



COMMUNITY MEMBERSHIP TERMS & CONDITIONS

LAST UPDATED: APRIL 2019

COMMUNITY MEMBERSHIP TERMS & CONDITIONS

The following sets for the terms and conditions for the Seven Summits Lodge Community Membership.

Definitions In addition to the terms defined in the Community Membership Agreement and elsewhere herein, the following terms shall have the meanings specified below:

“Additional Club Dues” shall have the meaning set forth in Section 5.11 hereof.

“Association” shall mean Whitman Community Association, Inc.

“Board” shall mean the Board of Directors of Association.

“Builder” shall mean any Person that purchases a Lot from Declarant for the purpose of constructing one or more Residential Units.

“Club” shall mean the Club Property, subject to additions and deletions made by Club Owner from time to time as provided in the Club Plan. The Club may be comprised of one or more parcels of land, which may or may not be connected or adjacent to one another. Notwithstanding the foregoing, Club Owner will not change the legal description of the Club Real Property after the Community Completion Date without the consent of the Board, which may not be unreasonably withheld.

“Club Dues” shall mean the annual charges assessed by Club Owner for use of the Club Facilities by Association and the Sub-Members to be paid by the Association pursuant to the Community Membership Agreement.

“Club Facilities” shall mean the Improvements and tangible and intangible personal property which Club Owner shall actually have constructed and/or made available for use by Members subject to the terms of the Club Plan. THE CLUB FACILITIES ARE SUBJECT TO CHANGE AT ANY TIME AT CLUB OWNER’S SOLE AND ABSOLUTE DISCRETION.

“Club Initiation Fees” shall mean the total of the Sub-Membership Initiation Fees to be paid by the Association to Club Owner from time to time to enable the Association to acquire and maintain the Community Membership from Club Owner.

“Club Manager” shall mean the entity operating and managing the Club, at any time, together with its officers, owners, governing board or committee members, members, employees and agents. Club Owner may be Club Manager as provided in the Club Plan. Club Owner reserves the right to designate the Club Manager in Club Owner’s sole and absolute discretion.

“Club Membership Documents” shall mean collectively, these Community Membership Terms and Conditions, the Community Membership Issuance Agreement, the Club Documents and all fee schedules established by Club Owner, as amended from time to time by the Club Owner.

“Club Membership Plan”, **“Membership Plan”**, or **“Club Plan”** shall have the meaning set forth in Section 12.7 hereof.

“Club Owner” shall mean Seven Summits Lodge, LLC and any of its designees, successors and assigns who receive a written assignment of all or some of the rights of Club Owner under the Club Membership Documents. Such assignment need not be recorded in the Public Records in order to be

effective. In the event of such a partial assignment, the assignee shall not be deemed Club Owner but may exercise such rights of Club Owner specifically assigned to it. Any such assignment may be made on a non-exclusive basis. The identity of the Club Owner may change from time to time (e.g., the Club Owner may sell the Club Property to a third party). Notwithstanding that Club Owner and the Declarant may be the same party, Affiliates or related parties from time to time, the Association and each Owner and Builder acknowledges that Club Owner and Declarant shall not be considered one and the same party, and neither of them shall be considered the agent or partner of the other. At all times, Club Owner and Declarant shall be considered separate and viewed in their separate capacities. No act or failure to act by Declarant shall at any time be considered an act of Club Owner and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Association, Owners and Builders with regard to their prompt, full, complete and continuous performance of their obligations and covenants hereunder.

“Club Property” shall mean the Club Real Property and the Club Facilities.

“Club Real Property” shall mean the real property owned by Club Owner upon which the Club Facilities are located.

“Club Rules and Regulations” shall have the meaning set forth in Section 12.7 hereof.

“Community” shall have the meaning set forth in the Declaration.

“Community Membership” shall mean the non-equity membership in the Club acquired by the Association from the Club pursuant to the Club Membership Agreement and the Club Membership Plan, which includes Sub-Membership Rights for every Owner and member of the Association. The Community Membership shall provide, at a minimum, non-exclusive license rights for every Owner and member of the Association equivalent to the level of an Invitational Membership as set forth in the Club Plan from time to time, together with such additional non-exclusive license rights as may be granted by Club Owner from time to time. The Community Membership does not provide the Association or any member of the Association with an equity or ownership interest in the Club, the Club Property or the Club Owner, or any rights with respect to the management and operation of the Club.

“Community Membership Agreement” shall mean the agreement by which the Association acquires the Community Membership from the Club, to which these Community Membership Terms and Conditions is attached.

“Declarant” shall have the meaning set forth in the Declaration.

“Declaration” shall mean that certain Declaration of Covenants, Conditions and Restrictions for Whitman Community Association, Document Number 201208070406, of the Public Records of Pierce County, Washington, in the office of the Pierce County Auditor, Washington, as such Declaration shall be amended or modified from time to time, which has or will be recorded in the Public Records.

“Deed” shall mean any deed conveying fee simple title to any portion of the Tehaleh Property or any interest therein and any other instrument conveying or transferring or assigning the interest of a Sub-Member to another Sub-Member, including a deed to a Lot, excluding a mortgage on a Lot.

“Domestic Partner” shall mean a cohabitating adult in a romantic relationship with the Member.

“Extended Family Members” shall mean parents; children of the Sub-Member, children of the spouse of the Sub-Member, children of the domestic partner of the Sub-Member, or any children of a person otherwise qualifying as an Immediate Family Member; grandparents and grandchildren of the Sub-Member and spouse and the spouses of such extended family members; and siblings of the Immediate Family Member(s).

“Founder Sub-Member” shall mean a Sub-Member that signed a purchase sales agreement on or before August 1, 2014. Privileges are equal to that of a Sub-Member.

“Immediate Family Members” shall mean the spouse or Domestic Partner of the Sub-Member. If a Sub-Member is unmarried, the Sub-Member may designate one other person who is living with such Sub-Member on a permanent basis in the Residential Unit as an Immediate Family Member.

“Including” shall mean including, but not limited to.

“Lender” shall mean the institutional and licensed holder of a first mortgage encumbering a Lot.

“Lessee” shall have the meaning set forth in the Declaration.

“Lot” shall have the meaning set forth in the Declaration.

“Member” shall mean (i) the Association, which has a Community Membership from the Club, and (ii) such other Persons that Club Owner issues Club memberships to from time to time, on such terms and conditions as determined in the sole discretion of Club Owner.

“Parking Areas” shall mean all areas designated for parking within the Club Facilities.

“Pro-Rata Portion of Club Dues” shall mean Club Dues divided by the number of Sub-Members from time to time.

“Public Records” shall mean the Public Records of Pierce County, Washington, in the office of the Pierce County Auditor, Washington.

“Record” or “Recording” shall mean placing an instrument of public record, **“Recorded”** or **“Recordation”** means having been so placed or the act of placing of public record and **“Record Owner”** and **“Record Notice”** means that such owner and/or such notice is evidenced by such public records, all in the office of the Pierce County Auditor, Washington.

“Residential Unit” shall have the meaning set forth in the Declaration.

“Special Use Fees” shall have the meaning set forth in Section 6.10 hereof.

“Sub-Member” shall mean each Owner, Lessee, or member of the Association.

“Sub-Membership Club Dues” shall mean for each Sub-Member, the Pro Rata Portion of Club Dues and all other fees and charges payable by Sub-Members hereunder to the Association, together with applicable sales or use taxes.

“Sub-Membership Initiation Fee” shall mean a fee payable by each Owner to the Association pursuant to Section 5.12 hereof upon acquisition by Owner of title to a Lot in accordance with the initial fee schedule attached hereto as **Exhibit 1** (the **“Initial Initiation Fee Schedule”**). The Club Owner reserves the right to revise the Initial Initiation Fee Schedule from time to time in its sole discretion, which revised Initial Initiation Fee Schedule shall be effective upon delivery to Association.

“Sub-Membership Rights” shall mean non-exclusive license rights deriving from the Association’s Community Membership which provides the derivative rights for each Sub-Member to utilize the Club Facilities as provided in the Club Plan, provided, however, for the purposes of Sub-Membership, there shall be only one Owner or Lessee per Lot, but not both; provided further, that a person shall continue to be a Sub-Member until he or she ceases to be an Owner, or ceases to be a Lessee legally entitled to possession of a rental Lot, and that once an Owner leases a Lot, only the Lessee shall be entitled to exercise the privileges of a Sub-Member with respect to such Lot; however, the Sub-Member and Lessee shall be jointly and severally liable for all Sub-Membership Club Dues allocated to such Lot; and, provided further, that upon transfer of a Lot by a Sub-Member, the Sub-Membership Rights of the transferring Sub-Member shall terminate, and the Lot transferee’s Sub-Membership Rights shall commence.

“Tehaleh Community” shall mean Trilogy at Tehaleh developed on the Tehaleh Property.

“Tehaleh Property” shall mean the property described in the Declaration from time to time.

“Total Annual Sub-Membership Club Dues” shall mean the total of all Sub-Membership Club Dues assessed against each Sub-Member.

1. **Benefits of Club.** The Association and each Owner, by recordation of a Deed to a Lot, ratify and confirm the Club Membership Documents and agree as follows:

1.1 **Term and Covenant Running with Land.** Every portion of the Tehaleh Property which can be improved with a Residential Unit shall be burdened with the payment of Sub-Membership Club Dues, including Sub-Membership Initiation Fees, as provided in the Club Membership Documents, as amended by the Club Owner from time to time in its sole and absolute discretion, for such time as the Club Membership Agreement is in effect. Every Owner, by acceptance of a Deed to any Lot, shall automatically assume and agree to pay all Sub-Membership Club Dues, including Sub-Membership Initiation Fees, owing in connection with such Lot. Every Builder, upon receipt of a certificate of occupancy for a Residential Unit located on a Lot owned by such Builder, shall automatically assume and agree to pay all Sub-Membership Club Dues, including Sub-Membership Initiation Fees, which shall be due and payable from and after the issuance of such certificate of occupancy unless this requirement is waived in writing by Club Owner in its sole and absolute discretion as to any particular Builder until such time as the Builder conveys the Lot to an Owner.

1.2 **Benefit.** By acceptance of a Deed, each Owner acknowledges that the automatic Sub-Membership in the Club obtained by Owners under the Club Membership Documents renders ownership of a Lot within the Tehaleh Property a benefit that it would not otherwise enjoy.

The Association, all Owners and Club Owner agree that the provisions and enforceability of the Club Membership Documents are mutually beneficial. The Association and each Owner and Builder acknowledge that Club Owner is initially investing sums of money and time in developing the Club Property on the basis that eventually the Club will generate a substantial profit to Club Owner. The Association and each Owner and Builder agree that Club Owner would not have made such an investment of money without the anticipation of such profit and such profit shall not, if ever generated, affect the enforceability of the Club Membership Documents.

1.3 Product Purchased. There were significant other housing opportunities available to each Owner and Builder in the general location of the Tehaleh Property. The Lot, Residential Unit, and rights to utilize the Club as a Sub-Member, were material in each Owner's decision to purchase a Lot in the Tehaleh Property and were, for the purposes of the Community Membership Agreement only, a "single product."

1.4 Disclosure. Recording of the Declaration and a Memorandum of Community Membership Agreement constitutes full disclosure of the nature of the Club and obligations associated therewith to each Owner prior to that Owner executing a contract to purchase a Lot and each Owner has, or was afforded the opportunity to, consult with an attorney prior to acquisition of a Lot.

1.5 Non-Exclusive License. The provisions of the Club Membership Documents do not grant any ownership rights in the Club in favor of Association or Sub-Members but, rather, grant a non-exclusive license to use the Club subject to the terms and conditions and full compliance with all obligations imposed by the Club Membership Documents. For clarity, but not as a limitation, the Association and the Sub-Members have no right to vote on Club Matters, no right to vote on revisions to the Club Documents, no right to participate in the operation and management of the Club, no right to share in the profits and no obligation to share in the losses of the Club, no right to share in any consideration from sale, lease or financing of the Club, and no right to review or copy any Club records, including membership, operational, or financial records.

1.6 Non-Reliance. NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED IN THE CLUB MEMBERSHIP DOCUMENTS, THE CLUB PLAN AND, IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE CLUB, THE CLUB OWNER OR THE DECLARANT. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF MEMBERSHIP OR SUB-MEMBERSHIP CONTAINED IN THE CLUB MEMBERSHIP DOCUMENTS AND OTHER PRINTED INFORMATION, THE CLUB MEMBERSHIP DOCUMENTS SHALL GOVERN OVER OTHER PRINTED MATERIALS OR OTHER INFORMATION.

1.7 Recreational Purposes Only. MEMBERSHIPS AND THE SUB-MEMBERSHIPS AT THE CLUB ARE BEING PROVIDED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING PERSONS TO OBTAIN LIMITED RECREATIONAL USE OF THE CLUB PROPERTY. MEMBERSHIPS AND SUB-MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT AND NO PERSON ACQUIRING A MEMBERSHIP OR SUB-MEMBERSHIP SHOULD EXPECT TO DERIVE ANY ECONOMIC PROFITS OR FINANCIAL BENEFITS FROM ACQUIRING, HOLDING, TRANSFERRING OR TERMINATING MEMBERSHIP OR SUB-MEMBERSHIP IN THE CLUB. THE CLUB IS OWNED AND OPERATED PRIVATELY. NEITHER MEMBERSHIP NOR SUB-MEMBERSHIP IN THE CLUB CONVEYS ANY INTEREST, OWNERSHIP, EQUITY OR PROPERTY RIGHTS. NEITHER MEMBERSHIP NOR SUB-MEMBERSHIP CONVEYS ANY VOTING RIGHTS, ANY MANAGEMENT RIGHTS, OR ANY VESTED INTEREST IN THE CLUB.

2. **Club Facilities.**

2.1 **Club Real Property.** Club Owner presently owns the Club Real Property. Additions and deletions to the Club Real Property, while not causing an increase or decrease in the Sub-Membership Initiation Fees payable with respect to each Lot, may result in an increase or decrease in Club Dues.

2.2 **Club Facilities.** Club Owner has constructed or intends to construct the Club Facilities on the Club Real Property, which will be and shall remain the property of Club Owner, subject only to the provisions hereof. At the time the Memorandum of Community Membership is recorded in the Public Records (subject to Club Owner's paramount right to unilaterally, and without the joinder of any party whomsoever, add to, remove, alter, modify and amend the Club Facilities at any time subject to the provisions hereof), the Club Facilities are planned to include (i) a clubhouse facility, including grounds, a fitness center, meeting rooms, dining room(s), function room(s), spa facility, Parking Areas, sports shop(s), one or more swimming pools, and pickleball courts and appurtenant facilities (collectively the "**Clubhouse Facility**").

2.3 **Constitution of the Club.** Club Owner will acquire the Club Real Property and construct the Club Facilities at its sole cost and expense. Club Owner shall be the sole and absolute judge as to the plans, size, design, location, completion, schedule, materials, equipment, size, and contents of the Club Facilities. Club Owner disclaims any warranty or representation as to the adequacy or fitness of the Club Real Property or Club Facilities for its intended purpose. Club Owner shall have the unequivocal right to:

2.3.1 develop, construct and reconstruct, in whole or in part, the Club and related Improvements within the Club Real Property, and make any additions, deletions, alterations, Improvements, or changes thereto;

2.3.2 without the payment of rent and without payment of utilities or any other part of the Club's expenses, maintain leasing and/or sales offices (for sales and resales of Lots and Residential Units), general offices, and construction operations on the Club Property including displays, counters, meeting rooms, and facilities for the sales and re-sales of Lots; provided, however, that so long as Declarant or an Affiliate of Declarant owns any Tehaleh Property, Club Owner shall not maintain leasing and/or sales offices nor provide displays or facilities for sales or re-sales of Lots without the prior written consent of Declarant;

2.3.3 place, erect, and/or construct portable, temporary, or accessory buildings or structures upon the Club Real Property for sales, construction storage, or other purposes; provided, however, that so long as Declarant or an Affiliate of Declarant owns any Tehaleh Property, Club Owner shall not place, erect and/or construct buildings or structures for sales or construction storage without the prior written consent of Declarant;

2.3.4 temporarily deposit, dump or accumulate materials, trash, refuse and rubbish on the Club Real Property in connection with the development or construction of the Club Property or any Improvements located within the Tehaleh Property; provided, however, that so long as Declarant or an Affiliate of Declarant owns any Tehaleh Property, Club Owner shall not take or permit any actions in connection with Improvements located within the Tehaleh Property without the prior written consent of Declarant;

2.3.5 post, display, inscribe or affix to the exterior of the Club Property, signs and other materials used in developing, constructing, selling, or promoting the sale of portions of the Tehaleh Property, including the sale of Lots and Residential Units; provided, however, that so long as Declarant or an Affiliate of Declarant owns any Tehaleh Property, Club Owner shall not permit such posting, display, inscription or affixing without the prior written consent of Declarant;

2.3.6 conduct whatever commercial activities within the Club Property deemed necessary, profitable and/or appropriate by Club Owner;

2.3.7 develop, operate and maintain the Club as deemed necessary, in its sole and absolute discretion;

2.3.8 excavate fill from any lakes or waterways within the Club Real Property by dredge or dragline, store fill within the Club Real Property, and remove and/or sell excess fill; and grow or store plants and trees within the Club Real Property and use and/or sell excess plants and trees; and

2.3.9 all activities which, in the sole opinion of Club Owner, are necessary for the development and sale of the Club or any of the Club Property.

2.4 Changes. Club Owner reserves the absolute right in Club Owner's sole and absolute discretion to, from time to time, alter, delete or change the Club and Club uses, including construction of additional Club Facilities and/or the removal or modification of Club Facilities at any time, whether such alterations, modifications and amendments cause an increase or decrease in Club Dues. Such alterations, modifications and amendments shall be subject to all applicable Pierce County zoning, platting and land use requirements and all other applicable laws.

2.5 Commercial Space. It is anticipated that portions of the Club Property may include retail and commercial space ("**Commercial Space**") as Club Owner may deem appropriate in Club Owner's sole and absolute discretion. Club Owner may permit Members to access any Commercial Space located within the Club Property at Club Owner's sole and absolute discretion. Club Owner may grant leases, franchises, licenses or concessions to commercial concerns on all or part of the Club Property including the Commercial Space ("**Commercial User**"). Club Owner shall have no duty to account for any rents, fees or payments from Commercial User(s) or other third parties for the right to occupy and/or lease Commercial Space; all of such rents, fees and payments, if any, shall be the sole property of Club Owner and shall not offset or reduce the Club Dues or Sub-Membership Club Dues payable by the Association, Owners and Builders.

3. **Persons Entitled to Use the Club.**

3.1 **Rights of Sub-Members.**

3.1.1 Each Sub-Member and its respective Immediate Family Members shall have such non-exclusive rights and privileges as shall from time to time be granted by Club Owner to the Association under its Community Membership. Sub-Members shall have no privity with the Club Owner, but shall derive their rights, privileges and obligations as Sub-Members solely through and by way of membership in the Association. In order to exercise the rights of a Sub-Member, a person must be an Owner or Lessee of a Lot. If a Lot is owned by a corporation, trust or other legal entity, or is owned by more than one family, then Owner shall designate one (1) person residing in the Residential Unit on such Lot who will be the Sub-Member of the Club with respect to

such Lot. Subject to the provisions of Section 5.1.2, the transfer of a Sub-Member's Lot to a transferee Owner automatically terminates the transferring Sub-Member's Sub-Membership Rights (but not its obligations accrued at the time of termination), and the transferee Owner automatically becomes a Sub-Member in accordance with the provisions of the Declaration by reason of the transferee Owner's membership in the Association (assuming the Community Membership remains in effect at the time of transfer and has not been earlier terminated in accordance with these Club Membership Documents). Sub-Members shall have no right to access the Commercial Space comprising part of the Club Facilities, or portions of the Club Property leased or licensed to third parties, except as and when permitted by Club Owner and/or the Commercial Users, as applicable

3.1.2 Each Sub-Member shall have the right to upgrade its Sub-Membership rights to other non-equity memberships in the Club, subject to availability of memberships in the Club from time to time as determined by Club Owner and subject to the provisions of the Club Plan. Upon obtaining a direct non-equity membership in the Club, the Club shall invoice the Sub-Member directly for dues, fees and charges related to the direct non-equity membership, provided the Sub-Member shall be granted a credit against such dues, fees and charges for Sub-Membership Club Dues paid by the Sub-Member to the Association. Obtaining a direct non-equity membership in the Club does not terminate nor extinguish the Sub-Member's Sub-Membership Rights or its obligations as an Owner or member of the Association under these Club Membership Documents. Subject to the provisions of the Club Plan, the transfer of a Sub-Member's Lot to a new Owner does not terminate nor extinguish the Sub-Member's direct non-equity membership in the Club, but does terminate the Sub-Member's right to credit against Club Dues and does effect a transfer of the Sub-Membership Rights to the new Owner.

3.2 Subordination. The Club Membership Documents and Sub-Membership Rights are and shall be subject and subordinate to: (a) any ground lease, mortgage, deed of trust, or other encumbrance and any renewals, modifications and extensions thereof, now or hereafter placed on the Club by Club Owner (collectively "**Encumbrance Document**"); and (b) easements, restrictions, limitations and conditions, covenants and restrictions of record, and other conditions of governmental authorities. This provision shall be self-operative. Association, in its own name and, as agent for all Owners, shall sign any documents confirming the subordination provided herein promptly upon request of Club Owner. Club Owner will request non-disturbance provisions be included in any Encumbrance Document, but makes no representation or guarantee that non-disturbance provisions will be included. In the event that non-disturbance provisions are not included in an Encumbrance Document, and the Club Property is foreclosed, the rights of the Association and Sub-Members under these Club Membership Documents may be extinguished and foreclosed.

3.3 Rights of Third Parties to Use of the Club. In addition to the Community Membership acquired by the Association, the Club has and will be offering memberships to other Persons outside the Association, and may offer additional membership rights to Sub-Members within the Community. These memberships may include the following membership categories; Corporate Memberships, Invitational Memberships, Dining Memberships and Honorary Memberships. Such additional memberships and membership rights shall be set forth in the Club Membership Plan. The Club will also provide access to the Club Facilities to other third parties who are not Members of the Club, including (i) for special events, tournaments, functions, parties, and Tehaleh Property and Club sales promotion purposes, (ii) for access by the general public to any restaurant within the Clubhouse Facilities, and (iii) for limited access use of the Club Facilities. The Club may further be providing reciprocal Club Facilities use rights to other clubs and community members in communities developed by Declarant or an Affiliate of Declarant.

4. **Ownership and Control of the Club**

4.1 **Control of Club By Club Owner; Termination Rights.** The Club shall be under the complete supervision and control of Club Owner unless Club Owner appoints a third party as Club Manager, in which event Club Manager shall have such supervision and control rights as granted by Club Owner to Club Manager. Club Owner may terminate the Club Membership Documents and any or all Club memberships, including the Association's Community Membership and the Sub-Memberships, in its sole and absolute discretion at any time and from time to time. Upon termination of the Association Community Membership and Sub-Memberships, Club Owner shall pay to the Association (i) an amount equal to the sum of all Sub-Membership Initiation Fees paid to the Association by Owners then holding title to all Lots, and (ii) any pre-paid Club Dues paid to Club Owner by Association for any time period following the effective date of the termination. Club Owner shall not be required to pay to Association any interest on funds to be paid by Club Owner to the Association. Upon receipt by the Association of such amounts from Club Owner, Association shall refund to each current Owner (a) the amount paid by such Owner to the Association for the Sub-Membership Initiation Fee, and (b) such Owner's pro-rata portion of the pre-paid Club Dues. Upon termination, Club Owner shall record a termination of the Club Membership Documents in the Public Records. So long as Declarant owns any Tehaleh Property, any termination of the Club Membership Documents must be approved in writing by the Declarant.

4.2 **Transfer of Club to Third Party.** Club Owner may sell, encumber, transfer or convey the Club Property or any part thereof to any Person in its sole and absolute discretion at any time, and from time to time (the "**Third Party Transfer**"). A Third Party Transfer shall not require the consent or approval of any Club Member, the Association, or any Sub-Member, Owner or Lessee. Association, in its own name and, as agent for all Sub-member, Owners and Lessees, shall sign any documents confirming the terms of the Club Membership Documents or compliance therewith by Association in conjunction with a sale, encumbrance or conveyance promptly upon request of Club Owner.

5. **Club Dues.** In consideration of the construction and providing for use of the Club Property by the Association under its Community Membership and the Sub-Members through the Association's Community Membership, the Association, on its behalf and on behalf of the Sub-Members, covenants and agrees to pay Club Dues, and each Owner by acceptance of a Deed to a Lot shall be deemed to have specifically covenanted and agreed to pay all Sub-Membership Club Dues and to require the Association to pay to Club Owner the Total Sub-Membership Club Dues which are set forth herein. Club Owner reserves the right to charge and collect from the Association Club Dues in advance on a monthly, quarterly, semi-annual or annual basis and also reserves the right to change the payment period from time to time. Sub-Membership Club Dues and other fees and charges payable to Club Owner shall be calculated and paid in accordance with this Section 5.

5.1 **No Assessment for Club Expenses/Club Dues Obligation.**

5.1.1 Club expenses shall be born by the Club. The Club shall not assess the Association, or Sub-Members for Club expenses; provided Club Dues and Sub-Membership Club Dues are not Club expenses and may be assessed to the Association and Sub-Members.

5.1.2 Each Owner, as a Sub-Member, shall pay to Association, in advance on the first day of each month (or other payment period designated by Club Owner to Association), without setoff or deduction, his/her/its Pro Rata Portion of Club Dues. The Association shall bear all expenses associated with collection and enforcement of collection of each Sub-Member's Club Dues,

so that Club Owner shall receive the total of all Sub-Members' Pro Rata Portion of Club Dues without deduction of expenses or charges for collection. Whether or not Association receives the foregoing payment of any Sub-Member's Pro Rata Portion of Club Dues, Association shall pay Club Owner when due the Club Dues.

5.2 Annual Limit. The Club may establish Club Dues and Sub-Membership Club Dues on a yearly basis in such amounts as Club Owner determines in its discretion. In order to provide a more level year-to-year Club Dues and Sub-Membership Club Dues, Club Dues and Sub-Membership Club Dues shall not be increased more than ten (10%) from year to year.

5.3 Taxes. Association shall pay all applicable sales, use or similar taxes now or hereafter imposed on the Club Dues and the Sub-Membership Club Dues paid to Club Owner. Currently, sales tax is payable on the entire amount of Club Dues. Club Owner shall allocate all applicable sales, use or similar taxes to the Association and other Members using the same basis as Club Owner uses to allocate Club Dues and other Club fees and charges, and all such applicable sales, use or similar taxes shall be included in the charges billed to the Association by Club Owner.

5.4 Builders. Although a Builder shall have no membership rights relative to the Club, Builders shall be deemed Sub-Members with respect to payment of Club Dues and each Builder shall pay Sub-Membership Club Dues on each Lot owned by such Builder on the same basis as all other Owners commencing upon the earlier of (i) the date that such Builder receives a certificate of occupancy for the Lot, or (ii) one (1) year from the date the title to the Lot is first transferred from Declarant to the Builder.

5.5 Perpetual. Each Owner's and each Builder's obligation to pay its Sub-Membership Club Dues to the Association shall remain in full force and effect regardless of whether the Residential Unit on a Lot is occupied, destroyed, renovated, torn down, replaced, rebuilt or leased, until the termination of the Community Membership.

5.6 Multiple Lots. If a Sub-Member owns more than one Lot, the Sub-Member shall be responsible for paying its Sub-Membership Club Dues for each and every Lot owned by such Owner.

5.7 Excuse or Postponement. Club Owner may excuse or postpone the payment of Sub-Membership Club Dues for any Sub-Member in its sole and absolute discretion, without the obligation to do so for any other Sub-Member. Club Owner shall provide notice to Association of any such excusal or postponement, and Association shall administer the same notwithstanding anything to the contrary in Section 5.1.2 above. Association shall not be obligated to collect from the Sub-Member or pay the Club any Sub-Member Club Dues that Club Owner has excused or postponed the payment of until and unless Association receives payment of such Sub-Member Club Dues from or on behalf of the Sub-Member.

5.8 Club Owner's Obligation. Under no circumstances shall Club Owner be required to pay Club dues.

5.9 Special Use Fees. Club Owner shall have the right to establish from time to time, by resolution, rule or regulation, or by delegation to the Club Manager, specific service and/or use fees and charges ("**Special Use Fees**"), for which one or more Members or Sub-Members (but less than all Members and Sub-Members) are subject, including greens fees, cart fees, trail fees, food and beverage charges, equipment and merchandise charges, spa service charges, locker rentals,

tennis court fees, cabana fees, lodging fees, use of special services, rental of facilities, catering, and tickets for shows, special events, or performances held in the Club Facilities, and the use of vending machines, video arcade machines and entertainment devices. Special Use Fees shall be payable at such time or time(s) as determined by Club Owner. Club Owner shall have no duty to account for any Special Use Fees; all of such Special Use Fees shall be the sole property of Club Owner and shall not offset or reduce the Club Dues payable by Members. For those programs or events, if any, for which tickets are sold, Club Owner shall adopt such rules and regulations as to entitlement of the tickets as Club Owner deems necessary. Special Use Fees are not subject to the limit set forth in Section 6.3.

5.10 Additional Club Dues. If the Association or a Sub-Member, his or her guests, invitees, licensees, lessee, agents, servants or employees do anything that increases the cost of maintaining or operating the Club, or cause damage to any part of the Club Property, Club Owner may levy additional Club Dues and Sub-Members Club Dues (the "**Additional Club Dues**") against the Association, and in the event such Additional Club Dues are levied against the Association, the Association shall levy such Additional Club Dues against the responsible Sub-Member in the amount necessary to pay such increased cost or repair such damage, provided Association owes the Additional Club Dues to the Club Owner regardless of whether the Sub-Member pays the Additional Club Dues to Association. Additional Club Dues are not subject to the limit set forth in Section 6.3.

5.11 Payment of Sub-Membership Club Dues; Commencement of First Charges. The obligation to pay Sub-Membership Club Dues shall commence as to each Owner on the date the Deed to the Sub-Member's Lot is recorded in the Public Records and as to each Builder on the date set forth in Section 6.5 (the "**Commencement Date**"). On the Commencement Date, the Sub-Member or Builder shall pay to Association, and the Association shall collect from the Sub-Member or Builder as a pre-requisite for membership in the Association, the then current Sub-Membership Initiation Fee and the remainder of the then current Sub-Membership Club Dues payable from the Commencement Date through the end of the then current month, or if required by Club Owner, through the end of the following month (collectively, the "**Commencement Charges**"). With respect to each initial Owner of a Lot, the Association shall pay the Commencement Charges to Club Owner. With respect to each subsequent purchaser of a Lot, the Association shall collect the Commencement Charges received from the purchaser receiving conveyance of title to the Lot and (i) refund to the Sub-Member conveying title to the Lot seventy-five percent (75%) of the Sub-Membership Initiation Fee paid by such Sub-Member (and each Sub-Member hereby expressly acknowledges that he/she/it will not receive a full refund of the Sub-Membership Initiation Fee upon conveyance of title to the Lot); and (ii) forward to Club Owner the balance of the Sub-Membership Initiation Fee not refunded to the transferring Sub-Member and the remainder of the Sub-Membership Club Dues paid by the transferee Owner. Notwithstanding the foregoing, the Association shall not be obligated to pay to Club Owner any Sub-Membership Initiation Fee or Sub-Membership Club Dues collected by Association, until the date upon which a material portion of the Clubhouse Facility can be used by Owners (i.e., upon issuance of a temporary certificate of occupancy for any structure forming part of the Clubhouse Facility, hereinafter referred to as the "**Clubhouse Occupancy Date**"). Within fifteen (15) days after the Clubhouse Occupancy Date, Association shall pay to Club Owner all Sub-Membership Initiation Fees and each Owner's and Builder's Sub-Membership Club Dues collected from Owners and Builders. The Club Owner, in its sole and absolute discretion, retains the right to fund or waive any or all of the Commencement Charges on behalf of any Owner or Builder, without the obligation to do so for any other Owner or Builder. Club Owner may provide that some Owners or Builders pay Sub-Membership Initiation Fees on a different basis than other Owners and Builders by recording a supplement or amendment to these Club Membership Documents with respect to one or more Lots. No Owner or Builder shall have

the right to object to any other Owner or Builder paying greater or lesser Sub-Membership Initiation Fees.

5.12 Time Is of Essence. Faithful payment of the sums due, and performance of the other obligations hereunder, at the times stated, shall be of the essence.

5.13 No Right to Withhold Payment. Each Owner agrees that so long as such Owner does not pay more than the required amount of Sub-Membership Club Dues, such Owner shall have no grounds upon which to object to either the method of payment or non-payment by other Owners of any sums due.

5.14 Statement of Account Status. Pursuant to the Declaration, the Association is obligated to issue to a lienholder, Owner or any other Person designated by Owner, a statement setting forth the amount of any unpaid Assessment (including any Assessment comprising Sub-Membership Club Dues) or other fee or charge against a Lot. Issuance of such a statement in error by the Association shall not relieve the Association from payment to Club Owner of the correct charges. The Association also shall be obligated to provide to the Club Owner any information Club Owner may require to exercise its rights pursuant to these Club Membership Documents.

5.15 Collection. Club Owner shall determine from time to time the method by which Club Dues, Special Use Fees, Additional Club Dues and any other amounts due to Club Owner shall be collected.

5.16 Non-payment. If any Club Dues are not paid by Association within twenty (20) days after the due date, a late fee (to compensate Club Owner for administrative expenses due to late payment) equal to the greater of Two Hundred Fifty Dollars (\$250.00) or two percent (2%) of the amount late per month, or such greater amount established by Club Owner by written notice to the Association, together with interest on all amounts payable to Club Owner at a rate of eighteen percent (18%) per annum, beginning from the due date until paid in full, may be levied against Association. Club Owner may, at any time thereafter, bring an action at law against the Association. Club Owner shall not be required to bring such an action if it believes that the best interests of the Club would not be served by doing so. Club Owner shall have all of the remedies provided herein and any others provided by law and such remedies shall be collective. The bringing of action shall not constitute an election or exclude the bringing of any other action.

6. **Covenant to Pay; Lien for Sub-Membership Club Dues.**

6.1 Personal Obligation. Each Owner, by acceptance of a Deed with respect to its Lot, is deemed to covenant and agree to pay such Owner's Sub-Membership Club Dues as provided in these Club Membership Documents. Each Owner's Sub-Membership Club Dues, together with interest thereon at a rate of eighteen percent (18%) per annum, from the date due until paid in full, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such amounts, whether suit is filed, shall be not only an obligation of the Sub-Member to the Association and the Association to Club Owner, but also the personal obligation of such Owner.

6.2 Right to Direct Bill Collectors. Club Owner shall have the right to designate who shall collect the Sub-Membership Club Dues, Sub-Membership Initiation Fees, Special Use Fees, Additional Club Dues and/or other fees and charges and such right shall be perpetual. Notwithstanding any contrary provision of these Club Membership Documents, in the event of non-payment by the Association of any Sub-Membership Club Dues, Sub-Membership Initiation Fees,

Special Use Fees, Additional Club Dues and/or other fees and charges, the Club Owner shall have the right to bill the Sub-Members directly for their respective portions of such charges, fees and dues. Each Sub-Member shall be liable for its Pro Rata Portion of Club Dues, its Sub-Membership Club Membership Fee, its Sub-Membership Initiation Fee and any other Special Use Fee or Additional Club Dues incurred by such Sub-Member, together with costs incurred by the Club Owner in collecting such amounts (including attorneys' fees), and interest thereon as provided above. The right of the Club Owner to bill Owners directly as provided in this Section shall not be in lieu of and shall not limit any other available remedies (including the right to bring an action against the Association for amounts owed with respect to the Sub-Membership Club Dues).

6.3 **Suspension.** Should a Sub-Member not pay sums required hereunder, or otherwise default, for a period of twenty (20) days, Club Owner may, without reducing or terminating Owner's obligations hereunder, suspend Owner's (or in the event the Lot is leased, the Lessee's) rights to use the Club Facilities until all fees and charges are paid current and/or the default is cured. Such suspension shall not suspend or waive Owner's obligations to make Sub-Membership payments to Association during the period of suspension.

7. **Special Provisions for Founders Sub-Members.** Notwithstanding anything in this Agreement to the contrary regarding Sub-Members, Founders Sub-Members shall have the following additional rights and privileges. Founders Sub-Membership Club Dues shall be equal to seventy-five percent (75%) of Sub-Member Club Dues. Founders Sub-Members shall not be required to pay an Initiation Fee. The initial purchaser of a Lot from a Founders Sub-Member shall not be required to pay an Initiation Fee, but otherwise will be deemed a Sub-Member without any Founders Sub-Member rights and privileges. If a Founders Sub-Member acquires a second Lot in the Community, the Founders Sub-Member may elect to transfer the Founders Sub-Member rights and privileges to the second Lot, in which event the Founders Sub-Member will own the first Lot as a Sub-Member without Founders Sub-Member rights and privileges. If the Founders Sub-Member does not elect to transfer the Founders Sub-Membership rights and privileges to the second Lot, then the Founders Sub-Member will own the second Lot as a Sub-Member without Founders Sub-Member rights and privileges. In the event that ownership of a Founders Sub-Member's Lot is transferred or awarded to the spouse or Domestic Partner of the Founders Sub-Member by an order of a divorce court or a legally enforceable separation agreement, then the Founders Sub-member rights and privileges shall be transferred to the spouse or Domestic Partner with ownership of the Lot. In the event of the Founders Sub-Member's death, if the Founders Sub-Member's Lot is transferred to the Founders Sub-Member's spouse or Domestic Partner, then the such Sub-Member's spouse or Domestic Partner shall assume the Founders Sub-Member rights and privileges; otherwise the Founders Sub-Membership rights and privileges shall terminate with the death of the Founders Sub-Member and the new Lot owner shall be deemed a Sub-Member without Founders Sub-Member rights and privileges.

9. **Operations; Club Manager.** At any time, Club Owner may appoint a Club Manager to act as its agent. The Club Manager shall have whatever rights hereunder as are assigned in writing to it by Club Owner. Without limiting the foregoing, the Club Manager, if so agreed by Club Owner, may bring actions for unpaid Club Dues against the Association and Owners and provided herein and prepare the Budget for the Club. Club Owner intends to appoint an Affiliate of Club Owner as Club Manager.

10. **Paramount Right of Association.** During the term of the Community Membership Agreement, Association shall have the right to post all notices of its Board and member meetings and

all notices required by applicable laws at a designated location within the Club Facilities visible to all Sub-Members without charge.

11. **Rights to Pay and Receive Reimbursement.** If Declarant and/or Association pay any Sub-Membership Club Dues, Special Use Fees or Additional Club Dues assessed to a Sub-Member that are in default and that may or have become a lien or charge against any Lot, the party paying the same shall be subrogated to the enforcement rights with regard to the amounts due. Further, Declarant and/or Association shall have the right, but not the obligation, to loan funds and pay insurance premiums, taxes or other items of costs on behalf of a Sub-Member to protect its lien. The party advancing such funds shall be entitled to immediate reimbursement, on demand, from the Sub-Member for such amounts so paid, plus interest thereon at a rate of eighteen percent (18%) per annum, from the date due until paid in full, plus any costs of collection, including reasonable attorneys' and paraprofessional fees at all levels, including appeals, collections and bankruptcy.

12. **General Restrictions.** Club Owner has adopted the following general restrictions governing the use of the Club Facilities, which restrictions may be revised by Club Owner from time to time. Each Member, Sub-Member, Immediate Family Member and other Person entitled to use the Club Facilities shall comply with following general restrictions:

12.1 **Minors.** Minors sixteen (16) years and older are permitted to use the Club Facilities without adult supervision. Minors under the age of sixteen (16) years may use the Club Facilities only in accordance with the Club Rules and Regulations, which may require that a minor be accompanied by an adult or prohibit use of certain portions of the Club Facilities altogether. Club Owner also may require a minor's parent or legal guardian to release Club Owner from liability when a minor (regardless of age) is using the Club Facilities pursuant to consent form(s) provided by Club Owner from time to time; provided, however, parents and legal guardians are responsible for the actions and safety of such minors and any damages caused to any portion of the Club Facilities by such minors. Notwithstanding the foregoing, if minors use the Club Facilities without the proper execution of a consent form or without adult supervision when required, Club Owner is not liable for the actions and safety of such minors.

12.2 **Responsibility for Personal Property and Persons.** Each Member and Sub-Member assumes sole responsibility for the health, safety and welfare of such Member and Sub-Member, his or her Immediate Family Members and guests, and the personal property of all of the foregoing, and each Member and Sub-Member shall not allow any of the foregoing to damage the Club or interfere with the rights of other Members or Sub-Members hereunder.

12.3 **Cars and Personal Property.** The Club is not responsible for any loss or damage to any private property used, placed or stored on the Club Property. Without limiting the foregoing, any person parking a car within the Parking Areas assumes all risk of loss with respect to his or her car in the Parking Areas. Further, any person entering the Club Facilities assumes all risk of loss with respect to his or her equipment, jewelry or other possessions stored in the fitness center, on bicycles, or within cars and wallets, books and clothing left in the pool area.

12.4 **Activities.** Any Member, Sub-Member, Immediate Family Member, guest or other person who, in any manner, makes use of, or accepts the use of, any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club Owner, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club Owner, either on or off the Club Property, shall do so at their own risk. Each Member and Sub-Member shall be liable for any property damage and/or personal

injury upon the Club Property, or at any activity or function operated, organized, arranged or sponsored by the Club Owner, caused by such Member or Sub-Member, Immediate Family Member or guest. No Member or Sub-Member may use the Club Facilities for any club, society, party, religious, political, charitable, fraternal, civil, fund-raising or other purposes without the prior written consent of Club Owner, which consent may be withheld for any reason.

12.5 Property Belonging to the Club Owner. Property or furniture belonging to the Club Owner shall not be removed from the room in which it is placed or from the Club Facilities.

12.6 Waiver, Indemnity and Release of Club Owner. On behalf of the Association and each Sub-Member, Immediate Family Member and guest of the same (each an "Indemnifying Party" and collectively, the "Indemnifying Parties"), the Association agrees, and each Member agrees, to the greatest extent provided by law, that each Indemnifying Party will indemnify and hold harmless Club Owner and Club Manager, their officers, partners, agents, employees, Affiliates, directors and attorneys (collectively, "**Indemnified Parties**") for, from, and against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("**Losses**") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, arising out of or relating to the use of the Club, including use of the Club Facilities by such Indemnifying Party, or the interpretation of these Club Membership Documents and/or the Club Plan and/or for, from and against any act or omission of the Club Owner or of any of the Indemnified Parties, but excluding, as to any Indemnified Party, Losses caused by the gross negligence or willful misconduct of such Indemnified Party. Losses shall include the deductible payable under any of the Club's insurance policies. The terms of this Section shall survive termination of these Club Membership Documents. The Association shall additionally cause each Sub-Member to execute a waiver, indemnity and release for Club Owner in the form provided by Club Owner. The Association acknowledges that the execution of such waiver, indemnity and release by a Sub-Member is a pre-condition for the Sub-Member exercising its Sub-membership rights, provided execution of such waiver, indemnity and release by a Sub-Member is not a prerequisite of Association's or Sub-Member's indemnity obligation under this Section.

12.7 Unrecorded Club Membership Plan, Fee Schedules, and Rules and Regulations. Club Owner has adopted a Club membership plan ("**Club Membership Plan**"), Club membership fee schedules ("**Club Membership Fee Schedules**"), and Club rules and regulations ("**Club Rules and Regulations**") (collectively, the "**Club Documents**"), and may amend, modify, terminate and restate each of them from time to time in its discretion, which adoption, amendment, modification, termination and restatement shall be binding upon, but shall not require the consent, approval or joinder of, the Declarant, the Association, any Club Member, any Owner or any other Person. Such Club Documents will not be recorded in the Public Records; therefore, each Owner and Lessee should request a copy of the Club Documents from the Club and become familiar with the same. Such Club Documents are in addition to the general restrictions set forth in these Club Membership Documents. In the event of a conflict between the terms of the Club Documents, the Club Documents shall prevail. Notwithstanding the foregoing, Club Documents, as they may be amended, modified, terminated or restated from time to time by Club Owner, (i) shall not serve to modify those certain sections of the Club Membership Documents requiring the consent of the Association without the approval of the Association, and (ii) shall not serve to modify any portion of these Club Membership Documents requiring the consent of Declarant for amendment without the approval of Declarant.

12.8 Waiver of Application of the Club Documents. Club Owner may waive the application of any part of the Club Documents to the Declarant, one or more Owners, Club Members,

Lessees, guests, invitees, employees or agents in Club Owner's sole and absolute discretion. A waiver may be revoked at any time upon notice to affected Lessees and Owners. Neither the Association nor any Owner, Member, Lessee, guest, invitee, employee or agent may claim the benefit of or the right to receive a waiver granted to another party.

13. **Violation of Club Rules and Regulations.**

13.1 **Basis For Suspension.** The membership rights of a Member or Sub-Membership Rights of a Sub-Member may be suspended by Club Owner if, in the sole judgment of Club Owner:

13.1.1 such person is not an Owner or a Lessee or is not otherwise entitled to exercise its Sub-Membership Rights hereunder;

13.1.2 the Member or Sub-Member violates one or more of the Club Rules and Regulations, the Club Membership Plan or these Club Membership Documents;

13.1.3 an Immediate Family Member, a guest or other person for whom a Member or Sub-Member is responsible violates one or more of these Club Rules and Regulations, the Club Membership Plan or these Club Membership Documents;

13.1.4 an Owner fails to pay Sub-Membership Club Dues in a proper and timely manner; or

13.1.5 a Member, Sub-Member, Lessee and/or guest and invitee has injured, harmed or threatened to injure or harm any person on the Club Property, or harmed, destroyed or stolen any personal property within the Club Facilities, whether belonging to a third party or to Club Owner.

13.2 **Types of Suspension.** Club Owner may restrict or suspend, for cause or causes described in the preceding Section, any Member's or Sub-Member's privileges to use any or all of the Club Facilities. By way of example, and not as a limitation, Club Owner may suspend the Sub-Membership Rights of a Lessee if such Lessee's Owner fails to pay Sub-Membership Club Dues due in connection with a leased Lot. In addition, Club Manager may suspend some privileges while allowing a Member or Sub-Member to continue to exercise other membership rights. For example, Club Manager may suspend the rights of a particular Member, Sub-Member (and/or Immediate Family Member) or Club Manager may prohibit a Member, Sub-Member (and/or Immediate Family Member) from using a portion of the Club Facilities. No Member or Sub-Member whose membership privileges have been fully or partially suspended shall, on account of any such restriction or suspension, be entitled to any refund or abatement of Club Dues, Sub-Membership Club Dues or any other fees. During the restriction or suspension, Club Dues and Sub-Membership Club Dues shall continue to accrue and be payable each month. Under no circumstance will a Member or Sub-Member be reinstated until all Club Dues, Sub-Membership Club Dues and other amounts due to the Club Owner are paid in full.

14. **Risk of Loss.** Club Owner shall not be liable for, from and against, and the Members and Sub-Members, and the Immediate Family Members, Extended Family Members and guests of same, assume all risks that may occur by reason of, any condition or occurrence, including damage to the Club Facilities on account of casualty, water or the bursting or leaking of any pipes or waste water about the Club Property, or from any act of negligence of any other Person, or fire, or tornado,

or other act of God, or from any cause whatsoever, occurring after the date of the recording of these Club Membership Documents. Neither Association nor any Owner shall be entitled to cancel these Club Membership Documents on account of any such occurrence, nor shall there be any abatement in payment of Club Dues, Sub-Membership Club Dues, nor any refund of Sub-Membership Initiation Fees, during casualty or reconstruction unless substantially all portions of the Club Facilities are not available for use during casualty or reconstruction. In that event, the Club Dues will be abated for any time such Club Facilities are not available for use after the initial sixty (60) days of closure.

15. **Additional Indemnification of Club Owner.** In addition to any other indemnification obligation of the Association, Association, for itself and on behalf of each Sub-Member covenant and agree that it and each Sub-Member will indemnify, defend and hold harmless Declarant and Club Owner, their respective officers, directors, shareholders, and any related persons or corporations and their employees, attorneys, agents, officers and directors for, from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas, Club Property, or other property serving the Association, and Improvements thereon, or resulting from or arising out of activities or operations of the Association or Sub-Members, and for, from and against all costs, expenses, court costs, counsel fees, paraprofessional fees (including all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising out of or relating to any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and for, from and against any orders, judgments or decrees which may be entered relating thereto, but excluding, as to any Indemnified Party, Losses caused by the gross negligence or willful misconduct of such Indemnified Party. The indemnifications provided in this Section shall survive termination of these Club Membership Documents. Association shall not be liable for any Sub-Member indemnification obligation to Club Owner under this Section.

16. **Estoppel.** Association shall, for itself and as authorized representative of the Sub-Members, from time to time, upon not less than ten (10) days' prior written notice from Club Owner, execute, acknowledge and deliver a written statement: (a) certifying that these Club Membership Documents are unmodified and in full force and effect (or, if modified, stating the nature of such modification, listing the instruments of modification, and certifying that these Club Membership Documents, as so modified, is in full force and effect) and the date to which the Club Dues are paid; and (b) acknowledging that there are not, to Association's knowledge, any uncured defaults by Association, Club Owner or Owners with respect to these Club Membership Documents. Any such statement may be conclusively relied upon by any prospective purchaser of Club Owner's interest or mortgagee of Club Owner's interest or assignee of any mortgage upon Club Owner's interest in the Club. Association's failure to deliver such statement within such time shall be conclusive evidence: (1) that these Club Membership Documents are in full force and effect, without modification except as may be represented, in good faith, by Club Owner; and (2) that there are no uncured defaults; and (3) that the Club Dues have been paid as stated by Club Owner.

17. **No Waiver.** The failure of Club Owner in one or more instances to insist upon strict performance or observance of one or more provisions of the Club Membership Documents or conditions hereof or to exercise any remedy, privilege or option herein conferred upon or reserved to Club Owner, shall not operate or be construed as a relinquishment or waiver of such covenant or condition or of the right to enforce the same or to exercise such privilege, option or remedy, but the same shall continue in full force and effect. The receipt by Club Owner of any payment required to be made hereunder, or any part thereof, shall not be a waiver of any other payment then due, nor shall such receipt, though with knowledge of the breach of any covenant or condition hereof, operate as,

or be deemed to be a waiver of such breach. No waiver of Club Owner (with respect to Association or a Sub-Member) shall be effective unless made by Club Owner in writing.

18. **Franchises and Concessions; Additional Easements.** Club Owner may grant franchises and concessions to any Person(s) on all or part of the Club Property and shall be entitled to all income derived therefrom. Club Owner may rent or license the use of all or any part of the Club Property to any Person(s) and shall be entitled to all income derived therefrom.

19. **Mandatory Dispute Resolution Procedures for Club Owner and Association.** Any controversy, dispute, or claim (collectively "**Dispute**") between Club Owner and Declarant or Association or a Sub-Member arising out of or relating to the Club, Membership or Sub-Membership in the Club, use of Club Facilities, Club operations, Club Dues or Sub-Membership Club Dues, the provisions of these Club Membership Documents, the Club Membership Plan and Club Rules and Regulations shall be governed by the mandatory dispute resolution procedures set forth below. Sub-Members shall have no direct rights to bring a Dispute against Club Owner, but must request the Association prosecute a Dispute on the Sub-Members' behalf. The Association shall prosecute Disputes on behalf of a requesting Sub-Member, provided the Sub-Member agrees to reimburse the Association for its costs incurred in prosecuting the Dispute and pays the Association a reasonable retainer as an advance on such costs, absent which agreement and funding, the Sub-Member will be deemed to have waived and released its Dispute.

19.1 **Notice.** In the event that Club Owner, Declarant or Association has a Dispute, it shall notify the applicable party (the "**Notified Party**") in writing of the Dispute, which writing shall describe the nature of the Dispute and any proposed remedy (the "**Dispute Notice**").

19.2 **Preliminary Meeting.** Within a reasonable period after receipt of the Dispute Notice, which period shall not exceed sixty (60) days, the Notified Party and the claimant shall meet at the Club Facilities to discuss the Dispute. The parties shall negotiate in an attempt to resolve the Dispute.

19.3 **Mediation.** If the parties fail to resolve the Dispute by negotiation within ninety (90) days after delivery of the Dispute Notice, the matter shall be submitted to mediation pursuant to the Mediation Rules of the American Arbitration Association applicable to Club disputes (except as such procedures are modified by these provisions) or such other mediation service selected by the Notified Party. The claimant who delivered the Dispute Notice shall have until one hundred twenty (120) days after the date of delivery of the Dispute Notice to submit the Dispute to mediation. If the claimant who delivered the Dispute Notice fails to timely submit the Dispute to mediation, then the Dispute of the party who delivered the Dispute Notice shall be deemed waived and abandoned and all applicable parties shall be relieved and released from any and all liability relating to the Dispute. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be commenced against the Notified Party or any applicable party without complying with the procedures described above.

19.3.1 **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The

mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the Club Facilities or such other place as is mutually acceptable by the parties.

19.3.2 Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute, consistent with the mediation rules applicable to the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

19.3.3 Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

19.3.4 Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall be confidential. There shall be no stenographic record of the mediation process.

19.3.5 Mediation Expenses. All expenses of the mediation, including the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

19.4 Arbitration. Should mediation not be successful in resolving any Dispute, then the claimant who delivered the Dispute Notice shall have ninety (90) days after the date of termination of the mediation to submit the Dispute to binding arbitration. If timely submitted, such Dispute shall be resolved by binding arbitration in accordance with the Arbitration Rules of the American Arbitration Association applicable to Club disputes as modified or as otherwise provided in this Section. If the claimant who delivered the Dispute Notice fails to timely submit the claim to arbitration within the ninety (90) day period, then the Dispute of the claimant who delivered the Dispute Notice shall be deemed waived and abandoned and the other party shall be relieved and released from any and all liability relating to the Dispute. A claimant with any Dispute may only submit such Dispute in arbitration on such Person's own behalf. No claimant may submit a Dispute in arbitration as a representative or member of a class, and no Dispute may be arbitrated as a class action. All parties and any claimant submitting a Claim Notice (collectively, the "**Bound Parties**"), agree that all Disputes that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this subsection, and waive the right to have the Dispute resolved by a court, including the right to file or participate in a legal action as the representative or member of a class or in any other representative capacity. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Except as provided in this subsection, the arbitrator shall have the authority to try all issues, whether of fact or law.

19.4.1 Place. The proceedings shall be heard in the Club Facilities.

19.4.2 Arbitrator. A single arbitrator shall be selected by the Club Owner within ten (10) days after service of the demand for arbitration on all respondents named therein in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant club matters. The arbitrator shall not have any relationship to the parties or interest in the Tehaleh Property.

19.4.3 Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

19.4.4 Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

19.4.5 Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (a) witness lists; (b) expert witness designations; (c) expert witness reports; (d) exhibits; (e) a maximum of two depositions per party, and (g) hearing briefs. Any other discovery shall be permitted by the arbitrator upon a showing of extenuating circumstances with the direction to the arbitrator that the granting of additional discovery is discouraged by the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

19.4.6 Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

19.4.7 Arbitration Award. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after conclusion of the arbitration hearing. The arbitrator's award may be enforced in accordance with law governing enforcement of awards in a trial court in Pierce County, or, as applicable, pursuant to the Federal Arbitration Act (Title 9 of the United States Code).

19.4.8 Arbitration Expenses. The arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The arbitrator shall not award any punitive damages. The arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The arbitrator shall assess the costs of the proceedings (including the fees of the arbitrator) against the non-prevailing party.

19.4.9 WAIVERS. NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE TEHALEH PROPERTY, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE

RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. THE ASSOCIATION, EACH OWNER, DECLARANT AND CLUB OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER, DECLARANT AND CLUB OWNER FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE TEHALEH PROPERTY, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

20. **RELEASE.** BEFORE ACCEPTING A DEED TO A LOT, EACH OWNER HAS BEEN ADVISED BY DECLARANT OR ITS AFFILIATES TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THE CLUB MEMBERSHIP DOCUMENTS AND THE CLUB PLAN. BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER ACKNOWLEDGES THAT HE HAS SOUGHT (OR HAD THE OPTION TO SEEK) AND RECEIVED (OR DECLINED TO OBTAIN) SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. CLUB OWNER IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT THAT THE CLUB MEMBERSHIP DOCUMENTS AND THE CLUB PLAN ARE VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO CLUB OWNER. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THE CLUB MEMBERSHIP DOCUMENTS AND CLUB PLAN ARE INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR CLUB OWNER TO SUBJECT THE CLUB PROPERTY TO THE CLUB MEMBERSHIP DOCUMENTS AND THE CLUB PLAN, EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE CLUB OWNER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST CLUB OWNER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THESE CLUB MEMBERSHIP DOCUMENTS, THE EXHIBITS HERETO OR THE CLUB PLAN. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF WASHINGTON.

21. **Amendment.** Except as provided above, Club Owner shall have the right to amend the Club Membership Documents as it deems appropriate, without the joinder or consent of any Person whatsoever, which amendment is effective immediately and supersedes any prior version of the Club Membership Documents. Neither Association nor any Sub-Member has any vested right in any past, current or future provision of the Club Membership Documents, except during the time when such current or future provision is in effect and has not been amended by Club Owner. Club Owner's right to amend under this provision is to be construed as broadly as possible.

22. **Severability.** Invalidation of any of the provisions of the Club Membership Documents by judgment or court order shall in no way affect any other provision, and the remainder of the Club Membership Documents shall remain in full force and effect. If any provision herein is

adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or Club Owner, as applicable, may interpret, construe, rewrite or revise such provision to the fullest extent allowed by law, so as to make such provision valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

23. **Notices.** Any notice required to be sent to any Person under the provisions of the Club Membership Documents shall be deemed to have been properly sent when mailed, postpaid, hand delivered, delivered by electronic communication, or delivered by professional carrier or overnight delivery to the last known address at the time of such mailing.

24. **Headings.** The headings within these Club Membership Documents are for convenience only and shall not be used to limit or interpret the terms hereof.

25. **Interpretation of Club Membership Documents and Club Membership Plan.** Club Owner will have the sole authority and power to determine the interpretation or construction of these Club Membership Documents and the Club Membership Plan, or any parts hereof, which may be in conflict or of doubtful meaning, and Club Owner's decision will be final and conclusive, so long as consistent with applicable law.

EXHIBIT 1

INITIAL INITIATION FEE SCHEDULE AND ADJUSTMENT PROVISIONS

The initial Sub-Membership Initiation Fee shall be Five Thousand Dollars (\$5,000.00) per Sub-Member. The Club Owner reserves the right to revise the Sub-Membership Initiation Fee from time to time in its sole discretion, which revised Sub-Membership Initiation Fee shall be effective upon delivery to Association; provided the Club Owner shall not revise the Sub-Membership Initiation Fee applicable to a subsequent purchaser of a Lot to an amount less than the Sub-Membership Initiation Fee paid by the seller of the Lot.