



201704240135

Skagit County Auditor \$78.00  
4/24/2017 Page 1 of 6 2:00PM

Filed for Record at Request of:  
Law Offices of Gregory E. Thulin, PS  
2200 Rimland Drive, Suite 115  
Bellingham, WA 98226

**Document Title:** Second Amendment to Declaration for Fidalgo Marina Condominium  
**Reference No. of**  
**Affected Docs.:** 9302250060, 9303050032 & 9508160024  
**Grantor:** Fidalgo Marina Owners Association  
**Grantee:** General Public  
**Legal Description:** Fidalgo Marina Condominium, Recorded at AF #9302250060

**SECOND AMENDMENT  
TO  
DECLARATION AND  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATIONS  
FOR FIDALGO MARINA CONDOMINIUM**

Purpose: To update Declaration to reference new lease controlling use of Harbor Area.

THIS SECOND AMENDMENT is made this 25<sup>th</sup> day of APRIL,  
2017, by the Fidalgo Marina Owners Association, a Washington non-profit association  
("Association").

**WITNESSETH:**

WHEREAS, the Fidalgo Marina Condominium was established by the execution and recording of certain Condominium Instruments in the land records of Skagit County, Washington; specifically, the Declaration and Covenants, Conditions, Restrictions and Reservations for Fidalgo Condominium ("Declaration") was executed and recorded at Auditor's File No. 9302250060, along with a Survey Map and Plans, which were contemporaneously recorded at Auditor's File No. 9302250059; the Declaration has been previously corrected by a Correction to Declaration recorded under Skagit County Auditor's File No. 9303050032; and previously amended by a First Amendment to Declaration recorded under Skagit County Auditor's File No. 9508160024.

WHEREAS, pursuant to RCW 64.34.264 and Section 24.2 of the Declaration, the Declaration of this Condominium may be amended by the vote or agreement of owners of units to which at least ninety percent (90%) of the votes in the Association are allocated.

WHEREAS, the initial lease of the Harbor Area between the City of Anacortes and the State of Washington Department of Natural Resources ("DNR") has expired

and a new lease executed. The initial sublease between the City of Anacortes and the Association has also expired and new sublease negotiated. The Association has determined that the Declaration must be amended to reflect the new DNR Lease and the new City Lease.

WHEREAS, the Association has obtained the necessary consent of the requisite percentage of Unit Owners prior to the date of this Amendment.

NOW, THEREFORE, pursuant to and in compliance with Section 24.2 of the Declaration and RCW 64.34.264, the Association hereby amends the Declaration as follows:

**I. AMENDMENT OF ARTICLE 1**

Article 1, titled "DEFINITIONS", is amended in part, as follows:

1.1.10 **City Lease** shall mean that Lease dated January 1, 2017, as amended, between the City, as Sublessor, and the Association, as Sublessee, pursuant to which the Association subleases the Harbor Area from the City, and any amendments, renewals, replacements, modifications, or extensions thereof.

1.1.20 **DNR Lease** shall mean that certain Aquatic Lands Lease, Lease No. 22-A02664, dated January 3, 2017, between the City of Anacortes and the DNR, pursuant to which the City of Anacortes leases the Harbor Area and certain additional tidelands from the DNR, and any amendments, renewals, replacement, re-leases, modifications or extensions thereof.

**II. AMENDMENT OF ARTICLE 19**

Article 19, titled "INSURANCE", is amended by the addition of the following Section:

**Section 19.9 Minimum Policy Requirements.** In addition to the insurance required under this Article 19, the Association shall maintain minimum insurance policies as required under the Sublease. In the case of a conflict between the insurance requirements in the Sublease and this Declaration, the terms and conditions of the Sublease shall control.

**III. AMENDMENT OF ARTICLE 23, SECTION 23.1**

Article 23, titled "**HARBOR AREA LEASE; SUBLEASES**", Section 23.1, titled "**Nature of Declarant's Interest in the Harbor Area; Assignment of The City Lease; Indemnification**" is completely amended and restated as follows:

**Section 23.1. Nature of Association's Interest in the Harbor Area.** The Association is subleasing the Harbor Area from the City pursuant to the City Lease. For purposes only of this Article XXIII, references to "Lessor" shall be to the Association.

NEITHER THE TERMINATION NOR EXPIRATION OF THE CITY LEASE, DNR LEASE OR ANY MARINA SLIP SUBLEASE SHALL AFFECT THE EXISTENCE OF OR THE SIZE OF THE CONDOMINIUM OR THE OBLIGATIONS OR RIGHTS CREATED UNDER THIS DECLARATION PERTAINING THE CONDOMINIUM.

#### **IV. AMENDMENT OF ARTICLE 23, SECTION 23.2**

Article 23, titled "**HARBOR AREA LEASE; SUBLEASES**", Section 23.2, titled "**Terms and Conditions of Marina Slip Subleases**" is amended in part, by only amending Section 23.2, all other Subsections; specifically Subsections 23.2.1 through 23.2.17, remain in full force and effect. Section 23.2 is amended to read as follows:

**Section 23.2. Terms and Conditions of Marina Slip Subleases.** At the time of purchasing a unit, owners shall enter into a Marina Slip Sublease (the "Sublease") with the Association in a form approved by the Association. The Sublease shall contain a copy of the DNR Lease and the City Lease with an acknowledgment of receipt of both documents. In addition to its other responsibilities, the Association shall be the designated and sole representative to collect rents and other charges owing under the Marina Slip Subleases, and shall pay marina common expenses, including rent and other charges owing under the City Lease, and shall serve as the sole representative for all of the owners, as sublessees of the marina slips, and all communications and negotiations with the City and DNR as may be required under the DNR Lease and/or City Lease; provided further, the Association may take such action with respect thereto as is reasonably necessary to protect the non-defaulting owners/sublessees and shall have a right to reimbursement therefor from such defaulting owner/sublessee.

There is no privity of contract between the DNR and the Association, the City or individual unit owners. The Association is the sole representative on matters relating to the City Lease.

Before conveyance of any ownership in a unit, or security interest in the City Lease, the Association shall give the potential purchaser of a unit or receiver of an interest in the City Lease, Notice of State-Owned Aquatic Lands Lease, a copy of which is attached hereto as Attachment 1 and incorporated herein. The notice required hereunder is only provided for pre-purchase information. Failure to provide such notice does not alter any rights or duties under the City Lease or the DNR Lease.

No provision of this Declaration, its amendments, the Bylaws of the Association or any other document creating or defining the Condominium owners' relations, rights or obligations ("Condominium Documents") modifies the provisions of the DNR Lease or the City Lease. In case of conflict between the DNR Lease and the Condominium Documents, the terms and conditions of the DNR Lease shall control all matters concerning the property. In case of conflict between the City Lease and the Condominium Documents, the terms and conditions of the DNR Lease shall control all matters concerning the property. The DNR is not a party to the Condominium Documents and is not charged with responsibilities imposed on the Association or unit owners under any state or local law. The Condominium unit owners have no reversionary interest in the property and have no right to re-lease any part of the property upon termination or expiration of the City Lease and DNR Lease. Further, the Association and Condominium unit owners have no right to enter into a new lease agreement upon termination or expiration of the City Lease.

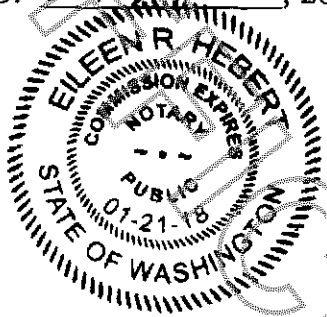
#### **V. LIMITATION OF AMENDMENT**

Except as expressly set forth herein, this Second Amendment to the Declaration, and the terms and conditions hereof, supplement, but do not otherwise alter, the terms and conditions of the Declaration. Accordingly, each and every provision of the Declaration is incorporated herein by reference except to the extent that the context requires otherwise.

**VI. EFFECTIVE DATE**

This Second Amendment to the Declaration shall take effect upon recording.

DATED: 24 April, 2017.



FIDALGO MARINA OWNERS ASSOCIATION

By [Signature]  
Robert Miller, President

STATE OF WASHINGTON )

COUNTY OF SKAGIT )

ss

On this day, personally appeared before me, Robert Miller, to me known to be the President of the Fidalgo Marina Owners Association, the association that executed the foregoing instrument, acknowledged the said instrument to be the free and voluntary act and deed of said association, that the foregoing was properly adopted by the association for the uses and purposes therein mentioned, and all stated that Robert Miller was authorized to execute the said instrument.

GIVEN under my hand and official seal this 24 day of April, 2017.

[Signature]  
Notary Public in and for the State of  
Washington residing at Anacortes WA 98221  
My commission expires: 1-21-18

## **ATTACHMENT 1**

### **NOTICE OF STATE-OWNED AQUATIC LANDS LEASE**

A portion of the property occupied by the Fidalgo Marina Owners Association is state-owned aquatic lands. The state owned aquatic lands are subject to a lease granted by the Washington State Department of Natural Resources ("DNR") to the City of Anacortes under DNR lease number 22-A02664 ("Lease") and a sublease granted by the City of Anacortes to Fidalgo Marina Owners Association ("Sublease"). Any interest you acquire in Fidalgo Marina Owners Association is subject to the terms of the Lease and the Sublease.

You can inspect the Lease and the Sublease at the offices of Fidalgo Marina Owners Association, or its authorized agent, at a mutually convenient time and date.

The Lease is scheduled to expire on January 2, 2034. The Sublease will expire on January 1, 2034. Expiration or termination of the Lease or Sublease will eliminate the state owned aquatic lands from the Condominium Property. Neither the Lease nor the Sublease is subject to renewal. Solely at its discretion, DNR may issue a new Lease to the current tenant, the City of Anacortes, and consent to a new sublease between the City of Anacortes and Fidalgo Marina Owners Association. DNR has no obligation to re-lease the state owned aquatic lands to the City of Anacortes or to consent to a new sublease from the City to Fidalgo Marina Owners Association, its successors, or assigns. Unit owners, either individually or collectively, have no reversionary interest in the leasehold. Unit owners, either individually or collectively, have not right to lease the state owned aquatic lands upon termination or expiration of the Lease or to sublease any portion of the state owned aquatic lands under lease upon termination or expiration of the Sublease.