permitted by Rules and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. No vehicle shall be parked in an area not specifically designated for parking in the Governing Documents, or in a space that is too small for the vehicle. Vehicles shall be operated in a safe and responsible manner while on the Property. The Board may require removal of any inoperative or unregistered vehicle, and any other equipment or item improperly stored in parking spaces. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by Rules adopted by the Board. Any designated visitors parking areas shall be left open for use by visitors, guests, invitees and licensees of Unit Owners and their tenants; visitors' spaces are intended to be used by visitors and shall not be used for parking or storage of vehicles owned by Owners and/or

other Occupants of Units. Unit Owners, tenants and guests may park operative automobiles directly outside of their Unit as long as someone is present within their Unit who may move the vehicle if necessary. Storage of personal vehicles or other items and equipment (such as boats, trailers, campers, or recreational vehicles) within the Condominium property is prohibited, except for the interiors of the Units. A motor vehicle is stored when it is parked at any location within the Condominium, outside the boundaries of a Unit, for more than two (2) consecutive hours, unless it's parked directly in front of that Owner's Unit, for allowed Unit uses, and in a manner that does not otherwise encumber or limit other Unit Owner's access to their respective Unit and to general ingress and egress to the Property. The Board may adopt Rules governing other aspects of vehicle use within the Common Elements of the Condominium.

9.1.4. Exterior Appearance. To preserve a uniform exterior appearance of the Building(s), the Board shall provide for the maintenance of the exterior of the Building(s) and the Common Elements and Limited Common Elements visible to the public, including the providing of the painting and other decorative finish of the Building(s) or other Common Elements or Limited Common Elements. No Owner may modify or decorate the exterior of the Building or the exterior doors of any Unit without the prior written consent of the Board. This power of the Association extends to doors and other visible portions of each Unit.

9.1.5. Offensive Activity. No noxious, offensive, smelly, excessively noisy, excessive vibration or illegal activity shall be carried on in any Unit or the Common Elements, nor shall anything be done therein which is or may become a nuisance or an unreasonable source of annoyance to other Unit Owners or other lawful occupants of the Condominium, nor shall any activity which may in any way create a nuisance or public health or safety hazard, or obstruct or interfere with the rights of other Owners or occupants of the Condominium, or which could interfere with or prevent the normal operation, maintenance, use, enjoyment, alteration or further development of the Property. Construction, remodeling and maintenance of a Unit shall not be deemed to be vibration, noise or odor inconsistent with the limitations of this subsection.

9.1.6. Hazardous Substances.

9.1.6.1. Generally. The Owner of each Unit shall not permit any hazardous substance to be generated, processed, stored, transported, handled or disposed of on, under, in or through the Owner's Unit or the Property except in compliance with any applicable law, order, ordinance, or regulation, and each Owner shall indemnify, defend, and hold harmless the other Owner or Owners and the Association from all fines, suits, procedures, claims and Actions of any kind

arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the Property by the Owner or the tenants or invitees of the Unit. As used here, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste or material which now or hereafter is designated a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. s 9601, et seq.), or under any local or state rule or regulation, without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior, abnormalities, cancer and/or genetic abnormalities.

- 9.1.6.2. Compliance with Environment Laws. Use of the Units and Common Elements of this Condominium is subject to various federal, state and local laws, regulations and guidelines non-effect and/or hereafter enacted, relating to or affecting the Property, concerning the impact on the environment of construction, land use, and maintenance in operation of structures and the conduct of business. No Unit Owner shall cause, or permit to be caused any act or practice by negligence, or omission, or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of the said laws, regulations or guidelines. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of the expense.
- 9.1.6.3. Inspections. The Association shall have the right but not obligation to enter any Unit and its Limited Common Elements at any reasonable time in order to inspect for compliance with environmental laws or laws relating to hazardous substances.
- 9.1.6.4. Duty to Clean Up. In the event of a spill or release of any hazardous substance within or from the Property, the person(s) causing or otherwise responsible for such spill or release shall promptly undertake thorough clean up measures and provide

notice to the Association, and to any governmental entity with appropriate jurisdiction, of the occurrence of the spill or release, and of the measures taken for clean up and remediation.

- 9.1.7. Trash. All trash, trash collection and trash removal from a Unit shall be the responsibility of the Unit Owner, and no trash shall be permitted to be stored inside or outside of the Unit(s). All other trash produced by the Unit Owners from permitted uses within the Units, shall be promptly removed by the Unit Owners to an offsite location. The Declarant or Board may create an area where a trash receptacle may go in the future.
- 9.1.8. Commit No Waste. No Owner of a Unit shall commit or permit waste of such Unit and/or of the Common Elements; and the liability in the event of such occurring shall be at the sole cost and expense of the responsible Unit Owner. This Section shall not be construed to permit any interference with or damage to the structural integrity of a Building or interference with the use and enjoyment of others of the Common Elements and/or other Units, nor shall be construed to limit the powers or obligations of the Association.
- 9.1.9. Fire Hazards. No Owner may make any alteration to its Unit or permit any use to be made of its Unit that would unreasonably increase the risk of fire within the Condominium. The Association shall have the right but not obligation to enter any Unit and its Limited Common Elements at any time in order to inspect for fire hazards or compliance with fire codes.
- 9.1.10. Signs. All signage is subject to Association approval.
- 9.1.11. Limitations on Storage. The Units are restricted to storage of items that pose no unreasonable health, safety, or fire risks to persons or property. No munitions or explosives may be stored within the Condominium Property. No person may store goods or materials that are unlawful to own or possess.
- 9.1.12. Effect on Insurance. The Owner of each Unit shall not use nor occupy the Unit nor do or permit anything to be done thereon in any manner which shall make it impossible for the Association to carry any insurance required or reasonably deemed necessary, or which will invalidate or unreasonably increase the cost thereof or which will cause structural injury to the Buildings, or which will constitute a public or private nuisance or which will violate any laws, regulations, ordinances or requirements of the federal, state or local governments or any other governmental authorities having jurisdiction over the Condominium. The Board may inspect Units to determine if anything is in the Unit or if it is being used in a way that it will effect insurance.

- 9.1.13. Rules. The Board is empowered to pass, amend and revoke Rules necessary or convenient from time to time to insure compliance with the general guidelines of this Article and the other provisions of this Declaration.

ARTICLE X
COMMON EXPENSES AND ASSESSMENTS

10.1. Budget for the Common Expenses.

Within thirty (30) days following the annual meeting of the Association, or at such other time as may be deemed necessary or desirable by the Board or the Association's accountant, the Board shall prepare an annual budget which shall estimate the Common Expenses to be paid during such year. The budget may make provisions for creating, funding, and maintaining reserves discussed in Section 10.3 hereof, and shall take into account any expected income and any surplus available within the prior year's operating fund. The Declarant or the Board may at any suitable time establish the first such estimate. If deemed necessary by the Board, any annual budget may be revised prior to the end of its budget year, subject to the provisions of Section 10.2 hereof.

10.2. Meeting of Association to Ratify Budget.

Within thirty (30) days after adoption of any proposed Budget for the Condominium, the Board must provide a copy of the budget to all the Unit Owners and set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen nor more than fifty (50) days after providing the budget. Unless at that meeting the Unit Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget and the Assessments against the Units included in the budget are ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required Notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

10.3. Reserves for Capital Improvements, Replacements, Major Repairs, and Insurance Deductibles.

The Board of Directors should establish and maintain reasonable Reserves for major repairs and/or replacement of components of the project that are the responsibility of the Association, along with the amount of any insurance deductible(s), by providing for such Reserves in the annual budget, segregating such Reserves on the books of the Condominium. The Board may also establish and maintain Reserve funds for operations and for capital improvements and such other purposes as may appear advisable from time to time. The portion of the Units' Assessments paid into such Reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Unit Owners.

10.4. Assessments against Units.

- 10.4.1. Liability of Units. Assessments for General Common Expenses and those Specially Allocated Expenses that are subject to inclusion in a budget must be made at least annually based on a budget adopted in the manner described in Sections 10.1 and 10.2 hereof.
- 10.4.2. Assessments in Proportion to Common Expense Liability. All General Common Expenses must be assessed against all the Units in accordance with their Allocated Interests for Common Expense Liabilities described in Section 10.5 hereof.
- 10.4.3. Payable in Installments. Unless otherwise determined by the Board, the annual Assessment against each Unit for its proportionate share of the Common Expenses shall be payable in twelve (12) equal, monthly installments, and each installment shall be payable in advance by the first day of the month.

10.5. Allocated Interests for Common Expense Liability.

Pursuant to RCW 64.90.235(1)(a), the Declarant has allocated to each Unit in the Condominium a liability for payment of the Common Expenses of the Association that is known as the Unit's Allocated Interest for Common Expense Liability. This liability has been allocated among the Units generally in proportion to the size of each Unit relative to all other Units in the Condominium. Each Unit's Allocated Interest for Common Expense Liability is expressed as a percentage and is stated with particularity on the attached Exhibit "B."

10.6. Special Assessments.

The Board at any time may propose a Special Assessment. The Assessment is effective only if the Board follows the procedures for ratification of a Budget described in Sections 10.1 and 10.2 hereof and the Unit Owners do not reject the proposed Assessment. The Board may provide that the Special Assessment may be due and payable in installments over any period it determines and may provide a discount for early payment. All Unit Owners shall be obligated to pay the adjusted monthly amount or, if the Special Assessment is not payable in installments, the full amount of such Special Assessment, in proportion to their Allocated Interests for Common Expense Liability. See also Section 11.9 governing Special Assessments that may be required in conjunction with major damage repairs.

10.7. Specially Allocated Assessments.

- 10.7.1. Expenses Subject to Inclusion in Budget. The items included below in this Subsection constitute Specially Allocated Expenses that are subject to inclusion in the Association's Annual Budget:

(a) Any expense associated with the operation, maintenance, repair, or replacement of a Special Limited Common Element shall constitute a Specially Allocated Assessment against the Unit to which such facility is allocated.

(b) If one or more Units or the Common Elements are not separately metered, the utility service shall be paid as a Common Expense, and the Board may either allocate, by reasonable formula, a portion of such expense to each such Unit as a Limited Common Expense, or reimburse any Unit Owner who pays, in whole or in part for utilities serving the Common Elements or other Units, as appropriate.

(c) The Association may require that any utility costs or similar charges (including water and sewer) that vary among the Units based upon usage or other factors, and that justify differential assessment levels, may be assessed differentially among Units. For example, there is one water line and sewer service into the project. The Association may allocate the cost of such service in an equitable manner, including based on fixture and/or appliance account and/or use of Unit, etc.

10.8. Accounts; Commingling Prohibited.

The Association must keep all funds of the Association in the name of the Association with a financial institution. The funds must not be commingled with the funds of any other association or with the funds of any Managing Agent of the Association or any other Person, or be kept in any trust account or custodial account in the name of any trustee or custodian.

10.9. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of Reserves must either be paid annually to the Unit Owners in proportion to their Common Expense Liabilities or credited to them to reduce their future Common Expense Assessments, at the Board's discretion.

10.10. Liability of Unit Owners for Association Obligations.

10.10.1. General Liability Principles. A Unit Owner is not liable, solely by reason of being a Unit Owner, for an injury or damage arising out of the condition or use of the Common Elements. Neither the association nor any Unit Owner except the Declarant is liable for that Declarant's torts in connection with any part of the Condominium which that Declarant must maintain. An action alleging a wrong done by the Association, including an action arising out of the condition or use of the Common Elements, may be maintained only against the Association and not against any Unit Owner.

10.10.2. Proportionate Liability for Liens. A judgment for money against the Association perfected under RCW 4.64.020 is not a lien on the Common Elements, but is a lien in favor of the judgment lienholder against all of the other real estate of the Association and all of the Units in the Condominium at the time the judgment was entered. Other property of a Unit Owner is not subject to the claims of creditors of the Association. Whether perfected before or after the creation of the Condominium, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the Condominium, becomes effective against two or more Units, the Unit Owner of an affected Unit may pay to the lienholder the amount of the lien attributable to the Unit, and the lienholder, upon receipt of payment, must promptly deliver a release of the lien covering that Unit. The amount of the payment must be proportionate to the ratio that the Unit Owner's Common Expense liability bears to the Common Expense liabilities of all Unit Owners that are subject to the lien. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expenses incurred in connection with that lien.

10.11. Assessments to Pay Judgment against Association.

Assessments to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered in proportion to their Allocated Interests for Common Expense liability at the time the judgment was entered.

10.12. Owners Personally Liable for Common Expenses.

10.12.1. Owners Jointly & Severally Liable for Assessments. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

10.12.2. Suit against Unit Owner Authorized. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

10.12.3. Association's Failure to Adopt Budget Does not Release Owners. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his or her allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget, each Unit Owner shall continue to pay (with or

without Notice) a monthly Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and Notice thereof has been sent to the Unit Owner.

10.12.4. Late Fees Authorized. The Association may from time to time establish reasonable late charges and a rate of interest to be charged, not to exceed the maximum rate calculated under RCW 19.52.020, on all subsequent delinquent Assessments or installments of Assessments. If the Association does not establish such a rate, delinquent Assessments bear interest from the date of delinquency at the maximum rate calculated under RCW 19.52.020 on the date on which the Assessments became delinquent.

10.12.5. No Waiver or Exemption of Liability for Assessments. No Unit Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of his or her Unit or otherwise.

10.13. Liability Following Conveyance of Unit.

10.13.1. Liability of Unit Owner following Sale of Unit. In a voluntary conveyance other than by foreclosure, the grantee of a Unit is jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

10.13.2. Liability of Mortgagee or other Purchaser following Foreclosure or Sale. Except as provided in Subsection 10.17.2 hereof, the holder of a mortgage or other purchaser of a Unit who obtains the right of possession of the Unit through foreclosure is not liable for Assessments or installments of Assessments that became due prior to such right of possession. Such unpaid Assessments are deemed to be Common Expenses collectible from all the Unit Owners, including such mortgagee or other purchaser of the Unit. Foreclosure of a mortgage does not relieve the prior Unit Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this Subsection.as provided above.

10.14. Statement of Unpaid Assessments.

10.14.1. Board Required to Deliver Statement of Unpaid Assessments. The Board, upon written request, shall furnish to a Unit Owner or a mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The

statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner, unless and to the extent known by the recipient to be false.

10.14.2. Unit Owners Deemed to Consent to Notice to Lender. Every Unit Owner, by virtue of taking title to a Unit in this Condominium, shall be deemed for all purposes to have consented in advance to the Association furnishing a statement of unpaid Assessments to a mortgagee holding a security interest in the Unit Owner's Unit – no additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a statement under circumstances that require such a delivery.

10.15. Lien for Assessments and Power of Sale.

10.15.1. The Association has a lien on each Unit for any unpaid Assessment against the Unit from the time such Assessment is due. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the date the first installment thereof is due.

10.15.2. Each and every Unit Owner of any Unit in the Condominium, by virtue of his or her acquisition by any means of title to such Unit, shall take such title subject to the Association's lien for Assessments. The Declarant as "Grantor" does hereby grant, bargain, sell and convey to Whatcom Land Title Co., as "Trustee" in trust WITH POWER OF SALE, the Units and all other real property in the Condominium described in Exhibit "A" Section 1 to this Declaration, which property is not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues and profits thereof, to secure the obligations of the Unit Owners to the Association, as "Beneficiary," for the payment of any Assessments lawfully levied under this Declaration. Each and every Unit Owner shall be deemed for all purposes, as of the time of his or her acquisition of title to any Unit in the Condominium, to have joined as an additional "Grantor" in the conveyance in trust above described, and to have at that time granted, bargained, sold and conveyed his or her Unit, along with its undivided Allocated Interest in the Common Elements and any Limited Common Elements assigned thereto, to such Trustee, to secure all obligations imposed by this Declaration on such Unit Owner to pay Assessments to the Association. The Power of Sale provided and granted herein shall be operative in the case of a default in the obligation to pay Assessments; upon default by such Unit Owner in the payment of any indebtedness secured hereby, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, the

Trustee shall sell the Unit as trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any Person except Trustee may bid at Trustee's sale. The Trustee shall apply the proceeds of the sale as follows: (1) to the expenses of sale, including a reasonable trustee's fee and attorney's fee; (2) to the obligations secured by this Declaration; (3) the surplus, if any, shall be distributed to the Persons entitled thereto.

10.16. Automatic Perfection of Lien.

Recording of this Declaration constitutes record notice and perfection of the Association's lien. Further notice or recordation of any claim of lien for Assessments is not required, but is not prohibited. The Board may thus record a Notice of Claim of Lien for delinquent Assessments in the real property records of any county in which the Condominium is located.

10.17. Priority of Lien.

10.17.1. General Lien Priority. The Association's lien shall be prior to all other liens and encumbrances on a Unit except: (a) Liens and encumbrances recorded before the recordation of this Declaration; (b) Except as otherwise provided in Subsection 10.17.2 below, a security interest on the Unit recorded before the date on which the unpaid Assessment became due; and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

10.17.2. Association's Super-priority Lien for Assessments. Except as provided in Subsection 10.17.2 hereof, The Association's lien also has priority over the security interests described in Subsection 10.17.1(b) above, to the extent of an amount equal to the following:

(a) The Common Expense Assessments, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to Sections 10.1 and 10.2 hereof, along with any Specially Allocated Assessments that are properly assessable against the Unit under such periodic Budget, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the Association's lien or a security interest described in Subsection 10.17.1(b) hereof;

(b) The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the Notice described in Subsection 10.17.2(c) hereof;

(c) The priority amounts described in Subsection 10.17.2 shall be prior only to the security interest of the holder of a security interest on the Unit recorded before the date on which the unpaid Assessment became due **and**

only if the Association has given that holder not less than sixty days' prior written Notice that the Owner of the Unit is in default in payment of an Assessment. The Notice shall contain:

- (A) Name of the borrower;
- (B) Recording date of the trust deed or mortgage;
- (C) Recording information;
- (D) Name of condominium, Unit Owner, and Unit designation stated in the Declaration or amendment thereto;
- (E) Amount of unpaid Assessment; and
- (F) A statement that failure to, within sixty days of the written Notice, submit to the Association payment of six months of Assessments as described in Subsection 10.17.2(a) hereof will result in the priority of the amounts described in Subsection 10.17.2(b).

(d) Upon payment of the amounts described in Subsection 10.17.2(a) by the holder of a Security Interest, the Association's lien described in Subsection 10.17.2 shall be thereafter fully subordinated to the lien of such holder's Security Interest on the Unit.

(e) The Notice described in Subsection 10.17.2(c) hereof shall be mailed by ordinary mail to the holder of the security interest on the Unit at an address for Notice provided to the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, either for the purpose of becoming an Eligible Mortgagee, or for the purposes of receiving the Notice required under Subsection 10.17.2(c) above or otherwise, then consistent with the provisions of RCW 64.90.285(9), the Association must provide Notice to the address appearing in the security interest of record which Notice shall be deemed for all purposes to satisfy the Notice requirements of RCW 64.90.485(3)(a)(iii).

(f) Every Unit Owner, by virtue of taking title to a Unit in this Condominium, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in Subsection 10.17.2(c) hereof to a mortgagee under the circumstances that require such a delivery. No additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a Notice.

10.17.3. Special Definitions Relating to Association's Lien Rights. For the purposes of this Section 10.17:

(a) "Institution of proceedings" means either:

(i) The date of recording of a notice of trustee's sale by a deed of trust beneficiary;

(ii) The date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the Association or by the holder of a recorded security interest; or

(iii) The date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract.

(b) "Capital improvements" does not include making, in the ordinary course of management, repairs to Common Elements or replacements of the Common Elements with substantially similar items, subject to: (i) Availability of materials and products, (ii) prevailing law, or (iii) sound engineering and construction standards then prevailing.

10.17.4. Amendments to Budgets to include Improper Amounts are Prohibited.

The adoption of a periodic Budget that purports to allocate to a Unit any fines, late charges, interest, attorneys' fees and costs incurred for services unrelated to the foreclosure of the Association's lien, other collection charges, or Specially Allocated Assessments assessed under Subsection 10.7 hereof does not cause any such items to be included in the priority amount affecting such Unit.

10.17.5. Mechanic's Liens. This Section 10.17 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

10.18. Enforcement of Association's Lien.

10.18.1. Judicial Foreclosure Proceedings Authorized. The Association's lien may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW, subject to any rights of redemption under chapter 6.23 RCW.

10.18.2. Nonjudicial Foreclosure Proceedings Authorized. The Association's lien also may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. 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. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.18.3. Limitations Associated with Nonjudicial Foreclosures. If the Association forecloses its lien nonjudicially pursuant to Chapter 61.24 RCW, the Association shall not be entitled to the lien priority provided for under Subsection 10.17 hereof, and is subject to the limitations on deficiency judgments provided in chapter 61.24 RCW.

10.18.4. Additional Remedies for Nonpayment of Assessments. This Section 10.18 does not prohibit actions against Unit Owners to recover sums for which Section 10.15 hereof creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

10.18.5. Restrictions on Commencement of Foreclosure Proceedings. The Association may not commence an action to foreclose a lien on a Unit unless:

(a) The Unit Owner, at the time the action is commenced, owes a sum equal to at least three months of Common Expense Assessments; and

(b) The Board approves commencement of a foreclosure action specifically against that Unit.

10.18.6. Six Year Statute of Limitation on All Enforcement Proceedings. The Association's lien for unpaid Assessments and the personal liability a Unit Owner for payment of those Assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the full amount of the Assessments sought to be recovered becomes due.

10.19. Rent Subject to Lien for Assessments - Other Remedies for Nonpayment.

10.19.1. Rent Payable to Association Upon Default of Owner. (a) If a Unit is rented or leased by its Owner, and if the Owner becomes delinquent in the payment of Assessments for more than thirty (30) days, the Association may collect the delinquent amount from the tenant, who shall pay over to the Association so much of the rent for such Unit as is required to pay such delinquency, plus interest, attorneys' fees and other costs of collection. In order to avail itself of the remedy contained in this Subsection, the Association shall first send a Notice jointly to the Owner and the tenant by First Class U.S. Mail, advising both parties [i] of the Owner's delinquency in Assessments, [ii] of the tenant's obligations under this Subsection of the Declaration, and [iii] notifying both parties

that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying rent to the Association until the delinquency has been cured. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Unit Owner and the Unit Owner's obligation to pay Assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents, as provided immediately below in Subsection 10.19.2 and (b) **Every Unit Owner, by virtue of taking title to a Unit in this Condominium and subsequently renting the Unit, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in this Subsection 10.19.1 to a tenant of the Owner under circumstances that authorize such a delivery. No additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a Notice.**

- 10.19.2. Association Entitled to Appointment of Receiver During Foreclosure. In an action by the Association to collect Assessments or to foreclose a lien on a Unit that is not occupied by the Owner thereof, the Court may appoint a receiver to collect all sums alleged to be due and owing to the Unit Owner before commencement or during pendency of the action. The receivership is governed under chapter 7.60 RCW. During pendency of the action, the Court may order the receiver to pay sums held by the receiver to the Association for any Assessments against the Unit. The exercise of rights under this Subsection by the Association does not affect the priority of preexisting liens on the Unit.

10.20. Remedies Cumulative.

The remedies provided herein are cumulative and the Board may pursue them concurrently, along with any other remedies that may be available under the law although not expressed herein. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

ARTICLE XI
INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION

11.1. Authority, General Provisions, Name of Insured.

- 11.1.1. General Provisions. Commencing not later than the time of the first conveyance of a Unit to a Person other than the Declarant, the Board of Directors shall obtain and maintain for the Association: property insurance, commercial general liability insurance, fidelity insurance and other insurance described in greater detail below in this Section 11, under such terms and for such amounts as shall be deemed necessary or desirable

by the Board. Levels of coverage and deductibles from coverage shall be determined annually by the Board with assistance from the agent of the insurance company or companies affording such coverage. Unless not reasonably available, such coverage shall follow the terms, conditions and amounts required by Section 11.2 hereof.

11.1.2. Name of Insured - Certain Insuring Arrangements Prohibited. The name of the insured under each required policy shall be stated as follows: "Flexspace North Condominium Owners Association." The Association must be the first named insured under each policy.

11.1.3. General Insuring Scheme - Association Coverage. The Association will acquire a "Master Policy" of property insurance that covers the Units and the Common Elements of the Condominium to standards specified with greater particularity in Section 11.2. The Association will also acquire commercial general liability insurance, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

11.1.4. General Insuring Scheme - Limited Coverage for Owners and Tenants. The Association is not a guarantor of the health, safety or property of the Unit Owners or tenants of the Condominium. See Section 14.1 hereof for further details. The Association's Master Policy does not and cannot provide coverage for personal property belonging to any Unit Owner, tenant or other tenants of a Unit, nor does the Master Policy provide coverage for liability for harm arising within a Unit. While the property coverage provided under the Master Policy will generally provide coverage for loss or damage to the Units, the Master Policy will always include a "deductible," with the result that no loss to a Unit will be completely covered under the Master Policy.

11.2. Coverage under Master Policy of Insurance.

11.2.1. Coverage.

The insurable improvements within the Condominium shall be insured under one or more policies of commercial project insurance, against casualty loss or physical damage in an amount equal to at least the cost of replacing the "vanilla shell" of the Building(s) created by the Declarant, subject to reasonable "deductible" limits. The Master Policy obtained by the Association thus will cover only the Building(s) and their basic mechanical equipment. This coverage need not insure the Unit's interior "tenant improvements" above and beyond the "vanilla shell" created by the Declarant, nor any personal property belonging to a Unit Owner nor any improvements or betterments to a Unit made by the Unit Owner, nor any interior furnishings or trade fixtures used in the Owner's business. The coverage will also be exclusive of land,

excavations and foundations, utilizing contemporary building materials and technology. Level(s) of coverage shall be determined annually by the Board of Directors with assistance of the agent of the insurance company affording such coverage. Such coverage shall afford the following protection:

- (a) against loss or damage by fire, vandalism, malicious mischief, wind storm, and other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Condominium Units during any period of repair or reconstruction; and such other perils customarily covered by insurance for similar condominium projects. Such coverage shall insure all Building(s) and other Common and Limited Common Elements that are normally included in commercial coverage. The policy may also but need not cover other insurable improvement within the Units, including separate ventilating, heating and other equipment, but not including the fixtures, furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall also cover other Condominium property including fixtures, building service equipment and common personal property and supplies owned by the Association or included in the Common Elements. The policy also should include:
 - (i) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance); or
 - (ii) a Replacement Cost Endorsement (under which the insurer agrees to pay up to 100% of the Property's insurable replacement cost, but no more) and, if title policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance).
- (b) the following Special Endorsements, or their functional equivalent:
 - (i) an Inflation Guard Endorsement, when it can be obtained;
 - (ii) Building Ordinance or Law Endorsement, if the enforcement of any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction.); and
 - (iii) Steam Boiler and Machinery Coverage Endorsement, if the project has central heating or cooling. (This endorsement should provide

for the insurer's minimum liability per accident to at least equal the lesser of \$2 million or the insurable value of the buildings housing the boiler or machinery.) In lieu of obtaining this as an endorsement to the commercial package for the project, the Association may purchase separate stand-alone boiler and machinery coverage.

(c) Liability for death, personal injury and property damage arising from the use, ownership or maintenance of any of the Common Elements. The insurance should also cover any commercial spaces that are owned by the Association, even if they are leased to others. Coverage should be afforded under a commercial general liability policy for the entire project, including all areas under the supervision of the Association. Limits of liability shall in no event be less than \$1,000,000 with respect to any single occurrence; and

(d) medical payments coverage, in such amounts as are customarily provided in such policies.

11.2.2. Flood and Earthquake Insurance.

If desirable and reasonably available, flood and/or earthquake insurance may be obtained. Funds to cover any deductible applying to such coverage should be included in the Association's operating reserve account, as provided in Section 11.2.

11.2.3. Directors' and Officers' Insurance.

If desirable and reasonably available, the Board may acquire Directors' and Officers' errors and omissions insurance to satisfy the Association's indemnification responsibilities under Section 14.2 of this Declaration.

11.2.4. Fidelity Insurance, Manager Coverage & Other Insurance.

The Association shall obtain blanket fidelity insurance for any person who either handles (or is responsible for) funds that he or she holds or administers, whether or not that individual receives compensation for services. The policy shall name the Association as the insured and must include a provision that calls for ten days' written notice to the Association and all Eligible Mortgagees before the policy can be canceled or substantially modified for any reason, in the manner provided in Section 15.2 hereof. The policy should cover the maximum funds that will begin the custody of the Association's Manager at any time while the policy is in force. A Manager that handles funds for the Association may be named as an additional insured under the Association's policy, or covered by its own fidelity insurance policy, which should provide the same coverage required of the Association. The Board may also acquire such additional insurance coverage as it may deem advisable and appropriate or as may be requested from time to time by a vote of the Unit Owners.

11.2.5. General Policy Provisions and Limitations.

Insurance obtained pursuant to the requirements of this Article XI shall be subject to the following provisions:

- (a) Each policy shall be written with a company or companies which are licensed to do business in the State of Washington and which hold a B general policyholder's rating or a financial performance index of 6 or better in the latest edition of Best's Key Rating Guide, or an A or better rating from Demotech, Inc.
- (b) The Master Policy will be primary, and no insurance coverage obtained and maintained pursuant to the requirements of this Article XI shall be brought into contribution with insurance purchased individually by any of the Unit Owners or their Mortgagees, as herein permitted, and any "no other insurance" or similar clause in any policy obtained by the Board of Directors pursuant to the requirements of this Section shall exclude such policies from consideration.
- (c) Each policy shall provide that it may not be canceled, substantially modified or reduced without at least 30 days' prior written notice to all insureds named thereon, including all named Mortgagees.

11.2.6. Deductible.

- 11.2.6.1. General Provisions. Except as provided herein, the amount of the deductible under the Association's master property policy shall be paid by the Association as a Common Expense. Funds to cover the amount of the deductible (excluding policies for earthquake, flood or similar losses that have higher than standard deductibles) should be included in the Association's Reserve Accounts.
- 11.2.6.2. Owner Responsible for Underinsured Amounts. In the event of loss or damage to a Unit that would be covered by the Association's property insurance policy (excluding policies for earthquake, flood or similar losses that have higher than standard deductibles) but that is within the deductible under that policy, the Owner of the Unit shall be held responsible on a no-fault basis for the amount of the loss up to the amount of the Association's deductible; this provision is designed to capture proceeds of insurance acquired by Unit Owners described in Section 11.4 hereof. In cases where loss or damage affects more than one Unit, or a Unit and the Common Elements, responsibility for the uninsured amount shall be prorated among the affected parties, including the Association, in

proportion to the relative costs of repairing the quantum of damage suffered by each party. See Section 11.5 for further details. Nothing in this Subsection shall be deemed to prevent a Unit Owner from asserting a claim against another Person for the amount recoverable by the Association under this Subsection if that other Person would be liable for such damages under general principles of law. Notwithstanding the above, if the Association is required to pay any other uninsured or under-insured amount because of the gross negligence or willful misconduct of an Owner or that Owner's tenant, or the family, servants, employees, agents, visitors, or licensees of that Owner, then as provided in Sections 13.2 and 10.7 hereof, the amount paid by the Association shall constitute a Specially Allocated Assessment against the Unit responsible for the damage, following notice and opportunity to be heard as provided in the Bylaws.

11.3. Certificates of Insurance Coverage.

An insurer that has issued an insurance policy to the Association must issue certificates or memoranda of insurance to the Association and, upon a request made in a Record, to any Unit Owner or holder of a security interest. 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 nonrenewal of contracts of insurance. The insurer may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy without complying with this Section 11.4.

11.4. Owners' Policies.

Each Unit Owner should obtain, at such Owner's expense, an insurance policy to insure against loss or damage to the upgrades, improvements, replacements to the Unit not covered by the Association's Master Policy, or the personal property used in or are incidental to the occupancy of the Unit, vandalism or malicious mischief, theft, personal liability, loss assessment coverage, and the like. The Association has no insurable interest in such matters and is under no obligation to require such insurance for the benefit of the Unit Owners. Each Unit Owner shall be required to obtain and maintain Condominium Unit Owners insurance for the Owner's Unit, at such Owner's expense, including insurance policy to insure against loss or damage to the mezzanines, upgrades, improvements, replacements to the Unit not covered by the Associations master policy or the personal property used in or are incidental to the occupancy of the Unit, vandalism, or malicious mischief, theft, personal liability, loss assessment coverage, and the like. The Association has no insurable interest in such matters and is under no obligation to require such insurance for the benefit of the Unit Owners. The Board may establish, in the Rules, the minimum coverage for such Owner's insurance. The Association shall have the right but not he obligation to monitor the maintenance of such insurance by Unit Owners and shall have the right, but no the obligation, to obtain such

insurance for the Unit Owner if the Owner fails to obtain or maintain and specially assess the cost to the Unit Owner. Each purchaser of a Unit shall deliver to the Association at Closing a Certificate of Insurance or other proof that such insurance has been obtained, if required by the Association.

11.5. Unavailability, Cancellation or Nonrenewal.

If the insurance described in Section 11.2 hereof is not reasonably available, or is modified, canceled or not renewed, the Board promptly shall cause Notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Unit Owners, to each Eligible Mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

11.6. Adjustment and Payment of Loss Proceeds.

All policies shall provide that adjustment of loss shall be made by the Board of Directors, and that proceeds payable pursuant to the policies shall be paid directly to the Board of Directors as Insurance Trustee, and not to any holder of a security interest. The Board shall hold such proceeds in trust for the Unit Owners and lienholders as their interests may appear.

(a) Proceeds are to be paid first for the repair or replacement of the damaged property, and neither the Association, the Unit Owners, nor lienholders are entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced, or the Condominium is terminated.

(b) If, pursuant to the provisions of Section 11.7 hereof, not all of the damaged or destroyed portions of the Condominium are to be repaired or replaced, insurance proceeds shall be payable as provided in that Section.

11.7. Reconstruction Following Casualty Loss.

11.7.1. Duty to Reconstruct.

Any portion of the Condominium for which insurance is required under this Section and for which the Board of Directors has the responsibility of repair that is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, along with that percentage of Eligible Mortgagees whose approval must be sought under Article 15 hereof, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and Reserves shall be a Common Expense.

11.7.2. Decision Not To Reconstruct.

In most instances, the Association will not hesitate to repair or replace damaged portions of the Condominium following casualty. In the event that the Owners at a Special Meeting of the Association convened to address such issues decide otherwise and adopt a resolution in accordance with the provisions of Section 11.7.1 hereof that some or all of the damaged or destroyed portions of the Condominium will not be repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien-holders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lien-holders, as their interest may appear, in proportion to the Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under RCW 64.90.030, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this Subsection, RCW 64.90.290 governs the distribution of insurance proceeds if the Condominium is terminated.

11.7.3. Manner of Reconstruction.

If destroyed or damaged property is to be reconstructed or repaired, the reconstruction or repair thereof shall be accomplished as nearly as practicable to the character of the Building or improvement existing immediately prior to such casualty. Any reconstruction or repair should be done in accordance with then prevailing building code requirements and may be done with contemporary building materials, and achieved by utilizing updated construction systems and technology.

11.7.4. Payment of and Procedure for Reconstruction.

The proceeds of insurance collected on account of casualty, any payments from or on behalf of Unit Owners pursuant to Section 11.2.6.2 of this Declaration on account of such casualty, and funds in the Association's Reserve Account, shall constitute a construction fund that shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

- (a) If the damages exist only to parts of a Unit for which the responsibility of maintenance and repair is borne by the Unit Owner, then the Board of Directors and the Owner may agree in advance in writing that the Owner shall be solely responsible for reconstruction and repair after casualty and shall be entitled, with the assistance of the Board of Directors, to apply for and use any applicable insurance proceeds; the deductible under the Master Policy shall be apportioned under Section 11.3.2 of the Declaration. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Board of Directors.

(b) If the amount of the estimated costs of reconstruction and repair is \$500,000 or less, (as estimated by the Board of Directors) then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors, provided, however, that upon request of a Mortgagee that is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided in Subpart (c) hereof;

(c) If the estimated costs of reconstruction and repair of the building or other improvement is more than \$500,000, then costs and expenses so incurred from the construction fund shall be disbursed from time to time as the work progresses upon approval by an engineer or architect (hereinafter referred to as the "Reconstruction Supervisor") licensed to practice in the State of Washington and employed by the Board of Directors to supervise such work. The Reconstruction Supervisor shall be required to furnish a certificate giving a brief description of the services rendered and materials furnished by various contractors, subcontractors, materialmen, the Reconstruction Supervisor, or other persons who have rendered services or furnished materials in connection with the work, and stating that: (a) the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (b) there is no other outstanding indebtedness known to the Reconstruction Supervisor for the services and materials described; and (c) the cost as estimated by the Reconstruction Supervisor for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

11.8. Assessments if Insurance is Inadequate.

Immediately after a casualty causing damage to property for which the Board of Directors has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in as good a condition as it was before the casualty. Such costs may include professional fees and premiums for such performance bonds or other type of security that the Board desires or as may be required. The cost of repair or replacement not paid from insurance proceeds is a Common Expense. If the proceeds of insurance, coupled with any available Reserve Funds, are not sufficient to defray such estimated costs, the Board shall present to the Owners a Budget containing a Special Assessment to be made against all the Units as provided in Section 10.7 hereof, in sufficient amounts to provide funds to pay the shortfall; such Budget shall be ratified in the manner described in Section 10.2 hereof. If at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for payment of the costs thereof are insufficient, the Board shall present a further Budget to the Owners containing a Special Assessment, in sufficient amounts to provide funds for the payment of such costs.

11.9. Notice to Eligible Mortgagees.

The Board of Directors shall give written Notice to: (a) an Eligible Mortgagee of the Unit whenever damage to the Unit covered by the mortgage exceeds \$10,000; and (b) all Eligible Mortgagees whenever damage to the Common Elements exceeds \$50,000.

11.10. Miscellaneous.

The provisions of this Article XI shall constitute the procedure by which a determination is made by the Unit Owners to repair, restore, reconstruct or rebuild the Condominium following casualty thereto. The purpose of this Article XI shall be to provide a fair and equitable method of allocating the costs of repair and restoration and making a determination for repair and restoration if all or a portion of the improvements are damaged or destroyed. The provisions of this Article XI shall be liberally construed to accomplish such purpose.

ARTICLE XII
CONDEMNATION

12.1. Condemnation Affecting Whole Unit.

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

12.2. Condemnation of Part of Unit.

Except as provided in Section 12.1 hereof, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit; and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

12.3. Condemnation of Common Elements.

If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective Allocated Interests in the Common Elements unless the Association at a Special Meeting called for such purpose, decides otherwise.

12.4. Condemnation of Limited Common Elements.

Any portion of an award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

12.5. Association Necessary Party to Proceeding.

The Association, through its Board of Directors, shall be a necessary party to any condemnation proceedings affecting more than one Unit or portions of the Common Elements and shall, to the extent feasible, act as a fiduciary on behalf of and in the best interests of any and all Unit Owners affected by such proceedings. Should the Association not act on the Owners' behalf in a condemnation proceeding, the affected Owners may individually or jointly act on their own behalf.

12.6. Complete Taking.

In the event of a complete taking of the Condominium, or in the event that the taking by the condemning authority is so substantial as to render the remainder of the Condominium unsuitable or undesirable for use by the remaining Unit Owners, then the Condominium shall (in the case of complete taking) or may (as to a partial taking) be terminated in accordance with the terms and conditions of RCW 64.90.030(1), and Article XV hereof.

12.7. Reconstruction and Repair.

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI hereof, provided that the Board 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 said Article XI.

12.8. Notice to Eligible Mortgagees.

The Board of Directors shall promptly give written Notice to all Eligible Mortgagees of the pendency of any condemnation proceedings affecting any portion of the Condominium.

12.9. Payment of Award.

When a Unit Owner becomes entitled to receipt of a condemnation award, or of any portion of such an award, or of any payment in lieu of such an award, then any such payment shall be made payable jointly to such Unit Owner and to the holders of any Mortgages encumbering such Owner's Unit, as their interests may appear.

ARTICLE XIII
COMPLIANCE WITH LAW AND COVENANTS

13.1. Compliance by Owners and Tenants.

Each Owner or tenant of a Unit shall comply strictly with the provisions of the Governing Law and the Governing Documents or Bylaws. All remedies provided to the Association in this Article may be enforced against any tenant of a Unit.

13.2. Liability for Conduct Causing Common Expense.

13.2.1. Liability for Negligence. Any expense of the Association caused by the negligence of any Unit Owner or that Unit Owner's tenant, guest, an invitee or Occupant may be assessed against the Unit Owner's Unit after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. See Section 10.7 hereof.

13.2.2. Liability for Gross Negligence or Willful Misconduct. To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Unit Owner or that Unit Owner's tenant, guest, invitee or occupant may be assessed against the Unit Owner's Unit after notice and an opportunity to be heard, even if the Association maintains insurance with respect to that damage or Common Expense. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. See Section 10.7 hereof.

13.3. Enforcement by Association.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents or Bylaws. Without limiting the authority and powers conferred upon the Board by the Governing Law, the Board shall have the rights, powers and duties described in the Bylaws.

13.4. Tenants Subject to Rights and Responsibilities of Owners.

Any tenant of a Unit shall be deemed to be bound by all portions of the Governing Documents or Bylaws that are binding upon the Owner thereof, other than the direct obligation to pay Common Expense Assessments to the Association. All rights, remedies and procedures

available to the Association when dealing with Owners under the Governing Documents or Bylaws shall be available to the Association when dealing with any tenant.

13.5. Remedies for Association, Owners.

While the Board has enforcement authority as provided above in this Article XIII, Unit Owners who are or may be harmed or aggrieved in some fashion also retain legal rights of enforcement on their own behalf and retain such remedies as are available under the law, and may bring an action to enforce a right granted or obligation imposed under the Governing Law or the Governing Documents. The court may award reasonable attorneys' fees and costs to the prevailing party in any such proceeding.

ARTICLE XIV
LIMITATION OF LIABILITY

14.1. Association Not a Guarantor - No Liability for Utility Failure, Etc.

The Association is not a guarantor of the health, safety or property of the Unit Owners of the Condominium. Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board or the Declarant shall be liable for any failure of any utility or other service obtained by the Board, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand that may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, or damage from mold or rot, or for inconvenience or discomfort resulting from any action taken to make repairs to the Property, or to comply with any law, ordinance or order of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

14.2. No Bailment.

Neither the Board of Directors, the Association, any Owner nor the Declarant shall be considered a bailee of any personal property stored or placed on the Common Elements (including property located in vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, nor shall they be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

14.3. Liability of Directors and Directors - Indemnification.

14.3.1. Liability of Directors and Officers. In the performance of their duties, Officers and Board members must exercise the degree of care and loyalty to the Association required of an officer or director of a corporation

organized, and are subject to the conflict of interest rules governing directors and officers, under chapter 24.06 RCW.

- 14.3.2. Indemnification of Officers and Directors. The Association shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board of Directors or Officers on behalf of the Association or the Unit Owners unless such contract was made in bad faith or contrary to the provisions of the Governing Documents or Bylaws. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association, against amounts paid in settlement incurred by him in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Condominium or the Association, to the fullest extent authorized by RCW 23B.08.510, 520, 530, and 570, and any amendments thereto.

ARTICLE XV MORTGAGEE PROTECTION

15.1. Rights of Secured Lenders.

- 15.1.1. General Authority Consistent with Governing Law. Pursuant to RCW 64.90.295, this Declaration provides that specified percentages of lenders who hold security interests encumbering Units in the Condominium, or lenders who have extended credit to the Association, have rights to approve specified actions of the Unit Owners or the Association as a condition to the effectiveness of those actions, but no requirement for such approval may operate to:

- (a) Deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board;
- (b) Prevent the Association or the Board from commencing, intervening in, or settling any litigation or proceeding; or
- (c) Prevent the Association's Board or any other insurance trustee from receiving and distributing any insurance proceeds except pursuant to RCW 64.90.470.

15.2. Rights Available only to Eligible Mortgagees.

With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only Eligible Mortgagees holding a first lien security interest need

be obtained and the percentage must be based upon the votes attributable to Units with respect to which Eligible Mortgagees have an interest.

15.3. Consent and Notice Required.

15.3.1. Document Changes.

Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, no amendment of any material provision of the Governing Documents by the Association or Unit Owners described in this Subsection, the effect of which would have a material adverse effect on lenders, may be effective without Notice to all Eligible Mortgagees, as required herein, and the approval by Owners of Units to which at least sixty-seven percent (67%) (or any greater Unit Owner vote required in Section 17.3 of this Declaration or the Governing Law) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least sixty-seven percent (67% (or any greater Eligible Mortgagee approval required by this Declaration) of the votes attributable to Units with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) are examples of actions that Fannie Mae historically viewed as holding the potential for a material adverse effect on lenders:

- (a) Voting rights;
- (b) Assessment liens or priority of Assessment liens;
- (c) Responsibility for maintenance and repairs;
- (d) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding mortgages in such Units need approve such action;
- (e) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or when a Unit is being lawfully subdivided by its Owner pursuant to Section 4.8 or 4.9 hereof, then only those Unit Owners and the Eligible Mortgagees holding mortgages in such Unit or Units need must approve such action;
- (f) Convertibility of Units into Common Elements or Common Elements into Units;
- (g) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (h) Hazard or fidelity insurance requirements;

- (i) Imposition of any restrictions on the leasing of Units;
- (j) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (k) Restoration or repair of the Condominium after damage or partial condemnation in a manner other than that specified in the Governing Documents;
- (l) Any provision that expressly benefits mortgage holders, insurers, or guarantors, where the amendment would have a material adverse effect on any such party.

15.3.2. Actions. Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, the Association may not take any action that would have a material adverse effect on lenders, without Notice to all Eligible Mortgagees as required above, approval by Owners of Units to which at least sixty-seven percent (67%) (or the indicated percentage, if different) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least fifty-one percent (51%) (or the percentage indicated below, if different,) of the votes attributable to Units with respect to which Eligible Mortgagees have an interest:

- (a) Any action to abandon or terminate the legal status of the Condominium after condemnation or substantial destruction.
- (b) Any action to abandon or terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required.
- (c) Abandon, partition, subdivide, encumber, sell, transfer or convey the Common Elements or any portion thereof, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, and the procedures specified in Subpart 15.2 hereof must be followed. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association will not be deemed a transfer within the meaning of this clause;
- (d) Change any of the Allocated Interests allocated to any Unit (other than as permitted in Section 4.8 or 4.9 hereof); in any other case the vote or agreement of the Owner of each Unit particularly affected and his or her Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than

the Declarant must be obtained, pursuant to Section 17.3 hereof and to RCW 64.90.285(4).

- (e) Increase the number of Units, change the boundaries of any Unit (other than as provided in Section 4.8 or 4.9 hereof) or change the uses to which any Unit is restricted, as to which the approval of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated must be obtained, pursuant to Section 17.3 hereof and to RCW 64.90.285(4).
- (f) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.
- (g) The restoration or repair of the Property after hazard damage, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, or after a partial condemnation, in a manner other than specified in the Governing Documents.

15.3.3. Implied Approval by Mortgagee. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association delivered by a certified or registered mail, "return receipt request", for approval of the amendment to the governing documents, wherever Eligible Mortgagee is required, shall constitute an implied approval of the addition or amendment.

15.4. Inspection of Books.

The Association must maintain current copies of the Declaration, Bylaws, Articles of Incorporation, Rules, books and records, and financial statements. The Association shall permit any Eligible Mortgagee or other first mortgagee of a Unit, to inspect the books and records of the Association during normal business hours.

15.5. Financial Statements.

The Association shall provide any Mortgagee who submits a written request, a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it, in which case, the Eligible Mortgagee shall bear the cost of the audit.

15.6. Enforcement.

The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

15.7. Attendance at Meetings.

Any representative of an Eligible Mortgagee may attend and address any Meeting that a Unit Owner may attend.

15.8. Appointment of Trustee.

In the event of damage or destruction under Article XI or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 11.7 of this Declaration. Proceeds will thereafter be distributed pursuant to Article XI or pursuant to a condemnation award.

15.9. Limitations on Mortgagees' Rights.

No requirement for approval contained in this Article may operate to (a) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors, or (b) prevent the Association or the Board of Directors from commencing, intervening in, or settling any litigation or proceeding, or (c) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds.

ARTICLE XVI
EASEMENTS

16.1. Easements for Units, Unit Owners and Association Functions.

16.1.1. Easements for Units. Each Unit has an unrestricted, perpetual easement in and through each other Unit and the Common and Limited Common Elements for support and for utilities and each Unit Owner has an unrestricted perpetual right of ingress to and egress from his or her Unit over the Common Elements.

16.1.2. Units Subject to Easement Rights. The Units in the Condominium are subject to rights of access in favor of the Association and other Unit Owners. See Subsections 5.6.2 and 8.3 hereof for further details.

16.1.3. Easements for Association Functions. There is hereby reserved to the Association, or its duly authorized agents, contractors and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents and Bylaws, including inspection of Units.

16.2. Easement for Emergency Access.

A non-exclusive perpetual easement is hereby granted on, over, under and across the Common Elements to all police, fire, ambulance and other rescue personnel for the lawful performance of their functions during *bona fide* emergencies.

16.3. Easements Shown on Survey Map.

Easements shown on the Survey Map filed concurrently with this Declaration are hereby declared and established. Any easement shown on the Survey Map that benefits one or more Units in the Condominium, or that benefits any real property not included within the Condominium, confers various rights and benefits upon the owner(s) of such real property, and may also impose obligations upon the Association. Reference should be made to the Survey Map.

16.4. Easements Reserved for Declarant.

The Declarant reserves an easement over, across, and through the Common Elements of the Condominium for the purposes of completing any unfinished Units or other improvements, exhibiting and preparing Units for sale, making any repairs required pursuant to any contract of sale, and discharging the Declarant's obligations or exercising Development Rights or Special Declarant Rights. The Declarant further reserves exclusive easements over, across, and through the Common Elements of the Condominium (i.e., the land described in Exhibit A as it may from time to time be amended by the Declarant) for the benefit of itself and its successors and assigns as present and future owners of the Subsequent Phase Property and withdrawable property, as it may from time to time be amended by the Declarant, for ingress and egress over the roadways and pathways of the Condominium and the right to have access to and to tie into and utilize any water, sanitary sewer, storm sewer, electricity, gas, telephone, cable television, and other utility lines now or hereafter established in the Condominium. With respect to the Subsequent Phase Property the easements may be exercised whether or not such property is developed as part of the Condominium. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of the roadways, pathways, and utilities by the Owners of Units in the Condominium. This Section may not be altered or amended without the written consent of the Declarant or the then owner of the land which may be withdrawn from the Condominium if that land has been sold or transferred by Declarant.

16.5. Easements to be granted by the Declarant.

The Declarant reserves the right to grant to any company or municipality providing utilities services to the Condominium or to the Owners of Units in the Condominium an easement for the installation, construction, maintenance, repair, and reconstruction of all utilities serving the Condominium or the owners, including, without limitation, such utilities services as gas, water, sanitary sewer, storm sewer, electricity, cable television, and telephone.

16.6. Declarant Functions.

There is hereby reserved to the Declarant (and its duly authorized agents, employees, contractors and representatives), such easements and rights of access over, across, under or into the Condominium (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Declarant as are set forth, provided for or authorized in: this Declaration; Survey Map; Articles, Bylaws, or Rules;

building or their governmental permits or approvals; and Purchase and Sale Agreement between Declarant and a Unit Purchaser; any express or implied warranty under which Declarant is obligated; or otherwise authorized or otherwise required by law.

16.7 Landscaping Buffer.

The City of Ferndale Municipal Code requires a landscaping buffer between certain zoning areas. The seven (7) foot landscape buffer is shown on the Survey Map. In this project, a seven (7) foot landscape buffer is part of the Common Elements and must be maintained by the Association. The landscaping shall be maintained by the Association in accordance with the City of Ferndale requirements.

ARTICLE XVII
AMENDMENT OF DECLARATION, SURVEY MAP & PLANS

17.1. Procedure for Amendment of Declaration.

17.1.1. General Provisions for Amendments. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" that sets forth the entire amendment. For purposes hereof, "amendment" means any change to the Declaration, including adding, removing, or modifying restrictions contained in a Declaration. Except as otherwise specifically provided for in this Declaration or in the Governing Law, any proposed amendment must be approved by the Board of Directors prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Declarant unilaterally pursuant to Section 17.6 hereof, by the Association under Sections 6.4 or 17.7 hereof or under statutory authority in the case of condemnation or a termination of the condominium, or by certain Unit Owners under Sections 4.8, 4.9 or 6.3 hereof, the Declaration may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

17.1.2. Additional Provisions – Advance Notice to Owners. Amendments to the Declaration required to be executed by the Association must be executed by any authorized Officer of the Association who must certify in the amendment that it was properly adopted. Owners shall be entitled to Notice of a proposed amendment not less than thirty (30) days prior to the Meeting of the Association at which the amendment is to be considered. In the absence of fraud, an action to challenge the validity of an amendment adopted by the Association may not be brought more than one year after the amendment is recorded.

17.2. Recordation Required. Every amendment to the Declaration must be recorded with the County Auditor and is effective only upon recording. An amendment shall be

indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. An amendment other than an amendment pursuant to RCW 64.90.260(1) must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

17.3. Special Restrictions.

17.3.1. General Restrictions. Except to the extent expressly permitted or required by other provisions of this Declaration, or of the Governing Law, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, or change the Allocated Interests of a Unit, without the consent of Unit Owners to which at least ninety percent of the votes in the Association are allocated, including the consent of any Unit Owner of a Unit, the boundaries of which or Allocated Interest of which is changed by the amendment, and that percentage of Eligible Mortgagees specified in Article XV hereof.

17.3.2. Restrictions protecting certain Persons. To the extent that Declaration may require the affirmative vote or approval of any particular Unit Owner or class of Unit Owners as a condition of its effectiveness, the amendment is not valid without that vote or approval. See also RCW 64.90.285(1)(b).

17.4. Amendment of Survey Map. The Survey Map may be amended by revised versions referred to and described as to effect in an amendment to the Declaration adopted as required above, subject to the provisions of RCW 64.90.245(4). Copies of any such proposed amendment to the Survey Map shall be made available for examination by every Owner. Such amendment to the Survey Map shall also be effective, once properly adopted, upon recordation in the appropriate County offices, along with the amendment to the Declaration that accompanies it.

17.5. Consent of Mortgagees May be Required – Limitations on Such Rights. The consent of specified percentages of Eligible Mortgagees may be required, pursuant to Article XV of this Declaration, prior to recordation of certain amendments to the Governing Documents. Such consent is deemed granted if a refusal to consent in a Record is not received by the Association within sixty days after the Association delivers Notice of the proposed amendment to the holder at an address for Notice provided to the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, the Association must provide Notice to the address appearing in the security interest of record.

17.6. Amendments by Declarant.

- 17.6.1. Unilateral Amendments. The Declarant may unilaterally adopt and file amendments to the Governing Documents for so long as the Declarant is the Owner of any Unit in the Condominium, in order to conform them to the actual location of any constructed improvements and to establish, vacate and relocate utility easements, access road easements and parking areas.
- 17.6.2. Amendments Requiring Notice to Unit Owners. Upon thirty-day advance Notice to Unit Owners, the Declarant may, without a vote of the Unit Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the Governing Documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the Governing Documents with respect to an objectively verifiable fact including, without limitation, recalculating the undivided interest in the Common Elements, the liability for Common Expenses, or the number of votes in the Unit Owners' Association appertaining to a Unit, within five (5) years after the recordation or adoption of the Governing Document containing or creating the mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

ARTICLE XVIII
TERMINATION OF CONDOMINIUM

The Unit Owners may elect to terminate the Condominium status of the property only in accordance with the provisions of RCW 64.90.290 and / or RCW 64.90.226, with the requisite approval of such Mortgagees and other lienholders as may be required by law, or by Article XV hereof.

ARTICLE XIX
NOTICE

- 19.1. Notice to be provided in Form of a Record. Notice to the Association, Board, or any Owner or Occupant of a Unit under the Governing Law must be provided in the form of a Record.
- 19.2. Notice in a Tangible Medium. Notice provided in a tangible medium may be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the Notice.

- 19.2.1. Notice to Association. Notice in a tangible medium to the Association may be addressed to the Association's Registered Agent at its Registered Office, to the Association at its principal office shown in its most recent Corporate Annual Report or provided by Notice to the Unit Owners, or to the President or Secretary of the Association at the address shown in the Association's most recent Corporate Annual Report or provided by Notice to the Unit Owners.
- 19.2.2. Notice to Unit Owner or Occupant. Notice in a tangible medium to a Unit Owner or Occupant must be addressed to the Unit address unless the Unit Owner or Occupant, in a Record delivered to the Association, has requested that Notices be sent to an alternate address or by other method allowed by this Section 19 and the Governing Documents. New Unit Owners must supply their names, addresses, telephone numbers and, if desirable to receive official Notice from the Association by electronic transmission, an e-mail address or other information consistent with Subsection 19.3.1 below.
- 19.3. Notice by Electronic Transmission. Notice may be provided in an electronic transmission as follows:
 - 19.3.1. Notice to Unit Owners or Board Members by Consent. Notice to Unit Owners or Board members by electronic transmission is effective only upon Unit Owners and Board members who have consented, in the form of a Record, to receive electronically transmitted Notices under the Governing Law and have designated in the consent the address, location, or system to which such Notices may be electronically transmitted, provided that such Notice otherwise complies with any other requirements of the Governing Law and other applicable law.
 - 19.3.2. Notice Deemed to Include Associated Materials. Notice to Unit Owners or Board members under this Subsection includes material that the Governing Law or the Governing Documents require or permit to accompany the Notice.
 - 19.3.3. Consent to Notice by Electronic Transmission may be Revoked. A Unit Owner or Board member who has consented to receipt of electronically transmitted Notices may revoke this consent by delivering a revocation to the Association in the form of a Record.
 - 19.3.4. Consent may be Automatically Revoked. The consent of any Unit Owner or Board member is revoked if: The Association is unable to electronically transmit two consecutive Notices given by the Association in accordance with the consent, and this inability becomes known to the Secretary of the Association or any other Person responsible for giving the Notice. The

inadvertent failure by the Association to treat this inability as a revocation does not invalidate any Meeting or other action.

19.3.5. Alternative Methods of Notice by Electronic Transmission. Notice to Unit Owners or Board members who have consented to receipt of electronically transmitted Notices may be provided by posting the Notice on an electronic network and delivering to the Unit Owner or Board member a separate Record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

19.3.6. When Electronic Notice to Association is Effective. Notice to the Association in an electronic transmission is effective only after the Association has designated in a Record an address, location, or system to which the Notices may be electronically transmitted.

19.4. Alternative Methods of Giving Notice not Prescribed by Statute.

Notice may be given by any other method reasonably calculated to provide notice to the recipient.

19.5. When Notice is Effective.

Notice is effective as follows:

19.5.1. Effectiveness of Notice Provided in Tangible Medium. Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

19.5.2. Effectiveness of Notice Provided in Electronic Transmission. Notice provided in an electronic transmission is effective as of the date it:

(a) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(b) Has been posted on an electronic network and a separate record of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

19.6. Ineffectiveness of Notice does not Invalidate Action by Association.

The ineffectiveness of a good-faith effort to deliver Notice by an authorized means does not invalidate action taken at or without a Meeting.

19.7. When Governing Law Requires Alternative Methods of Notice.

If the Governing Law prescribes different or additional notice requirements for particular circumstances, those requirements govern.

ARTICLE XX
MISCELLANEOUS

20.1. Severability.

All provisions of the Governing Documents, and Organizational Documents are severable. If any provision of a governing document, or its application to any Person or circumstances, is held invalid, the remainder of the governing document, Organizational Document or application to other Persons or circumstances is not affected.

20.2. Effective Date.

This Declaration shall take effect upon recording.

[Signature Page Follows]

DATED this 23rd day of February, 2024.

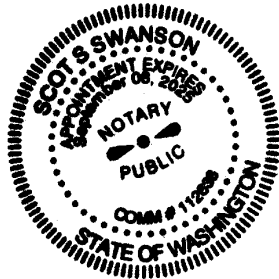
Declarant: FLEXSPACE NORTH, LLC

By *Steven Cowden*
Steven Cowden, Its Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I hereby certify that I know or have satisfactory evidence that Steven Cowden 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 the instrument and acknowledged it as the Manager of the Declarant, Flexspace North, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: February 23 2024.



Scot Swanson
PRINTED NAME: Scot Swanson
NOTARY PUBLIC for the State of
Washington, residing in Bellingham
My Commission expires 06/06/25

EXHIBIT "A"

TO DECLARATION FOR FLEXSPACE NORTH CONDOMINIUM
LEGAL DESCRIPTION

SECTION 1 - LEGAL DESCRIPTION OF ENTIRE CONDOMINIUM:

LOTS 1 AND 2, PORTAL WAY SHORT PLAT AS PER THE MAP THEREOF RECORDED ON NOVEMBER 19, 2014, UNDER AUDITOR'S FILE No. 2141101546, RECORDS OF WHATCOM COUNTY, WASHINGTON. TOGETHER WITH THE SOUTH 90 FEET OF THE EAST 150 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE EAST 45 FEET FOR ROAD.

SECTION 2 - LEGAL DESCRIPTION - PHASE 1:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, PORTAL WAY SHORT PLAT AS PER THE MAP THEREOF RECORDED ON NOVEMBER 19, 2014, UNDER AUDITOR'S FILE No. 2141101546, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE NORTH 02°31'17" EAST A DISTANCE OF 329.45 FEET; THENCE SOUTH 87°38'01" EAST A DISTANCE OF 100.57 FEET; THENCE SOUTH 02°18'16" WEST A DISTANCE OF 329.40 FEET; THENCE NORTH 87°39'52" WEST A DISTANCE OF 101.82 FEET TO THE POINT OF BEGINNING.

SECTION 3 - LEGAL DESCRIPTION - SUBSEQUENT PHASE PROPERTY (MAY BE WITHDRAWN FROM THE CONDOMINIUM):

LOTS 1 AND 2, PORTAL WAY SHORT PLAT AS PER THE MAP THEREOF RECORDED ON NOVEMBER 19, 2014, UNDER AUDITOR'S FILE No. 2141101546, RECORDS OF WHATCOM COUNTY, WASHINGTON. TOGETHER WITH THE SOUTH 90 FEET OF THE EAST 150 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE EAST 45 FEET FOR ROAD, FURTHER EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, PORTAL WAY SHORT PLAT AS PER THE MAP THEREOF RECORDED ON NOVEMBER 19, 2014, UNDER AUDITOR'S FILE No. 2141101546, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE NORTH 02°31'17" EAST A DISTANCE OF 329.45 FEET; THENCE SOUTH 87°38'01" EAST A DISTANCE OF 100.57 FEET; THENCE SOUTH 02°18'16" WEST A DISTANCE OF 329.40 FEET; THENCE NORTH 87°39'52" WEST A DISTANCE OF 101.82 FEET TO THE POINT OF BEGINNING.

ALL SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT "B"
TO DECLARATION FOR FLEXSPACE NORTH CONDOMINIUM
UNIT DESCRIPTION

Unit No.	Square Footage†	Level(s) in Building	Allocated Interests*
G-101	1,545	1 + Mezzanine	12.51%
G-102	1,550	1 + Mezzanine	12.55%
G-103	1,550	1 + Mezzanine	12.55%
G10-4	1,550	1 + Mezzanine	12.55%
G-105	1,550	1 + Mezzanine	12.55%
G-106	1,550	1 + Mezzanine	12.55%
G-107	1,550	1 + Mezzanine	12.55%
G-108	1,508	1 + Mezzanine	12.21%
TOTALS	12,353		100%

* Allocated Interests are the percentages of undivided interests in the Common Elements, fractional liability for the Common Expenses of the Association, and portions of the votes in the Association, allocated by the Declarant to each Unit, described in Sections 5.3, 7.4.2 and 10.5 of this Declaration. ALL ALLOCATED INTERESTS ARE SUBJECT TO CHANGE UPON AN EXERCISE OF DEVELOPMENT RIGHTS. SEE SECTION 3.3.2 HEREOF.

† Square footages are derived from surveyor's measurements of the Units, with reference to the statutory boundaries of such Units described in Section 4.2 of this Declaration and will be different from and generally smaller than measurements made according to BOMA standards or architects' conventions.

EXHIBIT "C"
TO DECLARATION FOR FLEXSPACE NORTH CONDOMINIUM
PARKING ALLOCATION

Parking Space No. #	Assignment for any Parking Spaces *
1	HC
2	SA

For location of Parking Spaces, refer to Survey Map.

* SA = Subject to Assignment by the Declarant pursuant to Special Declarant Rights and Developer Rights reserved in the Declaration.

* HC = Handicap Parking Space.

EXHIBIT "D"

TO DECLARATION FOR FLEXSPACE NORTH CONDOMINIUM
OPERATIONS AND MAINTENANCE MANUAL

[On Following Pages]

**Operations & Maintenance Manual
Flexspace North
Ferndale, Washington**

TPN: 390217 226446, 390217 260445,
390217 266436

Prepared For:

Flexspace North, LLC
5570 Knight Road
Bellingham, WA 98226
(360) 739-4042

Prepared By:

Freeland & Associates, Inc.
2500 Elm Street; Suite 1
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(360) 650-1408

February 2024

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Operation and Maintenance Guidance

Description of Stormwater Facilities

Stormwater from the proposed project (buildings, roads, drive aisles, and portions of landscaping) will be managed within onsite facilities. Stormwater runoff from building roofs will be infiltrated through roof downspout infiltration trenches (which are rule-authorized through the Department of Ecology's UIC program, see page 25). Stormwater runoff from drive aisles (pollution-generating) surfaces will be collected within a permeable concrete section with an underdrain. Stormwater runoff from the frontage (pollution-generating) will fully infiltrate into bioretention cells.

Operation and Maintenance

The Property Owner shall maintain, operate, and repair the stormwater facilities in compliance with the requirements of the current edition of the Department of Ecology Stormwater Management Manual. This maintenance plan shall be followed for conducting maintenance for the private systems to ensure that facilities are adequately maintained and operated. Pollution should be controlled at the source to the maximum extent possible. Specific maintenance responsibilities are discussed below.

Private stormwater facilities located within the City of Ferndale NPDES Phase II area give the City jurisdiction to inspect the private system for compliance with maintenance requirements. Reference the Flexspace North Maintenance Covenant and Access Easement (AF#2024-0200593) in the *Appendix* for the full description of the maintenance agreement made by the Developer and the City of Ferndale.

Maintenance Frequency

Stormwater facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.

Maintenance Equipment

- Shovels
- Pressure Washer

Maintenance Responsibilities

Facility	Responsibility
Onsite Storm Drains / Conveyance Systems	Property Owner
Bioretention Cells	Property Owner
Roof Downspout Infiltration Trenches	Property Owner
Permeable Pavement	Property Owner
Open Space - Landscaping	Property Owner
Public Road and Inlets	City of Ferndale

The City may, at the City's exclusive discretion, unilaterally assume storm water facilities operations and maintenance responsibilities at the expense of the individual property owner if the City determines that the responsible entity is not inspecting, operating, maintaining, and/or repairing the stormwater facilities per this plan.

Operational Source Control BMPs

Operational Source Control BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater. They include formation of a pollution prevention team, good housekeeping practices, preventive maintenance procedures, spill prevention and cleanup, employee training, inspections of pollution sources, and recordkeeping. The following BMPs must be implemented.

- Assign one or more individuals to be responsible for stormwater pollution control. The Property Owner shall appoint a person as Facility Manager that shall be responsible for managing and implementing this plan for their portion of the open space and stormwater facilities. The Property Owner may hire a contractor to act as the Facility Manager.
- Promptly contain and cleanup solid and liquid pollutant leaks and spills including oils, solvents, fuels and dust. The Facility Manager will contact the regulatory agencies regarding spill response activities.

- Clean oils, debris, sludge, etc., from all systems regularly. All pavements and storm drain systems shall be inspected for these pollutants in accordance with the Maintenance Schedule.
- Inspect and clean treatment systems, conveyance systems, and catch basins as needed.
- Do not conduct outside spraying, grit blasting, or sanding activities.
- Train all employees in identifying pollutant sources and in understanding pollutant control measures, spill response procedures, and environmentally acceptable material handling practices. The Property Owner or manager shall provide employees with information regarding pollutant control measures and spill response procedures.
- Maintain a Maintenance Log (see Exhibit 1) and keep such record for twenty years per FMC 13.34.020. The log should include: scope of the inspection, the personnel conducting the inspection, the date of the inspection, major observations relating to the implementation of the maintenance plan, and actions taken to correct BMP inadequacies.
- Conduct inspections in accordance with the Operation and Maintenance Log no less than annually.

Structural Source Control BMPs

Structural Source Control BMPs are physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater.

- Maintain the stormwater facilities as per the original design and in proper working order.
- Make changes to the system only when approved by a qualified individual.

Agency Notification Contact Reference List

Agency & Responsibility	Phone Contacts
Fire Department <ul style="list-style-type: none">▪ Fire Fighting▪ Emergency medical response▪ Community evaluation	911
Police Department <ul style="list-style-type: none">▪ Police authority	911
Hospital <ul style="list-style-type: none">▪ Emergency medical treatment	911
Washington State Department of Ecology Toxics Cleanup Program Reporting spills to soils	(360) 407-7170
National Response Center <ul style="list-style-type: none">▪ Reporting spills to water	(800) 424-8802
Washington State Emergency Management Division <ul style="list-style-type: none">▪ Reporting spills to water	(800) 258-5990
City of Ferndale <ul style="list-style-type: none">• Public Works	(360) 384-4302

Operation and Maintenance Tasks

Permeable Pavement

Inspections

All permeable pavements should be inspected several times within the first few months after construction and twice annually thereafter. Inspections should be conducted after large storms to check for surface ponding that might indicate local or widespread clogging. If severe clogging occurs, the entire structure may have to be replaced.

Erosion and introduction of sediment from surrounding land uses should be strictly controlled. Surrounding landscape areas should be inspected regularly and possible sediment sources controlled immediately.

Maintenance

The permeable pavement surface should be vacuum swept one to two times per year, followed by high pressure jet hosing to keep the concrete pores open. Hand held pressure washers are effective for cleaning void spaces and appropriate for smaller areas such as sidewalks and permeable concrete parking islands.

Spot clogging of the permeable pavement layer can be relieved by drilling half-inch holes through the porous concrete layer every few feet. In cases where clogging occurs in a low spot in the pavement, it may be advisable to install a drop inlet to route water into the stone reservoir beneath the permeable concrete.

Potholes and cracks can be repaired using conventional, non-porous patching mixes as long as the cumulative area repaired does not exceed 10% of the parking lot area.

Utility cuts should be backfilled with the same aggregate base used under the base permeable paving to allow continued conveyance of stormwater through the base, and to prevent migration of fines from the standard base aggregate to the more open graded permeable base material.

Permeable Pavement				
Component	Recommended Frequency a		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Surface/Wearing Course				
Permeable Pavements, all	A, S		Runoff from adjacent pervious areas deposits soil, mulch or sediment on paving	<ul style="list-style-type: none">• Clean deposited soil or other materials from permeable pavement or other adjacent surfacing• Check if surface elevation of planted area is too high, or slopes towards pavement, and can be regraded (prior to regrading, protect permeable pavement by covering with temporary plastic and secure covering in place)• Mulch and/or plant all exposed soils that may erode to pavement surface
Porous asphalt or pervious concrete		A or B	None (routine maintenance)	<ul style="list-style-type: none">• Clean surface debris from pavement surface using one or a combination of the following methods:• Remove sediment, debris, trash, vegetation, and other debris deposited onto pavement (rakes and leaf blowers can be used for removing leaves)• Vacuum/sweep permeable paving installation using:<ul style="list-style-type: none">• Walk-behind vacuum (sidewalks)• High efficiency regenerative air or vacuum sweeper (roadways, parking lots)• ShopVac or brush brooms (small areas)• Hand held pressure washer or power washer with rotating brushes• Follow equipment manufacturer guidelines for when equipment is most effective for cleaning permeable pavement. Dry weather is more effective for some equipment.
	Ab		Surface is clogged: Ponding on surface or water flows off the permeable pavement surface during a rain event (does not infiltrate)	<ul style="list-style-type: none">• Review the overall performance of the facility (note that small clogged areas may not reduce overall performance of facility)• Test the surface infiltration rate using ASTM C1701 as a corrective maintenance indicator. Perform one test per installation, up to 2,500 square feet. Perform an additional test for each additional 2,500 square feet up to 15,000 square feet total. Above 15,000 square feet, add one test for every 10,000 square feet.• If the results indicate an infiltration rate of 10 inches per hour or less, then perform corrective maintenance to restore permeability. To clean clogged pavement surfaces, use one or combination of the following methods:<ul style="list-style-type: none">• Combined pressure wash and vacuum system calibrated to not dislodge wearing course aggregate.• Hand held pressure washer or power washer with rotating brushes• Pure vacuum sweepers• Note: If the annual/biannual routine maintenance standard to clean the pavement surface is conducted using equipment from the list above, corrective maintenance may not be needed.
	A		Sediment present at the surface of the pavement	<ul style="list-style-type: none">• Assess the overall performance of the pavement system during a rain event. If water runs off the pavement and/or there is ponding then see above.• Determine source of sediment loading and evaluate whether or not the source can be reduced/eliminated. If the source cannot be addressed, consider increasing frequency of routine cleaning (e.g., twice per year instead of once per year).
	Summer		Moss growth inhibits infiltration or poses slip safety hazard	<ul style="list-style-type: none">• Sidewalks: Use a stiff broom to remove moss in the summer when it is dry• Parking lots and roadways: Pressure wash, vacuum sweep, or use a combination of the two for cleaning moss from pavement surface. May require stiff broom or power brush in areas of heavy moss.
	A		Major cracks or trip hazards and concrete spalling and raveling	<ul style="list-style-type: none">• Fill potholes or small cracks with patching mixes• Large cracks and settlement may require cutting and replacing the pavement section. Replace in-kind where feasible. Replacing porous asphalt with conventional asphalt is acceptable if it is a small percentage of the total facility area and does not impact the overall facility function.• Take appropriate precautions during pavement repair and replacement efforts to prevent clogging of adjacent porous materials.

a) Frequency: A= Annually; B= Biannually (twice per year); S = Perform inspections after major storm events (24-hour storm event with a 10-year or greater recurrence interval).

b) Inspection should occur during storm event.

Permeable Pavement – Continued				
Component	Recommended Frequency a		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Surface/Wearing Course (cont'd)				
Interlocking concrete paver blocks and aggregate pavers		A or B	None (routine maintenance)	<ul style="list-style-type: none">• Clean pavement surface using one or a combination of the following methods:• Remove sediment, debris, trash, vegetation, and other debris deposited onto pavement (rakes and leaf blowers can be used for removing leaves)• Vacuum/sweep permeable paving installation using:• Walk-behind vacuum (sidewalks)• High efficiency regenerative air or vacuum sweeper (roadways, parking lots)• ShopVac or brush brooms (small areas)• Note: Vacuum settings may have to be adjusted to prevent excess uptake of aggregate from paver openings or joints. Vacuum surface openings in dry weather to remove dry, encrusted sediment.
	A b		Surface is clogged: Ponding on surface or water flows off the permeable pavement surface during a rain event (does not infiltrate)	<ul style="list-style-type: none">• Review the overall performance of the facility (note that small clogged areas may not reduce overall performance of facility)• Test the surface infiltration rate using ASTM C1701 as a corrective maintenance indicator. Perform one test per installation, up to 2,500 square feet. Perform an additional test for each additional 2,500 square feet up to 15,000 square feet total. Above 15,000 square feet, add one test for every 10,000 square feet.• If the results indicate an infiltration rate of 10 inches per hour or less, then perform corrective maintenance to restore permeability.• Clogging is usually an issue in the upper 2 to 3 centimeters of aggregate. Remove the upper layer of encrusted sediment, and fines, and/or vegetation from openings and joints between the pavers by mechanical means and/or suction equipment (e.g., pure vacuum sweeper).• <u>Replace aggregate in paver cells, joints, or openings per manufacturer's recommendations</u>
	A		Sediment present at the surface of the pavement	<ul style="list-style-type: none">• Assess the overall performance of the pavement system during a rain event. If water runs off the pavement and/or there is ponding, then see above.• Determine source of sediment loading and evaluate whether or not the source can be reduced/eliminated. If the source cannot be addressed, consider increasing frequency of routine cleaning (e.g., twice per year instead of once per year).
	Summer		Moss growth inhibits infiltration or poses slip safety hazard	<ul style="list-style-type: none">• Sidewalks: Use a stiff broom to remove moss in the summer when it is dry• Parking lots and roadways: Vacuum sweep or stiff broom/power brush for cleaning moss from pavement surface
	A		Paver block missing or damaged	<ul style="list-style-type: none">• Remove individual damaged paver blocks by hand and replace or repair per manufacturer's recommendations
	A		Loss of aggregate material between	<ul style="list-style-type: none">• Refill per manufacturer's recommendations for interlocking paver sections
	A		Settlement of surface	<ul style="list-style-type: none">• May require resetting
Open-celled paving grid with gravel		A or B	None (routine maintenance)	<ul style="list-style-type: none">• Remove sediment, debris, trash, vegetation, and other debris deposited onto pavement (rakes and leaf blowers can be used for removing leaves)• Follow equipment manufacturer guidelines for cleaning surface.
	A b		Aggregate is clogged: Ponding on surface or water flows off the permeable pavement surface during a rain event (does not infiltrate)	<ul style="list-style-type: none">• Use vacuum truck to remove and replace top course aggregate• Replace aggregate in paving grid per manufacturer's recommendations
	A		Paving grid missing or damaged	<ul style="list-style-type: none">• Remove pins, pry up grid segments, and replace gravel• Replace grid segments where three or more adjacent rings are broken or damaged• Follow manufacturer guidelines for repairing surface.
	A		Settlement of surface	<ul style="list-style-type: none">• May require resetting

a) Frequency: A= Annually; B= Biannually (twice per year); S= Perform inspections after major storm events (24-hour storm event with a 10-year or greater recurrence interval).
b) Inspection should occur during storm event.

Permeable Pavement – Continued				
Component	Recommended Frequency a		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Surface/Wearing Course (cont'd)				
Open-celled paving grid with gravel	A		Loss of aggregate material in paving grid	<ul style="list-style-type: none">• Replenish aggregate material by spreading gravel with a rake (gravel level should be maintained at the same level as the plastic rings or no more than 1/4 inch above the top of rings). See manufacturer's recommendations.
		A	Weeds present	<ul style="list-style-type: none">• Manually remove weeds• Presence of weeds may indicate that too many fines are present (refer to Actions Needed under "Aggregate is clogged" to address this issue)

a) Frequency: A= Annually; B= Biannually (twice per year); S = Perform inspections after major storm events (24-hour storm event with a 10-year or greater recurrence interval).

b) Inspection should occur during storm event.

Bioretention Cells				
Note that the inspection and routine maintenance frequencies listed below are recommended by Ecology. They do not supersede or replace the municipal stormwater permit requirements for inspection frequency required of municipal stormwater permittees for "stormwater treatment and flow control BMPs/facilities"				
Maintenance Component	Recommended Frequency ^A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Facility Footprint				
Earth Side Slopes and Berms	B, S		Erosion (gullies/rills) greater than 2 inches dep around inlets, outlet, and alongside slopes	<ul style="list-style-type: none">• Eliminate cause of erosion and stabilize damaged area (regrade, rock, vegetation, erosion control matting)• For deep channels or cuts (over 3 inches in ponding depth), temporary erosion control measures should be put in place until permanent repairs can be made.• Properly designed, constructed and established facilities with appropriate flow velocities should not have erosion problems except perhaps in extreme events. If erosion problems persist, the following should be reassessed: (1) flow volumes from contributing areas and bioretention facility sizing; (2) flow velocities and gradients within the facility; and (3) flow dissipation and erosion protection strategies at the facility inlet
	A		Erosion of sides causes slope to become hazard	Take actions to eliminate the hazard and stabilize slopes
	A, S		Settlement greater than 3 inches (relative to undisturbed sections of berm)	Restore to design height
	A, S		Downstream face of berm wet, seeps or leaks evident	Plug any holes and compact berm (may require consultation with engineer, particularly for larger berms)
	A		Any evidence of rodent holes or water piping in berm	<ul style="list-style-type: none">• Eradicate rodents (see "Pest Control")• Fill holes and compact (may require consultation with engineer, particularly for larger berms)
Concrete sidewalls	A		Cracks or failure of concrete sidewalls	<ul style="list-style-type: none">• Repair/seal cracks• Replace if repair is insufficient
Rockery sidewalls	A		Rockery side walls are insecure	Stabilize rockery sidewalls (may require consultation with engineer, particularly for walls 4 feet or greater in height)
Facility area		All maintenance visits (at least biannually)	Trash and debris are present	Clean out trash and debris
Facility bottom area	A, S		Accumulated sediment to extent that infiltration rate is reduced (see "Ponded water") or surface storage capacity significantly impacted	<ul style="list-style-type: none">• Remove excess sediment• Replace any vegetation damaged or destroyed by sediment accumulation and removal• Mulch newly planted vegetation• Identify and control the sediment source (if feasible)
		During/after fall leaf drop	Accumulated leaves in facility	<ul style="list-style-type: none">• If accumulated sediment is recurrent, consider adding pre-settlement or installing berms to create a fore-bay at the inlet
Low permeability check dams and weirs	A, S		Sediment, vegetation, or debris accumulated at or blocking (or having the potential to block) check dam, flow control weir or orifice	Clear the blockage
	A, S		Erosion and/or undercutting present	Repair and take preventative measures to prevent future erosion and/or undercutting
	A		Grade board or top of weir damaged or not level	Restore to level position

^A Frequency A = Annually; B = Biannually (twice per year); M= Monthly; W= At least one visit should occur during the wet seasons (for debris/clog related maintenance, this inspection/maintenance visit should occur in the early fall, after deciduous trees have lost their leaves); S= Perform inspection after major storm events (24-hour storm event with a 10-year or greater recurrence interval).

IPM - Integrated Pest Management

ISA - International Society of Arboriculture

Bioretention Cells – Continued				
Maintenance Component	Recommended Frequency A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Facility Footprint (Cont'd)				
Ponded Water	B, S		Excessive ponding water: Water overflow during storms smaller than the design event or ponded water remains in the basin 48 hours after the end of a storm.	Determine cause and resolve in the following order: <ol style="list-style-type: none">1. Confirm leaf or debris buildup in the bottom of the facility is not impeding infiltration. If necessary, remove leaf litter/debris.2. Ensure that underdrain (if present) is not clogged. If necessary, clean underdrain.3. Check for other water inputs (e.g. groundwater, illicit connections)4. Verify that the facility is sized appropriately for the contributing area. Confirm that the contributing area has not increased. If steps #1-4 do not solve the problem, the bioretention soil is likely clogged by sediment accumulation at the surface or has become overly compacted. Dig a small hole to observe soil profile and identify compaction depth or clogging front to help determine the soil depth to be removed or otherwise rehabilitated (e.g. tilled). Consultation with an engineer is recommended.
Bioretention soil media	As needed		Bioretention soil media protection is needed when performing maintenance requiring entrance into the facility footprint	<ul style="list-style-type: none">• Minimize all loading in the facility footprint (foot traffic and other loads) to the degree feasible in order to prevent compaction of bioretention soils• Never drive equipment or apply heavy loads in facility footprint• Because the risk of compaction is higher during saturated soil conditions, any type of loading in the cell (including foot traffic) should be minimized during wet conditions.• Consider measures to distribute loading if heavy foot traffic is required or equipment must be placed in facility. As an example, boards may be placed across soil to distribute loads and minimize compaction.• If compaction occurs, soil must be loosened or otherwise rehabilitated to original design state.
Inlets/Outlets/Pipes				
Splash block inlet	A		Water is not being directed properly to the facility and away from the inlet structure	Reconfigure/repair blocks to direct water to facility and away from structure
Curb cut inlet/outlet	M during the wet season and before severe storm is forecasted	Weekly during fall leaf drop	Accumulated leaves at curb cuts	Clear leaves (particularly important for key inlets and low points along long, linear facilities)
Pipe inlet/outlet	A		Pipe is damaged	Repair/replace
	W		Pipe is clogged	Remove roots or debris
	A, S		Sediment, debris, trash, or mulch reducing capacity of inlet/outlet	<ul style="list-style-type: none">• Clear the blockage• Identify the source of the blockage and take actions to prevent future blockages
		Weekly during fall leaf drop	Accumulated leaves at inlets/outlets	Clear leaves (particularly important for key inlets and low points along long linear facilities)
		A	Maintain access for inspections	<ul style="list-style-type: none">• Clear vegetation (transplant vegetation when possible) within 1 foot of inlets, maintain access pathways• Consultation with a landscape architect is recommended for removal, transplant, or substitution of plants
Erosion control at inlet	A		Concentrated flows are causing erosion	Maintain a cover of rock or cobbles or other erosion protection measure (e.g. matting) to protect the ground where concentrated water enters the facility (e.g. a pipe, curb, or swale)

^A Frequency A = Annually; B = Biannually (twice per year); M= Monthly; W= At least one visit should occur during the wet seasons (for debris/clog related maintenance, this inspection/maintenance visit should occur in the early fall, after deciduous trees have lost their leaves); S= Perform inspection after major storm events (24-hour storm event with a 10-year or greater recurrence interval).

IPM - Integrated Pest Management

ISA - International Society of Arboriculture

Bioretention Cells – Continued				
Maintenance Component	Recommended Frequency ^A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Inlets/Outlets/Pipes (cont'd)				
Trash rack	S		Trash or other debris present on trash rack	Remove/dispose
	A		Bar screen damaged or missing	Repair/replace
Overflow	A, S		Capacity reduced by sediment or debris	Remove sediment or debris/dispose
Underdrain pipe	Clean Pipe as needed	Clean orifice at least biannually	<ul style="list-style-type: none">Plant roots, sediment or debris reducing capacity of underdrainProlonged surface ponding (see "Ponded water")	<ul style="list-style-type: none">Jet clean or rotary/roots from underdrain(s)If underdrains are equipped with a flow restrictor (e.g. orifice) to attenuate flow, the orifice must be cleaned regularly.
Vegetation				
Facility bottom area and upland slope vegetation	Fall and Spring		Vegetation survival rate falls below 75% within first two years of establishment (unless project O&M manual or record drawing stipulates more or less than 75% survival rate).	<ul style="list-style-type: none">Determine cause of poor vegetation growth and correct conditionReplant as necessary to obtain 75% survival rate or greater. Refer to original planting plan, or approved jurisdictional species list for appropriate plant replacements (See Appendix 3- Bioretention Plant List, in the LID Technical Guidance Manual for Puget Sound).Confirm that plant selection is appropriate for site growing conditionsConsultation with a landscape architect recommended for removal, transplant, or substitution of plantsRemove any diseased plants or plant parts and dispose of in an approved location (e.g. commercial landfill) to avoid risk of spreading the disease to other plantsDisinfect gardening tools after pruning to prevent the spread of diseaseSee Pacific Northwest Plant Disease Management Handbook for information on disease recognition and for additional resourcesReplant as necessary according to recommendations provided for "facility bottom area and upland slope vegetation".
Vegetation (general)	As needed		Presence of diseased plants and plant material	
Trees and shrubs		All pruning seasons (timing varies by species)	Pruning as needed	<ul style="list-style-type: none">Prune trees and shrubs in a manner appropriate for each species. Pruning should be performed by landscape professionals familiar with proper pruning techniques.All pruning of mature trees should be performed by or under the direct guidance of an ISA certified arborist.
	A		Large trees and shrubs interfere with operation of the facility or access for maintenance	<ul style="list-style-type: none">Prune trees and shrubs using most current ANSI A300 standards and ISA BMP's.Remove trees and shrubs, if necessary.
	Fall and Spring		Standing dead vegetation is present	<ul style="list-style-type: none">Remove standing dead vegetationReplace dead vegetation within 30 days of reported dead and dying plants (as practical depending on weather/planting season)If vegetation replacement is not feasible within 30 days, and absence of vegetation may result in erosion problems, temporary erosion control measures should be put in place immediately.Determine cause of dead vegetation and address issue, if possibleIf specific plants have a high mortality rate, assess the cause and replace with appropriate species. Consultation with a landscape architect is recommended.
	Fall and Spring		Planting beneath mature trees	<ul style="list-style-type: none">When working around and below mature trees, follow the most current ANSI A3000 standards and ISA BMPs to the extent practicable (e.g. take care to minimize any damage to tree roots and avoid compaction of soil).Planting of small shrubs or groundcovers beneath mature trees may be desirable in some cases; such plantings should use mainly plants that come as bulbs, bare root or in 4-inch pots; plants should be in no larger than 1-gallon containers

Bioretention Cells – Continued				
Note that the inspection and routine maintenance frequencies listed below are recommended by Ecology. They do not supersede or replace the municipal stormwater permit requirements for inspection frequency required of municipal stormwater permittees for "stormwater treatment and flow control BMPs/facilities"				
Maintenance Component	Recommended Frequency ^A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
<i>Vegetation (cont'd)</i>				
Trees and shrubs (cont'd)	Fall and Spring		Planting beneath trees	<ul style="list-style-type: none">When working around and below mature trees, follow the most current ANSI A300 standards and ISA BMPs to the extent practicable (e.g. take care to minimize any damage to tree roots and avoid compaction of soil).Planting of small shrubs or groundcovers beneath mature trees may be desirable in some cases; such plantings should use mainly plants that come as bulbs, bare root or in 4-inch pots; plants should be in no larger than 1-gallon containers.
	Fall and Spring		Presence of or need for stakes and guys (tree growth, maturation, and support needs)	<ul style="list-style-type: none">Verify location of facility liners and underdrain (if any) prior to stake infiltration in order to prevent liner puncture or pipe damageMonitor tree support systems: Repair and adjust as needed to provide support and prevent damage to tree.Remove tree supports (stakes, guys, etc.) after one growing season or maximum of 1 year.Backfill stake holes after removal.
Trees and shrubs adjacent to vehicle travel areas (or areas where visibility needs to be maintained)	A		Vegetation causes some visibility (line of sight) or driver safety issues	<ul style="list-style-type: none">Maintain appropriate height for sight clearanceWhen continued, regular pruning (more than one time/growing season) is required to maintain visual sight lines for safety or clearance along a walk or drive, consider relocating the plant to a more appropriate location.Remove or transplant if continual safety hazardConsultation with a landscape architect is recommended for removal, transplant, or substitution of plants
Flowering plants		A	Dead or spent flowers present	<ul style="list-style-type: none">Remove spent flowers (deadhead)
Perennials		Fall	Spent plants	<ul style="list-style-type: none">Cut back dying or dead and fallen foliage and stems
Emergent vegetation		Spring	Vegetation compromises conveyance	<ul style="list-style-type: none">Hand rake sedges and rushes with a small rake or fingers to remove dead foliage before new growth emerges in spring or earlier if the foliage is blocking water flow (sedges do not respond well to pruning)
Ornamental grasses (perennial)		Winter and Spring	Dead material from previous year's growing cycle or dead collapsed foliage	<ul style="list-style-type: none">Leave dry foliage for winter interestHand rake with a small rake or fingers to remove dead foliage back to within several inches from the soil before new growth emerges in spring or earlier if the foliage collapses and is blocking water flow
Ornamental grasses (evergreen)		Fall and Spring	Dead growth present in Spring	<ul style="list-style-type: none">Hand rake with a small rake or fingers to remove dead growth before new growth emerges in SpringClean, rake, and comb grasses when they become too tallCut back to ground or thin every 2-3 years as needed
Noxious weeds		M (March-October, preceding seed dispersal)	Listed noxious vegetation is present (refer to current county noxious weed list)	<ul style="list-style-type: none">By law, class A & B noxious weeds must be removed, bagged and disposed as garbage immediatelyReasonable attempts must be made to remove and dispose of class C noxious weedsIt is strongly encouraged that herbicides and pesticides not be used in order to protect water quality; use of herbicides and pesticides may be prohibited in some jurisdictionsApply mulch after weed removal (see "Mulch")

^A Frequency A = Annually; B = Biannually (twice per year); M= Monthly; W= At least one visit should occur during the wet seasons (for debris/clog related maintenance, this inspection/maintenance visit should occur in the early fall, after deciduous trees have lost their leaves); S= Perform inspection after major storm events (24-hour storm event with a 10-year or greater reoccurrence interval).

IPM - Integrated Pest Management

ISA - International Society of Arboriculture

Bioretention Cells – Continued				
Maintenance Component	Recommended Frequency ^A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Vegetation (cont'd)				
Weeds		M (March-October, preceding seed dispersal)	Weeds are present	<ul style="list-style-type: none">Remove weeds with their roots manually with pincer-type weeding tools, flame weeders, or hot water weeders as appropriateFollow IPM protocols for weed management (see "Additional Maintenance Resource" section for more information on IPM protocols)
Excessive Vegetation		Once in early to mid-May and once in early-to mid-September	Low-lying vegetation growing beyond facility edge onto sidewalks, paths, or street edge poses pedestrian safety hazard or may clog adjacent permeable pavement surfaces due to associated leaf litter, mulch, and soil	<ul style="list-style-type: none">Edge or trim groundcovers and shrubs and facility edgeAvoid mechanical blade-type edger and do not use edge or trimmer within 2 feet of tree trunksWhile some clippings can be left in the facility to replenish organic material in the soil, excessive leaf litter can cause surface soil clogging
	As needed		Excessive vegetation density inhibits stormwater flow beyond design ponding or becomes a hazard for pedestrian and vehicular circulation and safety	<ul style="list-style-type: none">Determine whether pruning or other routine maintenance is adequate to maintain proper plant density and aestheticsDetermine if planting type should be replaced to avoid ongoing maintenance issues (an aggressive grower under perfect growing conditions should be transplanted to a location where it will not impact flow)Remove plants that are weak, broken or not true to form; replace in-kindThin grass or plants impacting facility function without leaving visual holes or bare soil areasConsultation with a landscape architect is recommended for removal, transplant or substitution of plants
	As needed		Vegetation blocking curb cuts, causing excessive sediment build up and flow bypass	<ul style="list-style-type: none">Remove vegetation and sediment buildup
Mulch				
Mulch		Following weeding	Bare spots (without mulch cover) are present or mulch depth less than 2 inches	<ul style="list-style-type: none">Supplement mulch with hand tools to a depth of 2 to 3 inchesReplenish mulch per O&M manual. Often coarse compost is used in the bottom of the facility and arborist wood chips are used on side slopes and rim (above typical water levels)Keep all mulch away from woody stems
Watering				
Irrigation system (if necessary)		Based on manufacturer's instructions	Irrigation system present	<ul style="list-style-type: none">Follow manufacturer's instructions for O&M
	As needed		Sprinklers or drip irrigation not directed/located to properly water plants	<ul style="list-style-type: none">Redirect sprinklers or move drip irrigation to desired areas
Summer watering (first year)		Once every 1-2 weeks or as needed during prolonged dry periods	Trees, shrubs and groundcovers in first year of establishment period	<ul style="list-style-type: none">10 to 15 gallons per tree3 to 5 gallons per shrub2 gallons water per square foot for groundcover areasWater deeply, but infrequently, so that the top 6 to 12 inches of the root zone is moistUse soaker hoses or spot water with a shower type wand when irrigation system is not presentPulse water to enhance soil absorption, when feasiblePre-moisten soil to break surface tension of dry or hydrophobic soils/mulch, followed by several more passes. With this method, each pass increases soil absorption and allows more water to infiltrate prior to runoffAdd a tree bag or slow-release water device (e.g. bucket with a perforated bottom) for water newly installed trees when irrigation system is not present

Bioretention Cells – Continued				
Note that the inspection and routine maintenance frequencies listed below are recommended by Ecology. They do not supersede or replace the municipal stormwater permit requirements for inspection frequency required of municipal stormwater permittees for "stormwater treatment and flow control BMPs/facilities"				
Maintenance Component	Recommended Frequency ^A		Condition when Maintenance is Needed (Standards)	Action Needed (Procedures)
	Inspection	Routine Maintenance		
Watering (cont'd)				
Summer watering (second and third years)		Once every 2-4 weeks or as needed during prolong dry periods	Trees, shrubs and groundcovers in second or third year of establishment period	<ul style="list-style-type: none">• 10 to 15 gallons per tree• 3 to 5 gallons per shrub• Water deeply, but infrequently, so that the top 6 to 12 inches of the root is moist• Use soaker hoses or spot water with a shower type wand when irrigation system is not present• Pulse water to enhance soil absorption, when feasible• Pre-moisten soil to break surface tension of dry or hydrophobic soils/mulch, followed by several more passes. With this method, each pass increases soil absorption and allows more water to infiltrate prior to runoff
Summer watering (after establishment)		As needed	Established vegetation (after 3 years)	<ul style="list-style-type: none">• Plants are typically selected to be drought tolerant and not require regular watering after establishment; however, trees may take up to 5 years to become fully established• Identify trigger mechanisms for drought-stress (e.g. leaf senescence, etc.) or different species and water immediately after initial signs of stress appear
Pest Control				
Mosquitos	B, S		Standing water remains for more than 3 days after the end of a storm	<ul style="list-style-type: none">• Identify the cause of the standing water and take appropriate actions to address the problem (see "Ponded water")• To facilitate maintenance, manually remove standing water and direct to the storm drainage system (if runoff is from non-pollution-generating surfaces) or sanitary sewer system (if runoff is from pollution-generating surfaces) after getting approval from sanitary sewer authority.• Use of pesticides or <i>Bacillus thuringiensis israelensis</i> (Bti) may be considered only as a temporary measure while addressing the standing water cause.
Nuisance Animals	As needed		Nuisance animals causing erosion, damaging plants, or depositing large volumes of feces	<ul style="list-style-type: none">• Reduce site conditions that attract nuisance species where possible (e.g. plant shrubs and tall grasses to reduce open areas for geese, etc.)• Place predator decoys• Follow IPM protocols for specific nuisance animal issues (see "Additional Maintenance Resources" section for more information on IPM protocols)• Remove pet waste regularly• For public and right-of-way sites consider adding garbage cans with a dog bags for picking up pet waste.
Insect Pests	Every site visit associated with vegetation management		Signs of pests, such as wilting leaves, chewed leaves and bark, spotting or other indicators	<ul style="list-style-type: none">• Reduce hiding places for pests by removing diseased and dead plants• For infestation, follow IPM protocols (see "Additional Maintenance Resources" section for more information on IPM protocols)

^A Frequency A = Annually; B = Biannually (twice per year); M= Monthly; W= At least one visit should occur during the wet seasons (for debris/clog related maintenance, this inspection/maintenance visit should occur in the early fall, after deciduous trees have lost their leaves); S= Perform inspection after major storm events (24-hour storm event with a 10-year or greater reoccurrence interval).

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Infiltration Trenches

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Trash & Debris	Any trash and debris which exceed 5 cubic feet per 1,000 square feet (this is about equal to the amount of trash it would take to fill up one standard size garbage can). In general, there should be no visual evidence of dumping. If less than threshold all trash and debris will be removed as part of next scheduled maintenance.	Trash and debris cleared from site
	Poisonous/Noxious Vegetation	Any poisonous or nuisance vegetation which may constitute a hazard to maintenance personnel or the public. Any evidence of noxious weeds as defined by State or local regulations. (Apply requirements of adopted Integrated Pest Management policies for the use of herbicides)	No danger of poisonous vegetation where maintenance personnel or the public might normally be. (Coordinate with local health department) Complete eradication of noxious weeds may not be possible. Compliance with State or local eradication policies required.
	Contaminants and Pollution	Any evidence of oil, gasoline, contaminants or other pollutants. (Coordinate removal/cleanup with local water quality response agency).	No contaminants or pollutants present.
	Rodent Holes	Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes	Rodents destroyed and dam or berm repaired. (Coordinate with local health department)
Storage Area	Sediment	Water ponding in infiltration facility after rainfall ceases and appropriate time allowed for infiltration. (A percolation test pit or test facility indicates facility is only working at 90% of its designed capabilities. If two inches or more sediment is present, remove.)	Sediment is removed and/or facility is cleaned so that infiltration system works according to design.
Filter Bags	Filled with Sediment and Debris	Sediment and debris fill bag more than 1/2 full.	Filter bag is replaced or system is redesigned.
Rock Filters	Sediment and Debris	By visual inspection, little or no water flows through filter during heavy rain storms.	Gravel in rock filter is replaced.
Pre-Settling Ponds/Vaults	Facility or sump filled with sediment and/or debris	6" or designed sediment trap depth of sediment.	Sediment is removed.

Catch Basins

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Trash & Debris (Includes Sediment)	Trash or debris of more than 1/2 cubic foot which is located immediately in front of the catch basin opening or is blocking capacity of the basin by more than 10%	No Trash or debris located immediately in front of catch basin opening.
		Trash or debris (in the basin) that exceeds 1/3 the depth from the bottom of basin to invert the lowest pipe into or out of the basin.	No trash or debris in the catch basin.
		Trash or debris in any inlet or outlet pipe blocking more than 1/3 of its height.	Inlet and outlet pipes free of trash or debris.
		Dead animals or vegetation that could generate odors that could cause complaints or dangerous gases (e.g., methane).	No dead animals or vegetation present within the catch basin.
		Deposits of garbage exceeding 1 cubic foot in volume	No condition present which would attract or support the breeding of insects or rodents.
	Structure Damage to Frame and/or Top Slab	Corner of frame extends more than 3/4 inch past curb face into the street (If applicable).	Frame is even with curb.
		Top slab has holes larger than 2 square inches or cracks wider than 1/4 inch (intent is to make sure all material is running into basin).	Top slab is free of holes and cracks.
		Frame not sitting flush on top slab, i.e., separation of more than 3/4 inch of the frame from the top slab.	Frame is sitting flush on top slab.
	Cracks in Basin Walls/ Bottom	Cracks wider than 1/2 inch and longer than 3 feet, any evidence of soil particles entering catch basin through cracks, or maintenance person judges that structure is unsound.	Basin replaced or repaired to design standards.
		Cracks wider than 1/2 inch and longer than 1 foot at the joint of any inlet/ outlet pipe or any evidence of soil particles entering catch basin through cracks.	No cracks more than 1/4 inch wide at the joint of inlet/outlet pipe.
	Sediment/ Misalignment	Basin has settled more than 1 inch or has rotated more than 2 inches out of alignment.	Basin replaced or repaired to design standards.

Catch Basins (continued)

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Fire Hazard	Presence of chemicals such as natural gas, oil and gasoline.	No flammable chemicals present.
	Vegetation	Vegetation growing across and blocking more than 10% of the basin opening.	No vegetation blocking opening to basin.
		Vegetation growing in inlet/outlet pipe joints that is more than six inches tall and less than six inches apart.	No vegetation or root growth present.
	Pollution	Nonflammable chemicals of more than 1/2 cubic foot per three feet of basin length.	No pollution present other than surface film.
Catch Basin Cover	Cover Not in Place	Cover is missing or only partially in place. Any open catch basin requires maintenance.	Catch basin cover is closed
	Locking Mechanism Not Working	Mechanism cannot be opened by on maintenance person with proper tools. Bolts into frame have less than 1/2 inch of thread.	Mechanism opens with proper tools.
	Cover Difficult to Remove	One maintenance person cannot remove lid after applying 80 lbs. of lift; intent is keep cover from sealing off access to maintenance.	Cover can be removed by one maintenance person.
Metal Grates (If Applicable)	General	Grate with opening wider than 7/8 inch.	Grate opening meets design standards.
	Trash and Debris	Trash and debris that is blocking more than 20% of grate surface.	Grate free of trash and debris.
	Damaged or Missing.	Grate missing or broken member(s) of the grate.	Grate is in place and meets design standards.

Conveyance Systems

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
Pipes	Sediment & Debris	Accumulated sediment that exceeds 20% of the diameter of the pipe.	Pipe cleaned of all sediment and debris.
	Vegetation	Vegetation that reduces free movement of water through pipes.	All vegetation removed so water flows freely through pipes.
	Damaged	Protective coating is damaged; rust is causing more than 50% deterioration to any part of pipe.	Pipe repaired or replaced.
		Any dent that decreases the cross section area of pipe by more than 20%.	Pipe repaired or replaced.
Open Ditches	Trash & Debris	Trash and debris exceeds 1 cubic foot per 1,000 square feet of ditch and slopes.	Trash and debris cleared from ditches.
	Sediment	Accumulated sediment that exceeds 20 % of the design depth.	Ditch cleaned/ flushed of all sediment and debris so that it matches design.
	Vegetation	Vegetation that reduces free movement of water through ditches.	Water flows freely through ditches.
	Erosion Damage to Slopes	See "Ponds" Standard	See "Ponds" Standard
	Rock Lining Out of Place or Missing (If Applicable).	Maintenance person can see native soil beneath the rock lining.	Replace rocks to design standards.
Catch Basins		See "Catch Basins: Standard	See "Catch Basins" Standard
Debris Barriers (e.g., Trash Rack)		See "Debris Barriers" Standard	See "Debris Barriers" Standard

Grounds

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Weeds (Nonpoisonous)	Weeds growing in more than 20% of the landscaped area (trees and shrubs only).	Weeds present in less than 5% of the landscaped area.
	Safety Hazard	Any presence of poison ivy or other poisonous vegetation.	No poisonous vegetation present in landscaped area.
	Trash or Litter	Paper, cans, bottles, totaling more than 1 cubic foot within a landscaped area (trees and shrubs only) of 1,000 square feet.	Area clear of litter.
Trees and Shrubs	Damaged	Limbs or parts of trees or shrubs that are split or broken which affect more than 25% of the total foliage of the tree or shrub.	Trees and shrubs with less than 5% of total foliage with split or broken limbs.
		Trees or shrubs that have been blown down or knocked over.	Tree or shrub in place free of injury.
		Trees or shrubs which are not adequately supported or are leaning over, causing exposure of the roots.	Tree or shrub in place and adequately supported; remove any dead or diseased trees.

Disposal of Trash Debris and Sediment

Trash and Debris

Small amounts of trash and debris can be put into a solid waste container. Large amounts may require hiring a vendor to dispose of the material. If using a vendor, ensure that the vendor properly disposes of waste.

Sediment

1. Clean sediment may be used as landscape material or sent to yard waste recyclers.
2. Sediment that does not appear to be heavily contaminated with oil or grease can be double bagged and put into a solid waste container. Material that appears to be heavily contaminated must be disposed of by a qualified vendor.

Annual Stormwater Maintenance Log

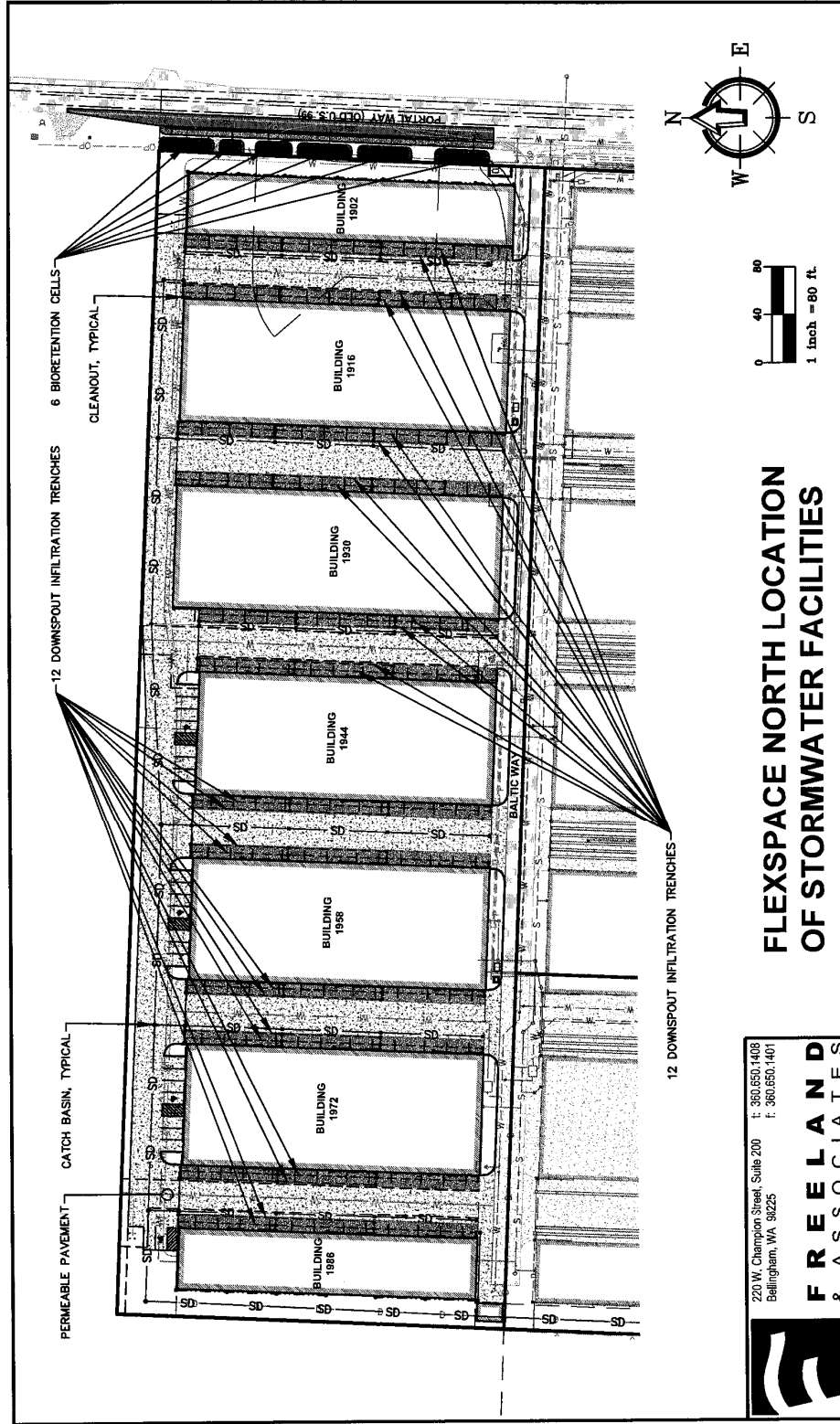
Component	Comments/Defects/Action Taken	Action By	Action Date

Inspection Conducted By: _____

Date of Inspection: _____

Additional Comments: _____

Stormwater Facilities Site Plan



UIC Well Rule-Authorization

Copy of the Rule Authorized Email

Sent: 1/25/2024 12:55 PM

Recipients:

Steven@cowdeninc.com

Steven@cowdeninc.com

Steven@cowdeninc.com

Registration and compliance with the Underground Injection Control (UIC) Program, Flexspace N.

Well Owner: Steve Cowden

Technical Contact: Steve Cowden

We reviewed your UIC registration form for the above-mentioned site. Based on the information provided in the registration the UIC wells are UIC Program rule authorized and a State Waste Discharge Permit is not required to operate the wells, 173-218 WAC. The UIC site number is 36630.

The UIC rule requires that groundwater quality is protected by implementing best management practices (BMPs) for the life of the well, such as operation and maintenance which prevents stormwater pollution, stormwater treatment, and also proper closure of the wells. Ecology's stormwater manuals <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals> include the BMPs associated with different land uses, see the Source Control chapter in the manual associated with your location.

The BMPs listed on the registration and applied at the site are presumed to protect ground water quality, and unless there is site specific information to indicate otherwise the non-endangerment requirements of the UIC program have been met.

UIC wells can also be registered on line at <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Underground-injection-control-program/Register-UIC-wells-online>. The disposition, rule authorization or pending, can also be viewed on line.

Please call me at (360) 688-3586 if you have any questions. Additional information can also be found at our website <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Underground-injection-control-program>.

Sincerely,

UIC Coordination Team

UICwells@ecy.wa.gov

(360) 688-3586

UIC Registration Signature Page

Site Number: 36630

I hereby certify that the information contained in the above referenced registration is true and correct to the best of my knowledge.

<u>Florspace North</u> <u>Steve Cowden</u>	<u>OWNER</u>
Name of legally authorized representative	Title
<u>Steve Cowden</u>	<u>1-31-24</u>
Signature of legally authorized representative	Date

Underground Injection Control

Industrial or Commercial Facilities

For UIC stormwater wells at industrial or commercial facilities.

Registration Status

Site Number:36630
Authorization Status:Updates Submitted
Comments:

Facility/Site Information

Facility Name:Flexspace North
Address:6445 Portal Way
PO Box/Suite/Building:
City:Ferndale
State:Zip:WA98248
Phone:360-739-4042
County:Whatcom

Contact Information

Well Owner

Name:Steve Cowden
Organization:Flexspace North, LLC
Address:5570 Knight Rd
PO Box/Suite/Building:
City:Bellingham
State:Zip:WA98226
Email:Steven@cowdeninc.com
Phone:360-739-4042

Property Owner

Name:Steve Cowden
Organization:Flexspace North, LLC
Address:5570 Knight Rd
PO Box/Suite/Building:
City:Bellingham
State:Zip:WA98226
Email:Steven@cowdeninc.com
Phone:360-739-4042

Technical Contact

Name:Steve Cowden
Organization:Flexspace North, LLC
Address:5570 Knight Rd
PO Box/Suite/Building:
City:Bellingham
State:Zip:WA98226
Email:Steven@cowdeninc.com
Phone:360-739-4042

Industrial Specific Information

SIC Code:
NAIC Code:531130
Facility wastewater:Connected to a public sewer
Site Drinking Water Source:Public Water Supply
Briefly describe the type or nature of business at this facility:Storage Condominiums
Was this site ever a toxic cleanup site?No
Is this site an industrial or commercial facility that uses or manages hazardous substances?No
Is this site regulated by Federal Regulations, 40 CFR Subpart 122.26(b)(14) NPDES Program?No

Main Well Information

Well Name	Construction Date	EPA Well Type	Status	UIC Construction Type	Depth of UIC Well (ft.)	Latitude	Longitude	Google Map Link
DownspoutInfiltration9	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874672	-122.586686	https://google.com/maps/place/48.874672,-122.586686/@48.874
DownspoutInfiltration8	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874672	-122.586711	https://google.com/maps/place/48.874672,-122.586711/@48.874
DownspoutInfiltration7	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874675	-122.586844	https://google.com/maps/place/48.874675,-122.586844/@48.874
DownspoutInfiltration6	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874678	-122.587336	https://google.com/maps/place/48.874678,-122.587336/@48.874
DownspoutInfiltration5	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874678	-122.587361	https://google.com/maps/place/48.874678,-122.587361/@48.874
DownspoutInfiltration4	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874683	-122.587494	https://google.com/maps/place/48.874683,-122.587494/@48.874
DownspoutInfiltration3	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	5	48.874689	-122.588008	https://google.com/maps/place/48.874689,-122.588008/@48.874
DownspoutInfiltration24	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874675	-122.584740	https://google.com/maps/place/48.874675,-122.584740/@48.874
DownspoutInfiltration23	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874653	-122.585360	https://google.com/maps/place/48.874653,-122.585360/@48.874
DownspoutInfiltration22	7/1/2022	Aquifer Recharge	Active	Infiltration trench with perforated pipe	4	48.874672	-122.586010	https://google.com/maps/place/48.874672,-122.586010/@48.874
DownspoutInfiltration21	7/1/2022	Stormwater (residential, paved streets, roofs,	Active	Infiltration trench with perforated pipe	4	48.874672	-122.586660	https://google.com/maps/place/48.874672,-122.586660/@48.874

Well Name	Construction Date	EPA Well Type	Status	UIC Construction Type	Depth of UIC Well (ft.)	Latitude	Longitude	Google Map Link
		parking lots)						
DownspoutInfiltration20	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874678	-122.587310	https://google.com/maps/place/48.874678,-122.587310/@48.874
DownspoutInfiltration2	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	5	48.874689	-122.588142	https://google.com/maps/place/48.874689,-122.588142/@48.874
DownspoutInfiltration19	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874689	-122.588060	https://google.com/maps/place/48.874689,-122.588060/@48.874
DownspoutInfiltration18	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874675	-122.584772	https://google.com/maps/place/48.874675,-122.584772/@48.874
DownspoutInfiltration17	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874647	-122.584900	https://google.com/maps/place/48.874647,-122.584900/@48.874
DownspoutInfiltration16	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874653	-122.584925	https://google.com/maps/place/48.874653,-122.584925/@48.874
DownspoutInfiltration15	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874653	-122.585392	https://google.com/maps/place/48.874653,-122.585392/@48.874
DownspoutInfiltration14	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874656	-122.585417	https://google.com/maps/place/48.874656,-122.585417/@48.874
DownspoutInfiltration13	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874658	-122.585550	https://google.com/maps/place/48.874658,-122.585550/@48.874
DownspoutInfiltration12	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874667	-122.586039	https://google.com/maps/place/48.874667,-122.586039/@48.874

Well Name	Construction Date	EPA Well Type	Status	UIC Construction Type	Depth of UIC Well (ft.)	Latitude	Longitude	Google Map Link
DownspoutInfiltration11	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874667	-122.586064	https://google.com/maps/place/48.874667,-122.586064/@48.874
DownspoutInfiltration10	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	4	48.874683	-122.586197	https://google.com/maps/place/48.874683,-122.586197/@48.874
DownspoutInfiltration1	7/1/2022	Stormwater (residential, paved streets, roofs, parking lots)	Active	Infiltration trench with perforated pipe	5	48.874692	-122.588167	https://google.com/maps/place/48.874692,-122.588167/@48.874

Main Well Information (cont.)

Well Name	Is constructed in accordance with approved stormwater manual?	Within 1000 feet of surface water?	Within 100 feet of a drinking water well or spring?	Within a Ground Water Protection Area?	Type of Drainage Area	Is High Susceptible Aquifer?	Is Confining Layer Present?	Zoning
DownspoutInfiltration9	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration8	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration7	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration6	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration5	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration4	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration3	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration24	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration23	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration22	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration21	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration20	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration2	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration19	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration18	Y	N	N	None	Non-pollutant Generating	N	N	Commercial

Well Name	IT constructed in accordance with approved stormwater manual?	Within 1000 feet of surface water?	Within 100 feet of a drinking water well or spring?	Within a Ground Water Protection Area?	Type of Drainage Area	Is High Susceptible Aquifer?	Is Confining Layer Present?	Zoning
DownspoutInfiltration17	Y	N	N	None	Roof Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration16	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration15	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration14	Y	N	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration13	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration12	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration11	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration10	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial
DownspoutInfiltration1	Y	Y	N	None	Non-pollutant Generating Roof	N	N	Commercial

Infiltration Trenches in Eastern or Western WA Without Soils Considered as Treatment BMP

Well Name	At least 5 ft. between the trench base and the water table or impermeable layer?	Basic treatment?	High use site? If in Eastern WA, high average daily traffic road?	High use treatment
DownspoutInfiltration9	N	None	N	None
DownspoutInfiltration8	N	None	N	None
DownspoutInfiltration7	N	None	N	None
DownspoutInfiltration6	N	None	N	None
DownspoutInfiltration5	N	None	N	None
DownspoutInfiltration4	N	None	N	None
DownspoutInfiltration3	N	None	N	None
DownspoutInfiltration24	N	None	N	None
DownspoutInfiltration23	N	None	N	None
DownspoutInfiltration22	N	None	N	None
DownspoutInfiltration21	N	None	N	None
DownspoutInfiltration20	N	None	N	None
DownspoutInfiltration2	N	None	N	None
DownspoutInfiltration19	N	None	N	None
DownspoutInfiltration18	N	None	N	None
DownspoutInfiltration17	N	None	N	None
DownspoutInfiltration16	N	None	N	None
DownspoutInfiltration15	N	None	N	None
DownspoutInfiltration14	N	None	N	None
DownspoutInfiltration13	N	None	N	None
DownspoutInfiltration12	N	None	N	None
DownspoutInfiltration11	N	None	N	None
DownspoutInfiltration10	N	None	N	None
DownspoutInfiltration1	N	None	N	None

Documents

Document Type	Document	Uploaded By
Ecology Response Letter	Rule Authorized Email.pdf	Brian Johnson on 1/25/2024 12:55:41 PM
Signed Registration Signature Page	UIC Registration Signature Page Site No 36630.pdf	sfireland on 1/31/2024 8:52:43 AM
UIC Drainage Plans	Choose File No file chosen	

Maintenance Covenant and Access Easement



After recording return to:
CITY OF FERNDAL
PO BOX 936
FERNDAL, WA 98248



DOCUMENT TITLE:	MAINTENANCE COVENANT AND ACCESS EASEMENT
RELATED DOCUMENT NUMBER:	
GRANTOR:	FLEXSPACE NORTH LLC, a Washington liability company
GRANTEE:	CITY OF FERNDAL, a Washington municipal corporation
ABBREVIATED LEGAL DESCRIPTION:	LOT 1 & 2 PORTAL WAY SHORT PLAT AS REC AF 2141101546 S 90 FT OF E 150 FT OF TR DAF- N 1/2 S 1/2 NE NW-LESS RD-RR
ASSESSOR'S TAX PARCEL NUMBER:	390217 230445 0000

MAINTENANCE COVENANT AND ACCESS EASEMENT

THIS MAINTENANCE COVENANT AND ACCESS EASEMENT ("Agreement") is made this 2nd day of February 2024, between FLEXSPACE NORTH LLC, a Washington limited liability company ("Developer"), and the CITY OF FERNDAL, a municipal corporation of the State of Washington ("City").

RECITALS

WHEREAS, Developer is the owner and developer of certain real property located in the City which property is legally described on Exhibit A attached hereto and incorporated by reference and which is commonly known as Flexspace North ("Development").

WHEREAS, The City has approved construction plans submitted by Developer for the Development. The Development contains on-site stormwater facilities as described in the approved construction plans, which together with any other stormwater facilities that may hereafter be constructed on the Development are hereinafter referred to as the "Stormwater Facility."

WHEREAS, Ferndale Municipal Code ("FMC") 13.34 requires a maintenance covenant for all stormwater facilities which maintenance covenant shall also include an easement for inspections by the City and which maintenance covenant shall be recorded against the Development.

WHEREAS, the City requires that Developer enter into this Agreement as a condition of the City's approval of construction plans and/or approval of the final plat, or issuance of a letter of completion in the case of a commercial project, for the Development.

NOW, THEREFORE, the City and Developer agree as follows:

1. Developer. The term "Developer" as used herein is intended to and does include the person or entity responsible for the Development to which this Agreement applies as well as the successors and assigns of such Developer, including without limitation, subsequent owners of lot(s) or interest(s) in the Development including any homeowners' or other association owning or having responsibility for maintenance of common areas in the Development, including ownership or maintenance of the Stormwater Facility.

2. Covenant to Maintain and Repair. Developer covenants, that it shall, at its sole expense, at all times maintain the Stormwater Facility in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines, including those adopted from time to time by the City.

3. Developer Designee. No later than at the time of recording of the final plat or issuance of a letter of completion for a commercial project, Developer shall notify the City in writing of the person or persons responsible for compliance with Developer's obligations under this Agreement ("Developer Designee") and the Developer will notify the City in writing within 30 days of any future change in the Developer Designee. Developer expressly agrees that the Developer Designee shall have the authority to bind Developer, its successors and assigns with respect to the matters described in this Agreement. Failure by Developer to notify the City of a Developer Designee shall in no way absolve or excuse Developer or Developer Designee from their obligations to comply with the terms of this Agreement. Any necessary enforcement action shall be taken against the legal owner of the Development at the time of enforcement.

4. Items of Maintenance, Repair and Inspection; Maintenance and Inspection Schedule and Records. Developer's inspection and maintenance of the Stormwater Facility will comply with FMC 13.34, as now constituted or as may be amended in the future which includes but is not limited to "removal of silt, litter and other debris from all catch basins, inlets and drainage pipes; grass cutting and vegetation removal; and necessary replacement of landscape vegetation." An inspection shall be conducted no less than annually, or as specified in the development's Stormwater Maintenance Manual, and "any identified maintenance found must be addressed in a timely manner as determined by the City...to ensure proper functioning of the Stormwater Facility." Developer, its successors, and assigns shall provide the City's Public Works Stormwater Division with annual (or such other time frame determined by the City) records of installation and of all maintenance and repairs and shall retain such records for 20 years, all as required by FMC 13.34.

5. Easement. Developer hereby grants to the City, its employees, independent contractors and designees, a nonexclusive easement for access, ingress and egress over, across, upon, through, and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater Facility and discharges therefrom. Such non-exclusive easement includes the right to inspection by the City when the City has a reasonable basis to believe that a violation of FMC 13.34 is occurring or has occurred and to enter when necessary for correction of a violation of this chapter pursuant to FMC 13.34 all as currently constituted or as may be amended in the future. The City's right to access, ingress, egress, and inspection under this section shall not require notice to Developer.

6. Failure to Perform Covenant. If the City determines that Developer, its successors, and assigns are not in compliance with this Agreement, enforcement shall be by way pursuant to FMC 13.34 or FMC 1.12 or any other means available under applicable laws. In addition to, or as an alternative and not as an election of remedies, enforcement may be by way of an action for breach of the terms of the Agreement herein.

7. City has No Obligation to Perform. Developer, for itself and its successors and assigns, including all future owners of lots or interests in the Development, agrees that the City has no obligation to exercise or to perform any maintenance or repair of the Stormwater Facility, and that the City shall have no liability to Developer or to any of Developer's successors or assigns, including future owners of lots or interests in the Development, in connection with the maintenance or repair of the Stormwater Facility, or the failure to perform the same.

8. Reimbursement. If the City exercises its right to enter the Development to inspect the Stormwater Facility when the City has a reasonable basis to believe that a violation of FMC 13.34 is occurring or has occurred and when the City exercises its right to enter the Development when necessary for correction of a violation of FMC 13.34, Developer, its successors, and assigns shall reimburse the City for all of its costs and expenses including reasonable attorney's fees incurred in connection therewith within thirty (30) days after receipt of an invoice. Such costs and expenses shall be added to the daily penalty allowable for a civil infraction, if a civil infraction is issued. If Developer fails to timely remit payment of an invoice, the City shall be entitled to a lien against Developer's property.

9. Indemnification. Developer, its successors, and assigns agrees to indemnify, defend and hold harmless the City, its employees, independent contractors and designees from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims or suits arising from Developer's failure to perform its obligations under this Agreement or the exercise of the City's rights herein.

10. Run with the Land. The rights and obligations contained herein shall run with the land and inure to the benefit of, and shall be binding upon, the City and Developer and their respective successors and assigns including, without limitation, subsequent owners of lots or interests in the Development and including any homeowner's or other association owning and/or having responsibility for maintenance of the common areas in the Development, including maintenance of the Stormwater Facility.

11. Failure of Association to Act; Creation of Lien and Personal Obligation. The Developer covenants and agrees that the obligations contained herein to maintain the Stormwater Facility belong jointly to such association having the responsibility for maintenance of the Stormwater Facility as well as to the individual lot or interest owners. Failure of such association to meet the obligations herein regarding the Stormwater Facility, does not relieve the individual lot or interest owners from such obligations. As such, any enforcement action by the City pursuant to this Agreement may be had against not only such association, but also against the individual lot or interest owners, as well. All applicable and allowable fees and costs herein as provided in the Ferndale Municipal Code, shall be a continuing lien upon each lot or interest against which such fees and costs are imposed or to which they apply, on a pro rata basis, and shall also be the personal obligation of each owner of such lot or interest at the time the fees and costs come due. The personal obligation for such fees and costs shall pass to the lot or interest owner's successor in title. No lot or interest owner may exempt himself/herself from liability for such fees and costs by abandoning or not using his/her lot or interest or otherwise.

12. Venue. With the exception of enforcement actions allowable under City Code, the venue for resolving disputes that arise under the terms of this Agreement shall be Whatcom County Superior Court.

13. Attorney Fees. If legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and in any appeal therefrom. The term "action" shall be deemed to include action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

14. Severability. Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

15. Assignment. The obligations of Developer, and of subsequent owners of lots or interests in the Development, under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), or (b) with the prior written consent of the City to a homeowners' or other association that owns and maintains the common areas of the Development, including the Stormwater Facility.

16. Authority. If Developer is an entity, the individual executing this Agreement on behalf of Developer represents and warrants to the City that he or she has the full power and authority to do so and that Developer has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

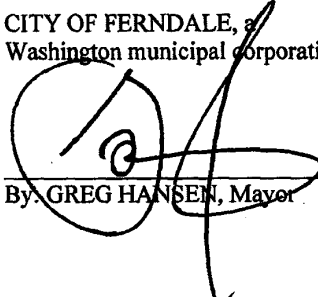
[Signature Page Follows]

IN WITNESS WHEREOF, Developer and the City have executed this instrument on the date first written above.

DEVELOPER:
FLEXSPACE NORTH, LLC, a
Washington limited liability company


By: STEVE COWDEN, Manager

CITY OF FERNDALE,
Washington municipal corporation


By: GREG HANSEN, Mayor

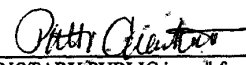
STATE OF WASHINGTON
County of Whatcom

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ss.

This is to certify that on the 14th day of February, 2024 before me, the undersigned Notary Public in and for the State of Washington, personally appeared GREG HANSEN, to me known to be the Mayor of the CITY OF FERNDALE, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of the CITY OF FERNDALE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



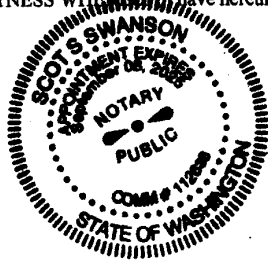

NOTARY PUBLIC in and for the
State of Washington, residing at
Bellingham WA
My commission expires: 12/19/25

STATE OF WASHINGTON
County of Whatcom

)
ss.

This is to certify that on the 2nd day of February 2024 before me, the undersigned Notary Public in and for the State of Washington, personally appeared Steve Cowden to me known to be Manager of FLEXSPACE NORTH, LLC, a Washington limited liability company, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of FLEXSPACE NORTH, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



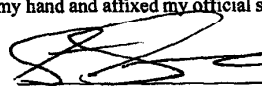

NOTARY PUBLIC in and for the
State of Washington, residing at
Bellingham
My commission expires: 09/08/25

EXHIBIT "A"

LEGAL DESCRIPTION BURDENED PARCEL

PARCEL No: 390217 230445 0000

LOTS 1 AND 2, PORTAL WAY SHORT PLAT AS PER THE MAP THEREOF RECORDED ON NOVEMBER 19, 2014, UNDER AUDITOR'S FILE No. 2141101546, RECORDS OF WHATCOM COUNTY, WASHINGTON, TOGETHER WITH THE SOUTH 90 FEET OF THE EAST 150 FEET OF THE NORTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., EXCEPT THE EAST 45 FEET FOR ROAD.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO AND/OR TOGETHER WITH ALL EASEMENTS, COVENANTS, RESTRICTIONS AND/OR AGREEMENTS OF RECORD, OR OTHERWISE.

