

Filed at the Request of
and to be Returned to:

MCREF III Lacey Apartments LLC
1417 116th Ave NE, Suite 208
Bellevue WA 98004

DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS
FOR
LACEY 23, A PLAT COMMUNITY

Grantor	MCREF III LACEY APARTMENTS LLC
Grantee	Lacey 23, a plat community Lacey 23 Owners Association, a Washington nonprofit corporation
Legal Description (abbreviated)	A portion of Section 9, Township 18 N., Range 1 W., W.M. Full legal description on Exhibit A.
Assessor's Tax Parcel ID No.	_____
Reference Nos. of Related Documents	_____

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
LACEY 23, A PLAT COMMUNITY

THIS DECLARATION is made this _____ day of _____, 20__, by _____, LLC, a Washington limited liability company, its successors and assigns, hereafter referred to as “Declarant”.

RECITALS

A. Declarant is the fee owner of the real property described on attached Exhibit A (“Covered Property”). This Declaration is being imposed by Declarant upon the Covered Property.

B. The Covered Property is a plat community (as defined under Ch. 64.90 RCW) whose name is LACEY 23.

C. Lacey 23 Owners Association, a nonprofit corporation, has been incorporated under the laws of the State of Washington for the purpose of exercising the powers and functions described herein.

D. Declarant has created 23 Lots (units) within the Covered Property, as described in the final Plat of Lacey 23, which was recorded in the Official Records on _____, 20__ under Thurston County Auditor’s File No. _____.

E. Declarant also is the owner of all the real property described on attached Exhibit B (“Multi-Family Property”). Declarant intends, but is not required, to develop multi-family housing on the Multi-Family Property. The Multi-Family Property benefits from certain covenants and restrictions contained in this Declaration, but is not subject to this Declaration. Likewise, Lacey 23 benefits from certain easements recorded or to be recorded against the Multi-Family Property.

F. Declarant will hereafter hold and convey title to all of the Covered Property subject to certain protective covenants, conditions and restrictions hereafter set forth.

NOW THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Covered Property, and the owners of said interests, their successors and assigns. All provisions of this Declaration and the Washington Uniform Common Interest Ownership Act (Ch. 64.90 RCW) shall be binding upon all parties having or acquiring any right, title, or interest in the Real Property or any part thereof, and shall inure to the benefit of the Unit Owners thereof and to the benefit of the Association and are intended to be and shall in all respects be regarded as covenants running with the land.

ARTICLE I
DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1.01. “Allowable Charges” shall mean and refer to the costs, late charges and interest in the amounts permitted which may be recovered by the Association when any Assessment becomes delinquent which, as of the date hereof, permits (i) reasonable costs incurred in collecting delinquent Assessments including reasonable attorneys fees, (ii) a late charge not exceeding the lesser of twelve percent (12%), or the maximum allowable by law, of the delinquent Assessments or, if greater, an amount set by the Board not to exceed Twenty-Five dollars (\$25.00), and (iii) interest on all sums imposed in accordance with this Section, including the delinquent Assessment, reasonable costs of collection and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, or the maximum allowable by law, whichever is lesser, commencing thirty (30) days after the Assessment becomes due.

Section 1.02. “Architectural Standards” shall mean and refer to the standards adopted and promulgated by the Board pursuant to Section 10.01 entitled “Architectural Standards.”

Section 1.03. “Articles” and “Bylaws” shall mean and refer to the Articles of Incorporation and Bylaws of the Association as the same may from time to time be amended.

Section 1.04. “Assessments” shall mean monthly assessments and special assessments, as each is described or defined in the Article entitled “Assessments” of this Declaration.

Section 1.05. “Association” shall mean and refer to Lacey 23 Owners Association, a nonprofit corporation incorporated under the laws of the State of Washington for the purpose of managing the Covered Property, its successors and assigns.

Section 1.06. “Association Management Documents” shall mean and refer to the Articles, Bylaws, this Declaration and the Association Rules, and any amendments to any of the foregoing.

Section 1.07. “Association Rules” shall mean rules adopted by the Board or set forth in the Association Management Documents.

Section 1.08. “Board” shall mean the Board of Directors of the Association.

Section 1.09. “Budget” shall mean an itemized written estimate of the income and Common Expenses of the Association prepared from time to time pursuant to the provisions of the Bylaws.

Section 1.10. “City” shall mean and refer to the City of Lacey, Washington, a municipal corporation of the State of Washington.

Section 1.11. “Common Expenses” shall mean and refer to the actual and estimated costs or amounts paid for:

(a) maintenance, management, operation, repair and replacement of the Community Property, and all other areas which are maintained by the Association pursuant to the provisions of this Declaration;

(b) unpaid Assessments;

(c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to the agreements with the City or the County;

(d) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) services which generally benefit and enhance the value and desirability of the Community Property;

(f) liability and other insurance required to be maintained by the Association pursuant to the Article entitled “Insurance” of this Declaration and any other insurance obtained by the Association;

(g) premiums on all bonds required in this Declaration for the Association (except for premiums on fidelity bonds obtained by the management agent for its officers, employees and agents);

(h) reasonable reserves as deemed appropriate by the Board;

(i) Taxes paid by the Association;

(j) discharge of any lien or encumbrance levied against the Community Property or portions thereof;

(k) maintenance, management, operation, repair and replacement of storm water and related facilities pursuant to that certain Stormwater Facility Declaration dated _____ and recorded under Thurston County Auditor’s file No. _____ on _____;and

(l) other expenses incurred by the Association for any reason whatsoever in connection with the Community Property, or the costs of any other item or items designated by the Association Management Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

Section 1.12. “Community Property” shall mean all real property and the improvements thereon, owned or leased from time to time by the Association for the common use and enjoyment of the Members. The Community Property within the Covered Property is described as:

Open Space Tracts A and B of the Plat.

Section 1.13. “County” shall mean and refer to the County of Thurston, State of Washington.

Section 1.14. “Covered Property” shall mean and refer to the real property described on Exhibit A attached hereto and by this reference incorporated herein.

Section 1.15. “Declarant” shall mean and refer to MCREF III LACEY APARTMENTS LLC, a Delaware limited liability company, its successors and assigns, whether by merger, consolidation, purchase of all or substantially all of its assets or otherwise. Without limiting the generality of the foregoing, the Declarant shall have the right to assign all of its right, title and interest as Declarant to a subsequent Declarant, and upon recordation of such assignment, the assignor shall have no further rights or obligations as Declarant.

Section 1.16. “Development” shall mean and refer to the Covered Property.

Section 1.17. “Improvement” shall mean all:

(a) structures and appurtenances thereto of every type and kind, including but not limited to, buildings, out buildings, walkways, mailboxes, sprinkler and sewer pipes or lines, garages, carports, swimming pools and other recreational facilities, roads, driveways, parking areas, fences, screening walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, trees and shrubs, poles, signs, solar or wind-powered energy systems or equipment, and water softener or heater or air conditioning and heating fixtures and equipment;

(b) the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

(c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

(d) landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; and

(e) any change or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

Section 1.18. “Lot” means any legally segmented and alienable portion of the Covered Property created through subdivision or any other legal process for dividing land and subjected to this Declaration by an appropriate recording, with the exception of the Community Property. As indicated on the Plat, Lacey 23 shall include twenty-three (23) Lots.

Section 1.19. “Member” shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled “Association Membership,” including Declarant so long as Declarant qualifies for membership pursuant to said Article.

Section 1.20. “Multi-Family Property” means the real property described on the attached Exhibit B; provided, however, the Multi-Family Property shall have no obligations hereunder, and is identified for the sole purpose of identifying the beneficiary of the rights granted to the owner of the Multi-Family Property herein, including pursuant to Sections 8.9, 8.12, and 10.01. If any portion of the Multi-Family Property is converted to condominiums in the future, the owner of such portion shall have no rights granted hereunder to the owner of the Multi-Family Property.

Section 1.21. “Official Records” shall mean the Official Records in the Office of the County Auditor of Thurston County.

Section 1.22. “Owner” shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot or Residence, including Declarant, excluding those having any such interest merely as security for the performance of an obligation. If a Lot or Residence is leased by Declarant for a term in excess of ten (10) years and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed to be the Owner. If fee title to a Lot or Residence is owned other than by Declarant, the Owner of the fee title and not the lessee of such Residence shall be deemed the Owner regardless of the term of the lease.

Section 1.23. “Plat” means the final plat of _____ recorded under Thurston County recording no. _____.

Section 1.24. “Residence” shall mean and refer to a Lot together with any residential dwelling unit, garages, fences, structures and other improvements on the same Lot. Residence shall not include any Community Property.

ARTICLE II
RIGHTS OF OWNERSHIP AND EASEMENTS

Section 2.01 - Amendment to Eliminate Easements. As long as Declarant is an Owner, any attempt to modify or eliminate this Section or any other easement or right reserved to Declarant in this Declaration shall require the prior written approval of Declarant.

Section 2.02 - Nature of Easements. Unless otherwise set forth herein, any easement reserved to Declarant herein shall be nonexclusive.

Section 2.03 - Easements Reserved to Declarant. There is hereby reserved to Declarant, together with the right to grant and transfer the same, easements over the Covered Property for the installation, use and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on any recorded final tract or parcel map covering the Covered Property; provided, however, such easements shall not unreasonably interfere with the use and enjoyment by the Members of their Lots, Residences or the Community Property. The Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such installation and maintenance within a reasonable time after the occurrence of such damage or need for restoration.

Section 2.04 – Special Declarant Rights. Subject to the Act, Declarant shall have the right to do the following for a period of ten (10) years following the sale of the first Lot by Declarant:

(a) Complete any improvements indicated on the Plat or described in this Declaration or the public offering statement pursuant to RCW 64.90.610(1)(h);

(b) Maintain sales offices, management offices, signs advertising the Lacey 23 community, and models;

(b) Use easements through the Community Property for the purpose of making improvements within Lacey 23 or within real property that may be added to Lacey 23;

(d) Make Lacey 23 subject to a master association;

(e) Merge or consolidate a common interest community with another common interest community of the same form of ownership;

(f) Appoint or remove any officer or board member of the association or any master association or to veto or approve a proposed action of any board or association;

(g) Control any construction, design review, or aesthetic standards committee or process until Declarant no longer owns any Lots;

(h) Attend meetings of the Lot Owners and, except during an executive session, the Board;
and

(i) Have access to the records of the Association to the same extent as a Unit Owner (collectively, the “Special Declarant Rights”).

Except as otherwise provided in this Declaration, all Special Declarant Rights shall expire ten (10) years after the conveyance of the first Lot; provided, that Declarant may voluntarily terminate any and all such rights at any time by recording an amendment to the Declaration, which amendment specifies which rights are thereby terminated.

Section 2.05 - Plat Easements and Covenants. Upon recording of the Plat, certain easements and covenants were established that benefit and/or burden Lacey 23. Some of the Plat easements and covenants are described herein or otherwise overlap with easements and covenants established by this Declaration. Consult the Plat for further details.

Section 2.06 - Certain Easements for Owners. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, television, telephone lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to said Owners, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Lot, and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon. Entry into a Lot for emergency purposes may be immediate. Entry into a Lot for other than emergency repairs shall be made only after reasonable notice has been given to the Owner. Entry in either event shall be made with as little inconvenience as possible to the Owner.

Section 2.07 - Certain Easements for Association.

(a) Association Rights. There is hereby reserved to Declarant easements over the Covered Property, together with the right and obligation to grant and transfer the same to the Association, for the purpose of permitting the Association to discharge its obligations and powers as described in the Association Management Documents including without limitation a right of entry for such purpose as provided in the Section entitled “Powers and Duties” of the Article entitled “Powers, Duties and Limitations of the Board” of the Bylaws.

(b) Rights and Duties: Utilities. Wherever sanitary sewer house connections, water house connections, air conditioning connections or ducts, electricity, gas, television, telephone lines or

{04550957.DOCX;7 }

drainage facilities are installed within the Covered Property, and said connections, lines or facilities serve the Community Property, the Association shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to the Association, an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service the Community Property and to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided the Association or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.

ARTICLE III
DUTIES AND POWERS OF THE ASSOCIATION

Section 3.01 - General Duties and Powers. In addition to the duties and powers prescribed by law and enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

Section 3.02 - General Duties of the Association. The Association through the Board shall have the duty and obligation to:

(a) maintain and otherwise manage the following:

(i) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;

(ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and

(iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration.”

(b) establish and maintain any required replacement reserve fund;

(c) within ten (10) days of the delivery of written request, provide a requesting Owner with (i) a copy of the Association Management Documents, (ii) a copy of the most recent financial statements of the Association, and (iii) a true statement in writing as to the amount of any unpaid Assessments and information relating to Allowable Charges which as of the date of the statement are or may be made a lien upon such Owner's Lot. A reasonable fee may be imposed for providing

such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

Section 3.03 - General Powers of the Association. Subject to limitations contained in the Section entitled “Powers and Duties of the Board of Directors” of the Bylaws and elsewhere in the Association Management Documents, the Association, through the Board, shall have the power but not the obligation to:

(a) acquire personal property that may be necessary or convenient for the management of the Covered Property, the administration of the affairs of the Association or for the benefit or enjoyment of the Members;

(b) establish reasonable rules and regulations pertaining to the use of the Community Property;

(c) impose temporary suspensions of an Owner's rights or other appropriate discipline for failure to comply with the Association Management Documents, specifically, Article VI, “Powers & Duties of the Board of Directors”, Section 1(b) of the By-Laws. Notwithstanding the foregoing, the Association shall not have the right to cause a forfeiture or abridgment of any Owner's right to the full use and enjoyment of its Lot or Residence on account of the failure by the Owner to comply with provisions of the Association Management Documents except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association; and

(d) subject to the approval rights of Owners, dedicate or transfer all or any part of the Community Property to any public agency, authority or utility or other entity.

Section 3.04 - Association to Defend Certain Actions. In the event that a lawsuit is filed against all or substantially all of the Owners as Members, or a lien is levied against all or substantially all of the Covered Property, the Association, upon a majority vote of the Members named as defendants or those Members whose property is covered by the lien, shall defend such lawsuit or cause such lien to be removed. The costs of such litigation or removal shall be a Special Assessment against all Members joined as defendants in such lawsuit or whose property is covered by the lien, provided, however, in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Member or Members to retain counsel of their choice to represent them in such lawsuit at their own expense. In the event that a Member so chooses, he shall not be relieved of liability for the Special Assessment provided for in this Section.

ARTICLE IV
ASSOCIATION MEMBERSHIP

Section 4.01 - Membership. Every Owner, including the Declarant as long as Declarant continues to be Owner by virtue of holding title to a Lot, shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of all of the Association Management Documents. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership.

Section 4.02 - Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the transferee of the interest of an Owner required for membership. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner.

Section 4.03 - Plural Memberships. A Member may own more than one membership in the Association by complying with the qualifications of membership as to more than one (1) Lot as set forth in this Article and the Section entitled "Owner" of the Article entitled "Definitions" of the Declaration.

ARTICLE V MEMBERSHIP VOTING RIGHTS

Section 5.01 - Voting Rights. All voting rights shall be subject to the restrictions and limitations provided in the Association Management Documents. Wherever a provision of the Association Management Documents requires the approval of Members, it shall be deemed to mean the vote of the prescribed percentage of the total voting power of the Association.

Section 5.02 - Classes of Voting Membership. The Association shall have one (1) class of voting membership.

Section 5.03 - Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, any provision of this Declaration which requires the vote or written assent of either the voting power of the Association or of Members shall be deemed satisfied by the following:

(a) The vote in person, by proxy or by absentee ballot of the specified percentage of all of the votes which are entitled to be cast. Said vote shall be at a meeting duly called and noted pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members;
or

(b) A vote conducted by ballot without a meeting, which meets the requirements of RCW 64.90.455.

ARTICLE VI
ASSESSMENTS

Section 6.01 - Covenant of Personal Obligation for Assessments. The Declarant, for each Lot owned, hereby covenants, and every Owner of every Lot by acceptance of the deed or other instrument of conveyance thereof including real estate contracts (whether or not it shall be so expressed in such deeds or other instrument of conveyance), is deemed to personally covenant and agree, jointly and severally, and hereby does so covenant and agree, to pay to the Association: (a) monthly assessments, (b) special assessments, and (c) default assessments applicable to such Lot; such assessments to be established and collected as hereinafter provided. No Member may exempt itself from personal liability for Assessments duly levied by the Association, or release the Lot owned by it from the liens, charges and other provisions of the Association Management Documents by non-use of, or waiver of the use and enjoyment of, the Community Property or the abandonment or leasing of its Lot or Residence.

Section 6.02 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Community Property. Proper uses of the assessments levied by the Association shall include, but are not limited to, the expenditures of funds for taxes, fees, expenses, charges, levies, premiums, expenditures, or other costs incurred by the Association for:

(1) Providing services to the Community Property, landscaped areas (even if within the City right-of-way) and other areas for which the Association is responsible hereunder, such as tree care, mowing grass, caring for the grounds and sprinkling and irrigation system, landscaping, shrubs, grass, walkways and pathways;

(2) Carrying out the powers and duties of the Association;

(3) Purchasing insurance for the Association;

(4) Managing the Association;

(5) Paying for maintenance, management, operation, repair and replacement of storm water and related facilities pursuant to that certain Storm Water Facility Declaration dated _____ and recorded under Thurston County Auditor's file No. _____ on _____;
and

(6) Carrying out or implementing any other purposes and uses that the Board shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of reserves for repair, maintenance, taxes, and the other uses specified above.

Section 6.03 - Assessment Years. The first assessment year for the levying of the Association's monthly assessments shall commence upon the date of the recording with the Thurston County Auditor of the Declarant's first conveyance of the Community Property to the Association and continue thereafter until the following December 31; however, Declarant may delay commencement of assessments, in which event Declarant must pay all of the Common Expenses or specially allocated expenses that have been delayed. Subsequent assessment years shall thereafter commence on the first day of January and continue until the following December 31.

Section 6.04 - Determination of Amount of Monthly Assessments. The Board may determine and levy monthly assessments for each assessment year by including the same in a budget that is ratified in the manner provided in Ch. 64.90 RCW; provided, however, that Declarant may set the amount of the initial monthly assessment prior to conveyance of the first Lot to be effective until the Board determines and levies a different monthly assessment. If the Board shall not determine and levy monthly assessments for a particular assessment year in accordance with the foregoing sentence, then the monthly assessments for that particular assessment year shall be deemed to be the same as the monthly assessments for the assessment year immediately preceding that particular assessment year.

Section 6.05 - Special Assessments. Generally, in addition to the monthly assessments authorized above, the Board may, at any time and from time to time, determine and levy in any assessment year a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, the costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, or maintenance of the Community Property or any other proper use of assessments; provided that such special assessment is ratified in the manner provided in RCW 64.90.525(3).

Section 6.06 - Due Dates for Assessment Payments & Late Fees. Unless otherwise determined by the Board in an adopted policy, the monthly assessments and any special assessments which are to be paid in installments shall be paid quarterly, in advance, and shall be due and payable to the Association at its office, without notice, on January 1st for the period of January - March; on April 1st for the period of April - June; on July 1st for the period of July - September; and on October 1st for the period of October - December. If any such assessment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" thereon in an amount determined pursuant to the definition of Allowable Charges to cover the extra expenses involved in handling delinquent assessment payments and to encourage timely receipt of payments. Further, all such delinquent assessments shall bear interest as provided in the definition of Allowable Charges, and shall be subject to such other costs, late charges, and interest described

{04550957.DOCX;7 }

in the definition of Allowable Charges. Payments shall be applied in the following order: past due regular assessments, past due special assessments, late fees, attorney or collection costs, current assessments, current special assessments and finally, future assessments.

Section 6.07 - Lien. All Lots shall be subject to the Allowable Charges and assessments provided for in and for the purposes set forth in the Articles and Bylaws. The Association shall have a lien against all Lots for said Allowable Charges and assessments. The lien of the Association shall have the priority(ies) set forth in RCW 64.90.485.

Section 6.08 - Certificate of Payment. The Association, shall upon demand, furnish to any Member liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the Assessments on such Owner's Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 6.09 - No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in the Association Management Documents; (ii) a Member has made and elects to make no use of the Community Property; or (iii) any construction or maintenance performed pursuant to the Section entitled "Transfer of Title and/or Control" of the Article entitled "Repair and Maintenance" of this Declaration shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

ARTICLE VII ENFORCEMENT OF ASSESSMENT LIENS

Section 7.01 - Delinquency. Any Assessment provided for in this Declaration which is not paid shall be delinquent fifteen (15) days after such Assessment was due (the "Delinquency Date") and Allowable Charges may be imposed if an Assessment becomes delinquent.

Section 7.02 – Enforcement. The Association may at its option, and without waiving its right to pursue any available remedies, including, without limitation, bringing an action at law against the Member personally obligated to pay the same or foreclosing the lien judicially or non-judicially against the Lot or Residence pursuant to the powers granted under RCW 64.90.485. Each Member vests in the Association, or its assigns, the right and power to bring all actions at law or in equity or in any lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

Section 7.03 - Personal Obligation. An Assessment and any Allowable Charges shall be a debt of the Owner of the Lot or Residence at the time the Assessment or other sums are levied in addition to the amount of the Assessment, plus any Allowable Charges, being a lien on the Owner's Lot and Residence.

ARTICLE VIII
USE RESTRICTIONS

Section 8.01 - Building Location. Buildings and other structures located on each Lot shall conform to and comply with the local governing jurisdiction's requirements.

Section 8.02 - Completion of Structures. All buildings commenced on any Lot shall be completed, including painting and landscaping, not later than eight months after construction is commenced unless additional time is provided with the written permission of the Declarant.

Section 8.03 - Noxious and Offensive Activities. No noxious or offensive activity shall be conducted on any Lot, nor shall anything be done or maintained within the Covered Property which may become an activity or condition which unreasonably interferes with the rights and quiet enjoyment this Declaration gives other Owners. No activity or condition shall be conducted or maintained on any part of the Covered Property which detracts from the value of the Covered Property as a residential community. No untidy or unsightly condition shall be maintained on any property. Untidy conditions shall include, but are not limited to, publicly visible storage of wood, disabled vehicles of any kind whatsoever, items covered by a tarp, kennels, and landscaping which is not properly maintained.

Section 8.04 - Temporary Structures. No mobile homes shall be permitted on any Lot. No structures of a temporary character, including but not limited to trailers, basement houses, tents, garages, barns, motor homes, sheds or outbuildings, shall be used on any Lot at any time as a residence, either temporarily or permanently. When referring to trailers, the term trailer shall include all forms of trailers or mobile homes of any size, whether capable of supplying their own motive power or not, without regard to whether the primary purpose of such trailers is or is not the conveyance of persons or objects, and specifically including all automobiles, buses, trucks, cars, vans, trailers, mobile homes, and motor homes, even though they may at any time be immobilized in any way, and the restriction shall apply to any period of any time of whatever duration. Living shall be restricted to a house or dwelling constructed on the Lot in conformance with these covenants. Storage of these items is prohibited unless screened from view. The Declarant shall have the right to have temporary structures including but not limited to; construction vehicles, storage and garbage/recycling containers, storage yards, real estate signage and offices permitted on the Covered Property for the sole purpose of conducting temporary development, construction and real estate sales business.

Section 8.07 - Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on or left on any Lot unless placed in an attractive container suitably located and screened from public view. All garbage cans, refuse containers, and trash cans or receptacles shall be kept out of sight except on the days prescribed for pick up.

Section 8.08 - Animals. No animals, except dogs, cats, caged birds kept inside a residence, fish and other small household pets (none of which may be kept, bred or maintained for any commercial purpose or in numbers deemed unreasonable by the Board), will be permitted in the Covered Property. No animals shall be kept or maintained within any outside cage, coop or similar enclosure, except that dogs may be kept in an appropriate kennel or kennel type enclosure. Notwithstanding the foregoing, all pets permitted to be kept by this section shall be kept on a leash when on any Covered Property or public property, except within the boundary of the Owner's Lot. The person accompanying a pet on public or private property is required to remove any animal fecal material from that property. Pets are not allowed to habitually or continually disturb the peace and quiet of any neighbor by barking, whining, howling or making other noise.

Section 8.09 - Fences. All fences shall be of cedar, pressure treated redwood, or similar and substantially equivalent wood material; provided that fences along the western boundaries (i.e., rear) of Lots 1 through 10 may be chain-link or other fence type that provides transparency to the landscaped areas in Tract A. Each Owner is responsible for maintaining, repairing and replacing its fence in good condition and repair; provided that the owner of the property to which the other side of the fence faces may paint, stain, or otherwise finish such side as it desires, subject to the obligation to keep it in good condition and repair. If an Owner has a fence that is adjacent to Community Property, both the Owner and the Association shall share in the responsibility to ensure the fence is properly maintained. The Association will be responsible for the Community Property side, the Owner responsible for the side facing the Owner. All replaced fences must be substantially similar to the fence originally installed by Declarant. Any replacement will be shared equally between the Association and the Owner of Community Property adjacent fencing. If the Board shall determine that an Owner has not properly maintained its fence, the Owner will be notified in writing and requested to perform such maintenance within a timely manner. Lack of response will result in the Association taking action to maintain the fence, and the Owner will be charged for the cost incurred by the Association. The Multi-Family Property owner is an intended third-party beneficiary of this Section 8.09 and shall have the right to enforce its terms. Neither the Association nor any Owner may remove any portion of the fence or change or replace the type of material used for any portion of the fence without the prior written approval of the Multi-Family Property owner, which approval may be granted or withheld in Multi-Family Property owner's sole discretion. The terms of this Section 8.09 shall not be amended or revoked without the prior written consent of the Multi-Family Property owner, which consent may be granted or withheld in Multi-Family Property owner's sole discretion. However, if any portion of the Multi-Family Property is converted to condominiums, the owner of such converted portion shall have no rights under this Section.

Section 8.10 - Repair and Maintenance by Owner. Each Owner shall maintain in good condition and repair the Residence and other Improvements on the Lot and maintain in an attractive condition the landscaped areas within the public right of way (primarily the planter strip) adjoining such Owner's Lot; provided, however, the Association shall maintain the irrigation system and provide water for the landscaped areas within the public right of way. Planter areas shall be weed-free with bushes and trees pruned as needed. If the Board shall determine that a Lot has not been properly maintained, the Owner will be notified in writing and requested to perform such maintenance within a timely manner. Lack of response will result in the Association taking action to maintain the area, and the Owner will be charged for the cost incurred by the Association.

Section 8.11 - Mailboxes. The Declarant shall provide a mailbox for every Residence within the Covered Property. Mailboxes may be installed as Mailbox "clusters" according to the standards and guidelines of the United States Postal Service.

(a) The Association shall maintain the outside "shell" of the mailbox clusters and the stand.

(b) Owners are responsible for the door, lock and keys on the individual locking mailboxes, which are assigned to their Residence.

(c) The USPS is responsible for the locks that provide the USPS Carrier with access to the "ingoing" and "outgoing" mail doors.

Section 8.12 – Installation and Maintenance of Drainage Facilities. All Owners shall use and maintain their Lots in such a way as to minimize surface water runoff to the extent reasonably practical, to avoid interference with natural surface water flows, and to prevent the accumulation of debris in the storm water system. In addition, each Owner is responsible for ensuring that their Lot complies with all applicable water runoff/drainage codes, laws and regulations, including those, if any, imposed by the City of Lacey through land use permits or approvals issued for the Covered Property. Without limiting the generality of the foregoing terms of this Section 8.12, each Lot Owner will be responsible for the installation (except to the extent already installed by a builder) and maintenance of a drywell and related drainage facilities to accommodate water runoff from the roof of the Residence on the Lot. In addition, the Covered Property benefits from certain stormwater facilities located on the Multi-Family Property. A separate Stormwater Facility Declaration recorded or to be recorded in Thurston County property records governs maintenance and use of those facilities. The terms of this Section 8.12 shall not be amended or revoked without the prior written consent of the Multi-Family Property owner, which consent may be granted or withheld in Multi-Family Property owner's sole discretion. However, if any portion of the Multi-Family Property is converted to condominiums, the owner of such converted portion shall have no rights under this Section.

ARTICLE IX

REPAIR AND MAINTENANCE

Section 9.01 - Repair and Maintenance by Association. Except to the extent that an Owner may be obligated to maintain and repair as otherwise provided in this Declaration, and without limiting the generality of the statement of duties and powers contained in the Association Management Documents, the Association acting through its Board and its officers shall have the duty to accomplish the following upon the Covered Property or other land in such manner and at such times as the Board shall prescribe:

- (a) manage, operate, control, maintain, repair, restore, replace and make necessary improvements to the Community Property;
- (b) perform such maintenance and repair as authorized under Section 3.02(a); and
- (c) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Association.

The costs of any such maintenance and repair pursuant to this Section shall be paid out of the general funds of the Association, except as otherwise specified in this Declaration as payable by the particular Owners.

Section 9.02 - Repair and Maintenance by Owner. Each Owner shall perform and meet the repair and maintenance obligations set forth in this Declaration, including without limitation those set forth in this Article and in Section 8.09 and Section 8.10.

Section 9.03 - Noncompliance by Owner. If an Owner fails to accomplish any installation, maintenance or repair required by this Declaration, the Board shall give notice to the Owner describing the deficiency and setting a date for a hearing before the Board or a committee selected by the Board for such purpose. To the maximum extent permitted by applicable law, the Association shall have the right, but not the obligation, to remedy the deficiency and charge the Owner the cost of such remedy, including all related costs and expenses, as a default assessment.

ARTICLE X ARCHITECTURAL STANDARDS

Section 10.01 – Basic Requirements. All Improvements shall be constructed, installed and maintained in a clean and attractive condition. All Improvements shall be constructed in a northwest style of architecture. The exterior of all Residences and other structures on any Lot shall be of neutral colors or earth tones. Roofs shall be made of composite materials and shall be of neutral tones. Without limiting the generality of the foregoing, no Improvements may be finished with neon colors. The Multi-Family Property owner is an intended third-party beneficiary of this

{04550957.DOCX;7 }

Section 10.01 and shall have the right to enforce its terms. Neither the Association nor any Owner may construct or install any Improvements that violate this Section 10.01 without the prior written approval of the Multi-Family Property owner, which approval may be granted or withheld in Multi-Family Property owner's sole discretion. The terms of this Section 10.01 shall not be amended or revoked without the prior written consent of the Multi-Family Property owner, which consent may be granted or withheld in Multi-Family Property owner's sole discretion. However, if any portion of the Multi-Family Property is converted to condominiums, the owner of such converted portion shall have no rights under this Section.

Section 10.02 – Architectural Standards. The Board may, from time to time, adopt and promulgate Architectural Standards to be administered through the Board. Such standards may include limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: placement, construction, reconstruction, exterior addition, change or alteration to or maintenance of any Improvement including, without limitation, the nature, kind, shape, height, materials, exterior color, surface and location of any Improvement. Such standards shall also include provisions regarding the procedure and timing for review of plans, standards for granting variances. No Improvement shall be constructed, installed, expanded, made, planted, commenced, erected or maintained upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Board in conformance with the then existing Architectural Standards.

ARTICLE XI INSURANCE

Section 11.01 - Insurance Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association must maintain in its own name, to the extent reasonably available and subject to reasonable deductibles:

(a) Property insurance on the Community Property and on property that must become Community Property insuring against risks of direct physical loss commonly insured against, as near as practicable to the full insurable replacement value (without deduction for depreciation) of the Community Property, exclusive of land, excavations, foundations, and other items normally excluded from property policies;

(b) Commercial general liability insurance, including medical payments insurance, in an amount not less than one million dollars (\$1,000,000) 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 Community Property and, in cooperatives, of all Lots;

(c) Fidelity insurance; and

(d) Such other insurance as the Association deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, and Veterans Administration, so long as any of them is a mortgagee or Owner, except to the extent such coverage is not available or has been waived in writing by such agencies.

Section 11.02 - Casualty Losses. In the event of substantial damage to or destruction of any of the Community Property, the Association shall give prompt written notice of such damage or destruction to the Owners and to all mortgagees who have requested notice of such damage or destruction from the Association. Insurance proceeds for damage or destruction to any part of the Community Property shall be paid to the Association as a trustee for the Owners, or its authorized representative, including an insurance trustee, which shall segregate such proceeds from other funds of the Association.

Section 11.03 - Condemnation. If any part of the Community Property is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to all mortgagees who have requested notice of any such proceeding or proposed acquisition from the Association. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

ARTICLE XII EMINENT DOMAIN

Section 12.01 - Definition of Taking. The term “taking” as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Community Property.

Section 12.02 - Representation by Board in Condemnation Proceedings. In the event of a taking, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.

Section 12.03 - Award for Community Property. Any awards received on account of the taking of Community Property shall be paid to the Association and shall be retained in the general funds of the Association subject to the prior rights of any mortgagee holding an encumbrance upon any Community Property for which such award has been paid.

ARTICLE XIII
GENERAL PROVISIONS

Section 13.01 - Enforcement. The Association and any Owner shall have the right of action against any Owner, and any Owner shall have a right of action against the Association to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of such restrictions, condition, covenants or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement with respect to Assessment liens. The Association and any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control and Association Rules, the Association shall have the exclusive right to the enforcement thereof unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise had standing shall have the right to undertake such enforcement.

Section 13.02 - No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, restriction or reservation herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition, restriction or reservation.

Section 13.03 - Cumulative Remedies. All rights, options and remedies of Declarant, the Association or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in the Declaration.

Section 13.04 - Severability. Invalidation of any one or a portion of these covenants, conditions, restrictions or reservations by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.05 - Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association and any Owner, and their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by not less than sixty-seven percent (67%) of the voting power of the Association has been recorded at least one (1) year prior to the end of any such period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

Section 13.06 - Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 13.07 - Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 13.08 - Nuisance. The result of every act or omission where any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 13.09 - Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

Section 13.10 - Notices. Any notice given to an Owner or the Association under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when personally delivered or delivered to a common carrier for personal delivery to the addressee, or delivered to a person giving such notice by electronic means, or when deposited in the United States mail, first class, postage prepaid and directed to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Residence. In the case of co-Owners any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to the Association shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished by the Association or the address of its principal place of business.

The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners or to all Members to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 13.11 - Conflicts Between Association Management Documents. In the event of a conflict between any provisions of any of the Association Management Documents with the provisions of another Association Management Document, the provisions of the Controlling Document named below in the left column shall be deemed to supersede the provisions of the Subordinate Documents named below in the right column to the extent of any such conflict.

<u>CONTROLLING DOCUMENTS</u>	<u>SUBORDINATE DOCUMENTS</u>
(a) Articles	Declaration, Bylaws, and Association Rules
(b) Declaration	Bylaws and Association Rules
(c) Bylaws	Association Rules

Section 13.12 - Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 13.13 - Personal Covenant. To the extent the acceptance of conveyance of a Residence creates a personal covenant between the Owner of such Residence and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 13.14 - Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, nor other committees of the Association nor any Member or the Association shall have any liability for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 13.15 - Termination of Status of Covered Property. The Association shall have no right to abandon or terminate the maintenance of the Community Property, or any part thereof, by the Association, except as expressly set forth in this Declaration.

ARTICLE XIV AMENDMENT PROVISIONS

Section 14.01 - Vote of Association. Subject to the other provisions of this Declaration, this Declaration may be amended as follows:

{04550957.DOCX;7 }

(a) Any amendments shall require the vote or written assent of sixty-seven percent (67%) of the voting power of the Association.

(b) An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association, or any other officer or officers authorized by resolution of the Board, who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records. The notarized signatures of the Members shall not be required to effectuate an amendment of this Declaration.

(c) Notwithstanding the foregoing, any provision of the Association Management Documents which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Section 14.02 - Petition to Amend. The Association or any Owner may petition the superior court of the County for an order reducing the percentage of affirmative votes necessary.

IN WITNESS WHEREOF, the undersigned is the Owner of the properties described herein subject to these covenants, conditions and restrictions.

MCREF III LACEY APARTMENTS LLC,
a Delaware limited liability company

By: Mill Creek Fund III LLC,
a Delaware limited liability company, a
member

By: MCRT Fund III Manager LLC,
a Delaware limited liability company, its
manager

By: _____
Steve Yoon,
Senior Managing Director

**EXHIBIT A
LEGAL DESCRIPTION OF COVERED PROPERTY**

[To be attached when Plat final and recorded; intent is Lots 1-23 and the two common area tracts]

In Thurston County, Washington.

EXHIBIT B
LEGAL DESCRIPTION OF MULTIFAMILY PROPERTY

[To be attached when Plat is recorded and legal for Multi-Family Property can be described by reference to the Plat]