

# MARIANNA CONDOMINIUMS

A PORTION OF LOTS 1 AND 2, BLOCK 36, OF "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON  
MAY 25, 2007  
SHEET 1 OF 4

## SHEET INDEX

- SHEET 1 - BOUNDARY, NARRATIVE, LEGEND, REFERENCES
- SHEET 2 - NOTES, FIRST FLOOR PLAN, BUILDING CERTIFICATE, CROSS SECTION
- SHEET 3 - NOTES, SECOND FLOOR PLAN
- SHEET 4 - NOTES, THIRD FLOOR PLAN, SURVEYORS CERTIFICATE, APPROVALS, DECLARATION, AND ACKNOWLEDGEMENT

## NARRATIVE AND BASIS OF BEARINGS

THE PURPOSE OF THIS SURVEY WAS TO CREATE A CONDOMINIUM PLAN OF THAT TRACT OF LAND DESCRIBED IN DOCUMENT NO. 2006-100488, MULTNOMAH COUNTY DEED RECORDS.

THE BASIS OF BEARINGS AND BOUNDARY DETERMINATION FOR THIS CONDOMINIUM IS HELD PER SURVEY NUMBER 0048, MULTNOMAH COUNTY SURVEY RECORDS, WHICH REFLECTS ALL BEARINGS, DISTANCES, CORNERS, AND DISTANCES ARE HELD PER SAID SURVEY UNLESS OTHERWISE NOTED.

## SURVEY REFERENCES

- 1. SN 60484, MULTNOMAH COUNTY SURVEY RECORDS

## SURVEYOR'S LEGEND

- FOUND 1.17" DIAMETER BRONZE DISK IN CONCRETE INSCRIBED "FOSTER LS 1934" UNLESS OTHERWISE NOTED
- FOUND YELLOW PLASTIC CAP
- L.C.E. LIMITED COMMON ELEMENT
- G.C.E. GENERAL COMMON ELEMENT
- P. PARKING UNIT
- S.N. SURVEY NUMBER, MULTNOMAH COUNTY SURVEY RECORDS
- SO. FT. SQUARE FEET

THIS SURVEY WAS PREPARED USING HEWLETT PACKARD PRODUCT NUMBER C4444A ON CONTINENTAL POLYESTER FILM, #PC-4M2.



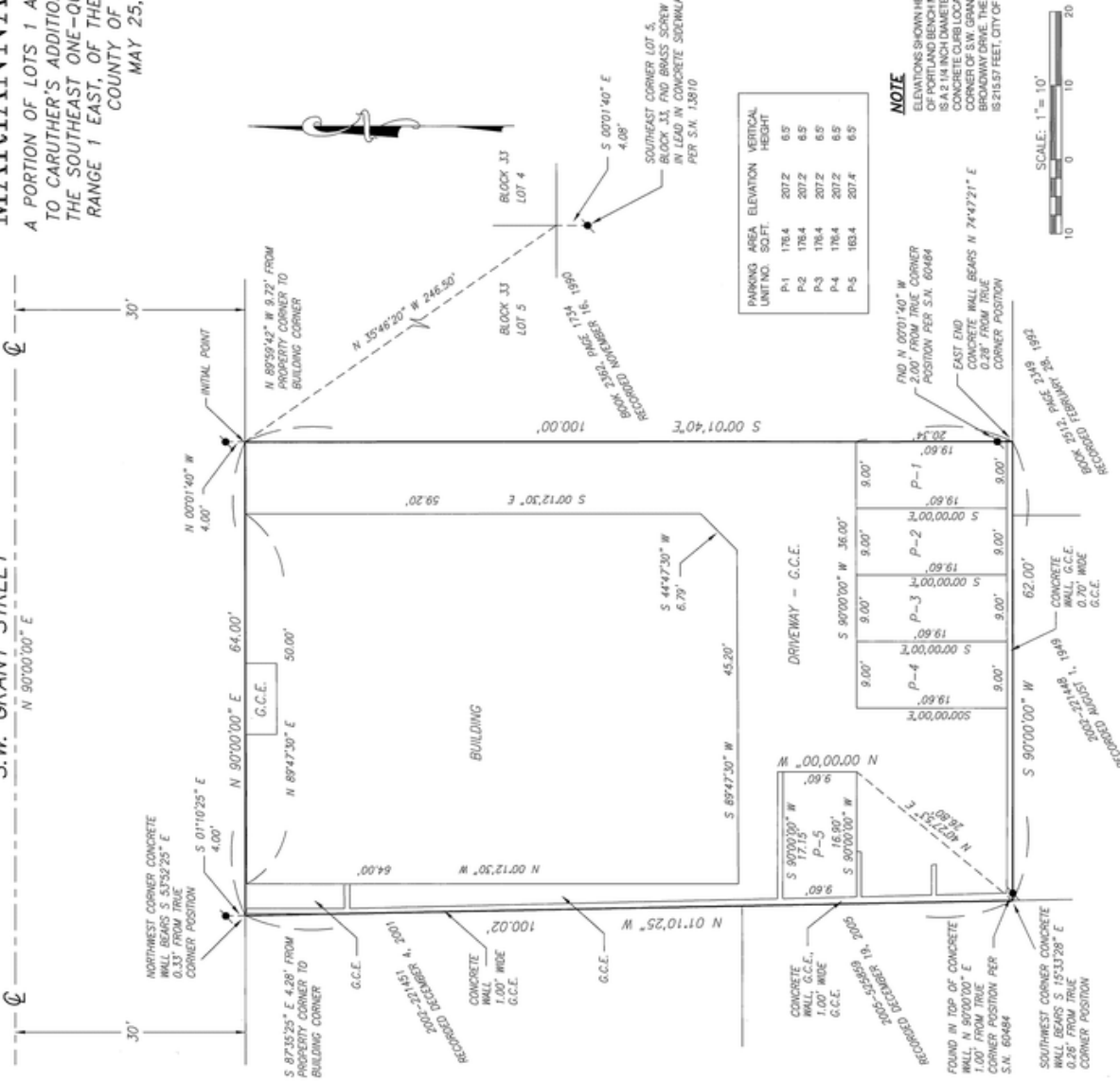
REGISTERED PROFESSIONAL LAND SURVEYOR  
DAVID A. FOSTER  
NO. 1034  
STATE OF OREGON  
EXPIRES 12/31/08  
I HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

## SURVEYED BY:

FOSTER & MADDOX SURVEYING, INC.  
700 N.E. 28TH PLACE  
WOODVILLE, OREGON 97068  
503-667-6007, 503-991-1100



S.W. GRANT STREET



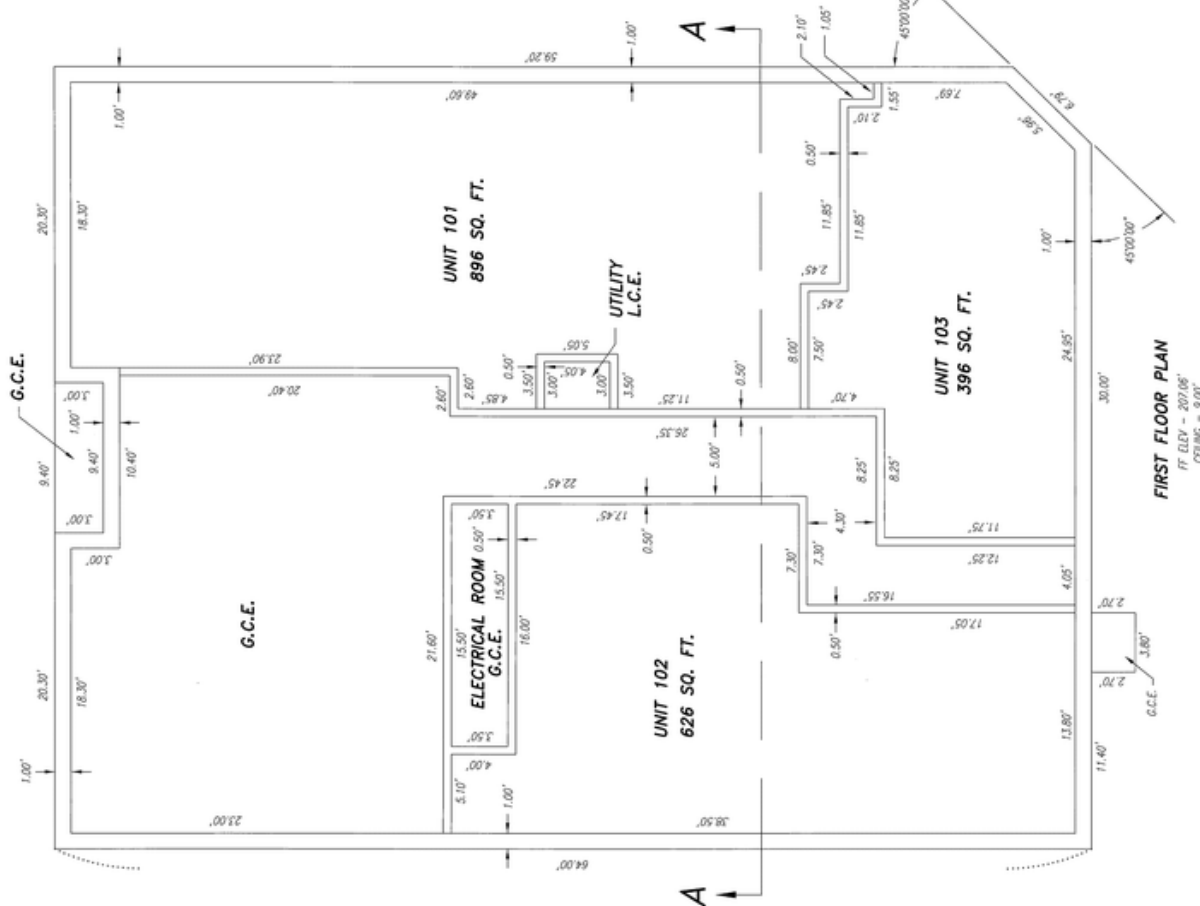
## NOTE

ELEVATIONS SHOWN HEREON ARE BASED ON CITY OF PORTLAND BENCHMARK NO. 2618. SAID MARK IS A CONCRETE CHISEL LOCATED AT THE SOUTHWEST CORNER OF S.W. GRANT STREET AND S.W. BROADWAY DRIVE. THE ELEVATION OF SAID MARK IS 215.57 FEET, CITY OF PORTLAND DATUM.



# MARIANNA CONDOMINIUMS

A PORTION OF LOTS 1 AND 2, BLOCK 36, OF "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON  
MAY 25, 2007



UNIT 304	G.C.E. HALLWAY	UNIT 303
THIRD FLOOR		ELEVATION - 227.41'
UNIT 204	G.C.E. HALLWAY	UNIT 203
SECOND FLOOR		ELEVATION - 217.21'
UNIT 102	G.C.E. HALLWAY	UNIT 101
FIRST FLOOR		ELEVATION - 207.06'

**CROSS SECTION A-A**  
NOT TO SCALE  
NOTE: ELEVATIONS TYPICAL FOR ALL UNITS ON A GIVEN FLOOR.

### CERTIFICATE OF COMPLETION

I, DAVID A. FOSTER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PLAT OF GRANT TO THE MARIANNA CONDOMINIUMS FULLY AND ACCURATELY DEPICTS THE CONSTRUCTION OF THE UNITS AND BUILDING AS DEPICTED ON SUCH PLAT, HAS BEEN COMPLETED AS OF MAY 25, 2007.

DAVID A. FOSTER P.L.E. 1654

"THIS SURVEY WAS PREPARED USING HEWLETT  
PACKARD PRODUCT NUMBER CASHA80  
CONTINENTAL POLYESTER FILM JPC-A02"

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
DAVID A. FOSTER  
OREGON  
NOV 14 1990  
NOV 14 1934  
RENEWABLE OR EXPIRE

"I HEREBY CERTIFY THAT THIS  
DRAWING IS A TRUE AND EXACT  
COPY OF THE ORIGINAL PLAT"

### NOTES

1. THE BUILDING CORNERS SHOWN HEREON ARE AT RIGHT ANGLES (90 DEGREES) UNLESS NOTED OTHERWISE.
2. BUILDING WALLS SHOWN HEREON ARE GENERAL COMMON ELEMENT UNLESS NOTED OTHERWISE.
3. ALL INTERIOR WALL THICKNESSES ARE 0.50' UNLESS OTHERWISE NOTED OTHERWISE.
4. EXTERIOR WALLS SHOWN HEREON REFLECT THE FOUNDATION WALL AT THE FIRST FLOOR UNLESS NOTED OTHERWISE.
5. ELEVATIONS SHOWN HEREON ARE BASED ON CITY OF PORTLAND BENCH MARK NO. 2618. S&D MARK IS A 2 1/4 INCH DIAMETER BRASS DISK IN CONCRETE CURB LOCATED AT THE SOUTHWEST CORNER OF SW 6TH STREET AND W 10TH AVENUE. THE ELEVATION OF S&D MARK IS 215.57 FEET CITY OF PORTLAND DATUM.
6. MEASUREMENTS SHOWN ARE TO FINISHED SURFACES. ACTUAL UNIT BOUNDARIES ARE TO UNFINISHED SURFACES PER SECTION 4.3 OF THE CONDOMINIUM DECLARATION.

### LEGEND

- G.C.E. GENERAL COMMON ELEMENT
- SQ. FT. SQUARE FEET
- FF ELEV. FINISHED FLOOR ELEVATION

### SURVEYED BY:

FOSTER & MADDOX SURVEYING, INC.  
700 N.E. 28TH PLACE  
WOOD LAKE, OREGON 97060  
503-661-6807, 503-980-1130



# MARIANNA CONDOMINIUMS

A PORTION OF LOTS 1 AND 2, BLOCK 36, OF "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON  
MAY 25, 2007  
SHEET 3 OF 4

**NOTES**

1. THE BUILDING CORNERS SHOWN HEREON ARE AT RIGHT ANGLES (90 DEGREES) UNLESS NOTED OTHERWISE.
2. DIMENSIONS SHOWN HEREON ARE GENERAL COMMON ELEMENT DIMENSIONS UNLESS NOTED OTHERWISE.
3. ALL INTERIOR WALL THICKNESSES ARE 0.50 UNLESS OTHERWISE NOTED.
4. EXTERIOR WALLS SHOWN HEREON REFLECT THE FOUNDATION WALL AT THE FIRST FLOOR UNLESS NOTED OTHERWISE.
5. ELEVATIONS SHOWN HEREON ARE BASED ON CITY OF PORTLAND BENCH MARK NO. 2618. BENCH MARK IS A 2.74 INCH DIAMETER BRASS DISK IN THE CURB OF THE SIDEWALK AT THE INTERSECTION OF SEASIDE AVENUE STREET AND SW BROADWAY DRIVE. THE ELEVATION OF SAID MARK IS 215.57 FEET, CITY OF PORTLAND DATUM.
6. MEASUREMENTS SHOWN ARE TO FINISHED SURFACES. ACTUAL UNIT BOUNDARIES ARE TO UNFINISHED SURFACES PER SECTION 4.3 OF THE CONDOMINIUM DECLARATION.

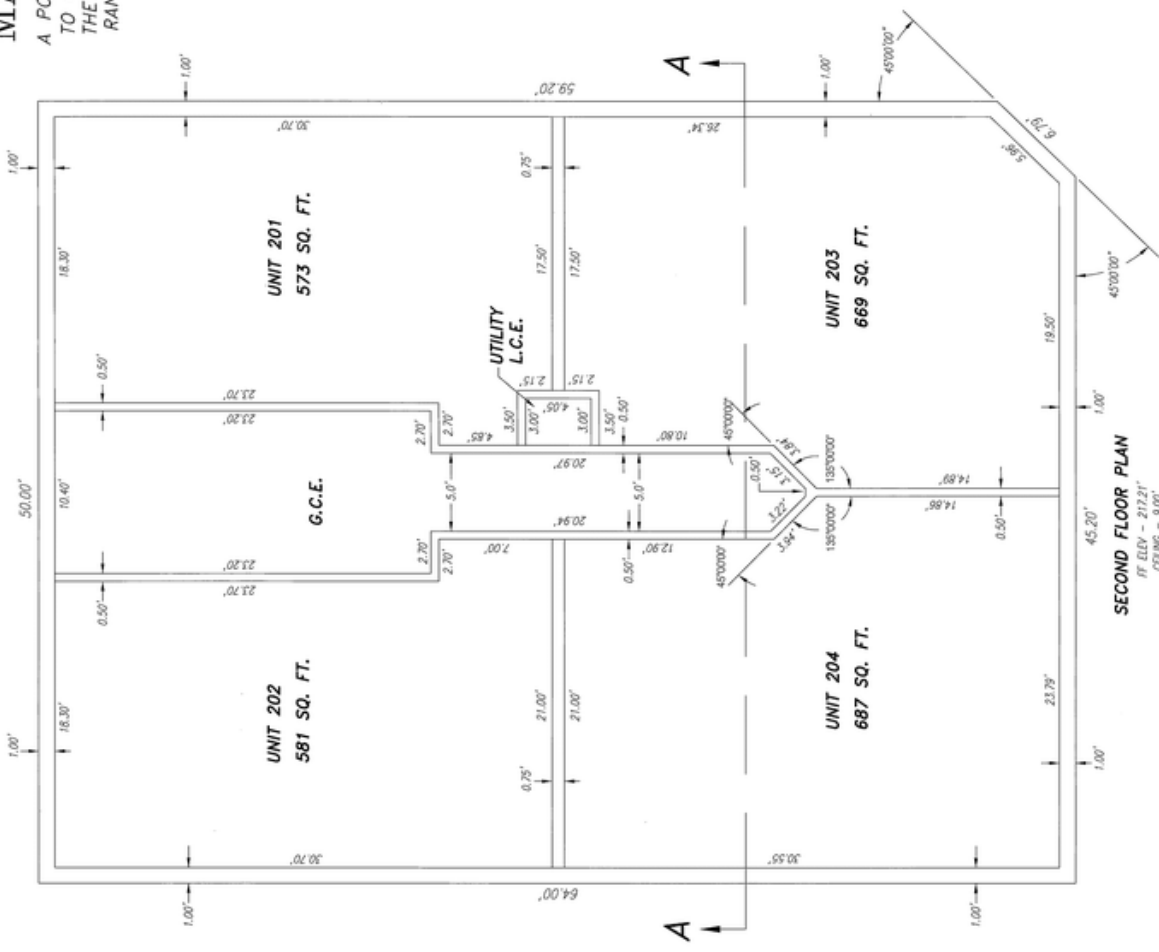


**LEGEND**

- G.C.E. GENERAL COMMON ELEMENT
- SQ. FT. SQUARE FEET
- FF ELEV. FINISHED FLOOR ELEVATION

THIS SURVEY WAS PREPARED USING HEWLETT PACKARD PRODUCT NUMBER C8340A0N CONTINENTAL POLYESTER FILM, PC-A8E.

REGISTERED PROFESSIONAL LAND SURVEYOR  
OREGON  
DEC. 16, 1966  
DAVID M. FOSTER  
RENEWABLE ON: 12/31/08  
I HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.



**SECOND FLOOR PLAN**  
FF ELEV. - 217.21'  
CEILING - 9.00'

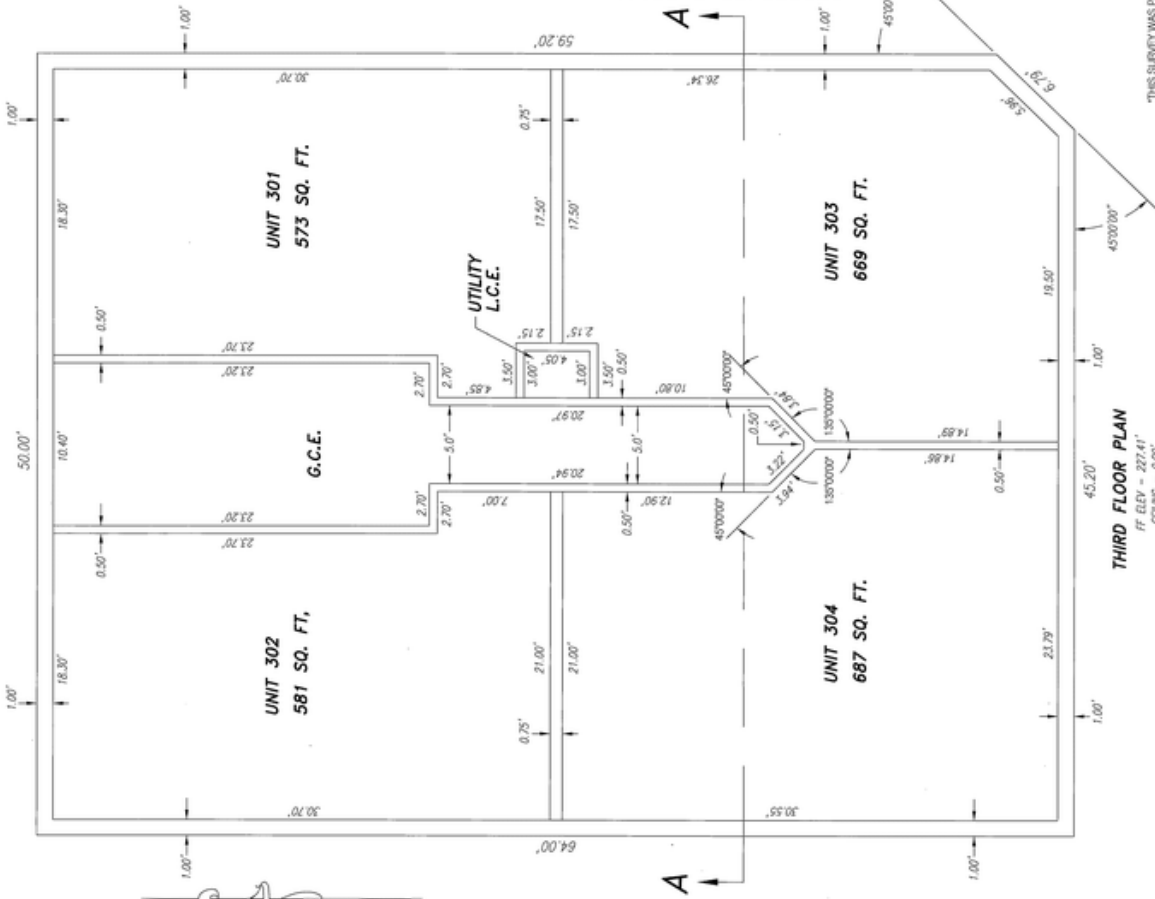
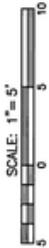
**SURVEYED BY:**  
FOSTER & MADOLUX SURVEYING, INC.  
709 N.E. 288TH PLACE  
WOOD VILLAGE, OREGON 97060  
503-667-8307, 503-997-1100



# MARIANNA CONDOMINIUMS

A PORTION OF LOTS 1 AND 2, BLOCK 36, OF "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON

MAY 25, 2007 SHEET 4 OF 4



**THIRD FLOOR PLAN**  
FF ELEV = 227.41'  
CEILING = 9.00'

### DECLARATION

KNOW ALL MEN BY THESE PRESENTS THAT MARIANNA CONDOMINIUMS, LLC, OWNER, DOES HEREBY DECLARE THE ATTACHED MAP OF "MARIANNA CONDOMINIUMS" AS DESCRIBED IN THE ACCOMPANYING SURVEYORS CERTIFICATE TO BE A TRUE AND CORRECT MAP AND PLAT THEREOF, AND DOES HEREBY COMMIT SAID LAND TO THE OPERATION OF THE OREGON CONDOMINIUM ACT, CHAPTER 103, DIVISION 1 OF THE OREGON REVISED STATUTES, THE PROPERTY AND IMPROVEMENTS DESCRIBED AND DEPICTED ON THE PLAT ARE SUBJECT TO THE PROVISIONS OF OREGON REVISED STATUTES CHAPTER 103.040 TO 103.060.

*Ben Hengel*  
BEN HENGEL, MANAGER, MARIANNA CONDOMINIUMS, LLC, AN OREGON LIMITED LIABILITY COMPANY

### SURVEYOR'S CERTIFICATE

I, DAVID A. FOSTER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND FOUND TO BE MARKED WITH PROPER MONUMENTS THE LANDS REPRESENTED ON THE ANNEKED PLAT OF "MARIANNA CONDOMINIUMS" BEING THAT PORTION OF LOTS 1 AND 2, BLOCK 36, "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND" AS DESCRIBED IN DEED DOCUMENT NO. 2006-018963, MULTNOMAH COUNTY DEED RECORD, AND THE CITY OF PORTLAND, OREGON, TOWNSHIP ONE SOUTH, RANGE ONE EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 5, BLOCK 33 OF SAID "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", BEING REFERENCED BY A FOUND BRASS SCREW WHICH BEARS THE INITIALS "D.A.F. 1980", BEING THE NORTHWEST CORNER OF SAID DEED DOCUMENT NO. 2006-018963, SAID POINT BEING REFERENCED BY A FOUND 1.17 INCH DIAMETER BRASS DISK IN CONCRETE, INSCRIBED "FOSTER L.S. 1984" WHICH BEARS NORTH 09°11'40" WEST 4.00 FEET, SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF S.W. GRANT STREET, THENCE ALONG THE EAST LINE OF SAID RIGHT-OF-WAY LINE OF S.W. GRANT STREET TO THE SOUTHWEST CORNER THEREOF, BEING A POINT ON THE SOUTH LINE OF LOT 2, BLOCK 36, "CARUTHER'S ADDITION TO CARUTHER'S ADDITION TO THE CITY OF PORTLAND", THENCE ALONG SAID SOUTH LOT LINE, AND THE SOUTH LINE OF SAID DEED, SOUTH 89°00'00" WEST A DISTANCE OF 62.00 FEET, TO THE SOUTHWEST CORNER OF SAID DEED, THENCE LEAVING SAID SOUTH LOT LINE, ALONG THE WEST LINE OF SAID SOUTH LOT LINE TO THE SOUTHWEST CORNER OF SAID DEED, THENCE ALONG THE WEST LINE OF SAID SOUTH LOT LINE TO THE NORTHWEST CORNER THEREOF, BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF S.W. GRANT STREET, THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE NORTH 89°00'00" EAST A DISTANCE OF 64.00 FEET, TO THE INITIAL POINT, THE LAND HEREIN DESCRIBED CONTAINS 6,300 SQUARE FEET.

### NOTES

1. THE BUILDING CORNERS SHOWN HEREON ARE AT RIGHT ANGLES (90 DEGREES) UNLESS NOTED OTHERWISE.
2. EXTERIOR WALLS SHOWN HEREON ARE GENERAL COMMON ELEMENT UNLESS NOTED OTHERWISE.
3. ALL EXTERIOR WALL THICKNESSES ARE 0.50' UNLESS OTHERWISE NOTED.
4. EXTERIOR WALLS SHOWN HEREON REFLECT THE FOUNDATION WALL AT THE FIRST FLOOR UNLESS NOTED OTHERWISE.
5. ELEVATIONS SHOWN HEREON ARE BASED ON CITY OF PORTLAND BENCH-MARK NO. 2618. SAID MARK IS A 2 INCH DIAMETER BRASS DISK IN CONCRETE CURB LOCATED AT THE INTERSECTION OF S.W. GRANT STREET AND S.W. BROADWAY DRIVE, THE ELEVATION OF SAID MARK IS 225.17 FEET TO THE CITY OF PORTLAND DATUM.
6. MEASUREMENTS SHOWN ARE TO FINISHED SURFACES. ACTUAL UNIT BOUNDARIES ARE TO UNFINISHED SURFACES PER SECTION 4.2 OF THE CONDOMINIUM DECLARATION.

### LEGEND

- G.C.E. GENERAL COMMON ELEMENT
- SQ. FT. SQUARE FEET
- FF ELEV FINISHED FLOOR ELEVATION
- FF CEILING FINISHED FLOOR CEILING

"THIS SURVEY WAS PREPARED USING HEINLETT BACKSCATTER PRODUCT NUMBER C8844 ON CONVENTIONAL POLYESTER FILM, PFC-44E."

### ACKNOWLEDGEMENT

THIS CERTIFICATE ON THIS 1<sup>st</sup> DAY OF OCTOBER, 2007, BEFORE ME PERSONALLY APPEARED BEN HENGEL WHO BEING DULY SWORN ACKNOWLEDGED THAT THE DECLARATION AND THAT SAID DECLARATION WAS A FREE ACT AND DEED ON BEHALF OF MARIANNA CONDOMINIUMS, LLC.

KAROL HERZOG  
NOTARY PUBLIC

*Karol Herzog*  
NOTARY PUBLIC - OREGON  
COMMISSION NUMBER 371273  
MY COMMISSION EXPIRES 3-19-08

### APPROVALS

APPROVED THIS 11<sup>th</sup> DAY OF December, 2007  
COUNTY SURVEYOR  
MULTNOMAH COUNTY, OREGON

BY *Robert A. Hurd*

ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY O.R.S. 100.110 HAVE BEEN PAID AS OF December 11, 2007

DIRECTOR, DIVISION OF ASSESSMENT AND TAXATION,  
MULTNOMAH COUNTY, OREGON

BY *Stacie Winton*  
DEPUTY

STATE OF OREGON )  
COUNTY OF MULTNOMAH )

I DO HEREBY CERTIFY THAT THE ATTACHED CONDOMINIUM PLAT WAS RECEIVED FOR RECORD AND RECORDED December 11<sup>th</sup>, 2007 AT 3:02 O'CLOCK IN MIN BOOK 1290, ON PAGES 69-72

MULTNOMAH COUNTY RECORDING OFFICE  
BY *Scott Appleton*

DOCUMENT NO. 2007-212310

REGISTERED PROFESSIONAL LAND SURVEYOR

*David A. Foster*  
DAVID A. FOSTER  
DEC. 4, 1980

RENEWABLE ON 12/31/08  
I HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE ORIGINAL PLAT

### SURVEYED BY:

FOSTER & MADDOX SURVEYING, INC.  
708 N.E. 28TH PLACE  
WOOD VILLAGE, OREGON 97060  
503-667-6307, 503-997-1100



After Recording Return to:



\$61.00

00796523201100215170060060

02/15/2011 03:04:16 PM

1R-AMDECUCO

Cnt=1 Stn=10 RECCASH1

\$30.00 \$11.00 \$15.00 \$5.00

*710*  
Marianna Condominium  
Owners Association  
0224 SW Hamilton Street, Ste 300  
Portland, OR 97239

FIRST AMENDMENT TO THE DECLARATION  
AND FIRST PLAT AMENDMENT  
OF  
MARIANNA CONDOMINIUMS  
TO ADD NEW UNIT 104

THIS FIRST AMENDMENT TO THE DECLARATION AND FIRST PLAT AMENDMENT OF MARIANNA CONDOMINIUMS TO ADD NEW UNIT 104 (this "Amendment") is made and entered into by Marianna Condominiums Owners Association, an Oregon Nonprofit Corporation (the "Association").

RECITALS

- A. Marianna Condominiums was created pursuant to a Condominium Declaration for Marianna Condominiums recorded on December 11, 2007, Document No. 2007-211237 of the Deed Records for Multnomah County, Oregon ("Declaration"). The Bylaws of Marianna Condominiums were recorded in the deed records of Multnomah County, Oregon, simultaneously with the Declaration. The Plat was recorded in book 1290, page 69-72 of Multnomah County Plat Records.
- B. A majority of the Board of Directors of the Marianna Condominiums Owners Association has proposed this Amendment to create a new Unit 104 from the General Common Elements.
- C. The Unit Owners of the Marianna Condominiums desire to create a new Unit 104 from the General Common Elements described on the first floor of the Building as shown on the original Plat.
- E. Each Unit owner approves the Plat Amendment which is recorded concurrently with this Amendment, for the addition of Unit 104 from what was originally shown as a General Common Element on the first floor of the original Plat, conveys their interest in the general common elements, and conveys their interest in Unit 104 to the Marianna Condominium Owners Association for purposes of creating Unit 104 as shown on the Plat Amendment.

NOW THEREFORE,

*6*

1. Each of the Unit owners approve this Amendment and the Plat Amendment recorded concurrently with this Amendment.
2. Each of the Unit owners convey their interest in the general common elements and convey their interest in Unit 104, as shown on the Plat Amendment, to the Marianna Condominium Owners Association.
3. Article 1, Section 1.7 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 1.7:

“1.7 **‘General Common Elements’** mean those Common Elements consisting of the parts of the Condominium described in Section 5 of this Declaration and ORS 100.105(b) of the Act, including the Utility Room, the Hallway, and Electrical Room.”

4. Article 4, Section 4.1 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 4.1:

“4.1 **General Description of Building.** The Condominium which was built in 1917, consists of one building consisting of twelve (12) Dwelling Units and five (5) Parking Units. The building contains three (3) stories. Attic spaces exist between the upper floor ceiling and flat roof. The building is of concrete construction, with a light skim trowel finish and multi-ply built up flat roof.”

5. Article 4, Section 4.2 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 4.2:

“4.2 **General Description, Location and Designation of Units.** The Condominium contains twelve (12) Dwelling Units. All of the Dwelling Units contain one story. The condominium contains five (5) Parking Units. The designation, location, description of boundaries and area in square feet of each unit are shown on the Plat and the attached Exhibit B.”

6. Article 5, Section 5.4 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 5.4:

“5.4 Stairs, hallway, utility room, electrical room, storage, storage/gas, entry/porch and exits that are not part of a Unit.”

7. Article 8, Section 8.1 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 8.1:

“8.1 **Allocation of Interest in Common Elements.** Each Dwelling Unit’s undivided interest in the Common Elements shall be an equal 1/13 as shown on

the attached Exhibit B. ORS 100.515. Each Parking Unit Owner's percentage interest in the Common Elements is an equal 1/65th as shown on the attached Exhibit B. Each Dwelling Unit Owner's interest in the Common Elements and Limited Common Elements, and each Parking Unit's interest in the Common Elements, shall be inseparable from the unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of any undivided interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred."

8. Article 8, Section 8.2 of the Declaration is hereby deleted in its entirety and replaced with the following new Section 8.2:

**"8.2 Allocation of Common Profits and Expenses.** The common profits and common expenses of the Condominium shall be solely allocated to each Dwelling Unit equally, so that each unit shall be entitled to and bear one-twelfth (1/12) of such profits and expenses. Except upon termination of the Condominium or as otherwise provided in the Bylaws with respect to damage, destruction or condemnation, any such common profits shall be used solely for the purpose of maintaining, repairing and replacing the common elements or for other expenses or reserves of the Association."

9. Exhibit B to the Declaration is hereby deleted in its entirety and replaced with the following new Exhibit B as follows:

**EXHIBIT B**  
**Unit Square Footage and Undivided Interests**

<u>Unit</u>	<u>Total Square Footage</u>	<u>Undivided Interest in Common Elements</u>	<u>Undivided Obligation for Gen. And Ltd. Common Element Expenses</u>
101	896	(1/13)	(1/12)
102	626	(1/13)	(1/12)
103	396	(1/13)	(1/12)
104	336	(1/13)	(1/12)
201	573	(1/13)	(1/12)
202	581	(1/13)	(1/12)
203	669	(1/13)	(1/12)
204	687	(1/13)	(1/12)
301	573	(1/13)	(1/12)
302	581	(1/13)	(1/12)
303	669	(1/13)	(1/12)
304	687	(1/13)	(1/12)
<b>Total</b>	<b>7274</b>	<b>(12/13)</b>	<b>(12/12)</b>

Parking Unit #	<u>Total Square Footage</u>	Undivided Interest in Common Elements	Undivided Obligation for Gen. And Ltd. Common Element Expenses
P1	176.4	1/65	0
P2	176.4	1/65	0
P3	176.4	1/65	0
P4	176.4	1/65	0
P5	163.44	1/65	0
Parking Unit Total	869.04	5/65	N/A
All Units Total	8143.04	13/13	100%

10. Pursuant to Section 13.2(b) of the Declaration of the Marianna Condominiums, the consent of the Mortgagees holding Mortgages on the Units is required for an amendment to the Declaration of a material adverse nature to the Mortgagees. Pursuant to Section 13.2(c) of the Declaration, written request for consent to this Amendment and the Plat Amendment was sent to all mortgage holders by certified or registered mail, return receipt requested. A negative response was not received from Mortgagees representing more than 49% of the Mortgagees and therefore the Mortgagees are deemed to have approved the Amendment and the Plat Amendment.

**NOTICE PER ORS 100.105(1)(e)**

**THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.**

I, Vickie Sigafoos, the Chairperson of the Marianna Condominiums Owners Association, certify that the Unit Owners approved and adopted the Amendment and the Plat Amendment in accordance with the Declaration and the provisions of ORS 100.135(2)(b).

MARIANNA CONDOMINIUMS  
OWNERS ASSOCIATION:

By: Vickie Sigafoos  
Vickie Sigafoos, Chairperson  
Dated: 12-1-2010, 2010.



STATE OF OREGON )  
 ) ss  
County of Multnomah )

Signed and sworn to before me on December 1, 2010, by the above named Vickie Sigafos, Chairperson of Marianna Condominiums Owners Association.



Karri L Herzog  
Notary Public of Oregon  
My Commission Expires: 3-19-2012

I, Patrick Boileau, the Secretary of the Marianna Condominiums Owners Association, certify that the Unit Owners approved and adopted the Amendment and the Plat Amendment in accordance with the declaration and the provisions of ORS 100.135(2)(b).

MARIANNA CONDOMINIUMS  
OWNERS ASSOCIATION:

By: Patrick Boileau  
Patrick Boileau, Secretary  
Dated: 12.1., 2010.

STATE OF OREGON )  
 ) ss  
County of Multnomah )

Signed and sworn to before me on December 1, 2010, by the above named Patrick Boileau, Secretary of Marianna Condominiums Owners Association.



Karri L Herzog  
Notary Public of Oregon  
My Commission Expires: 3-19-2012

The foregoing First Amendment to the Declaration and First Plat Amendment of the Marianna Condominiums to Add New Unit 104 is approved pursuant to ORS 100.110 on December 27, 2010 and, in accordance with ORS 100.110(8), this approval shall automatically expire if this Amendment is not recorded within one (1) year from this date.

Oregon Real Estate Commissioner *er*

By: Laurie Skillman  
Laurie Skillman

Dated: December 27, 2010

The foregoing First Amendment to the Declaration and First Plat Amendment of the Marianna Condominiums to Add New Unit 104 is approved pursuant to ORS 100.110 on \_\_\_\_\_, 2010.

Multnomah County Assessor

By: William Pett

Dated: Feb 15, 2010  
2011

PLU 12-11-07  
Tess Kies

AFTER RECORDING, RETURN TO:

~~Ben Henzel~~  
0224 SW Hamilton  
Portland, OR 97239

PREPARED BY:

John A. Cochran  
The Cochran Law Firm LLC  
8700 SW 26<sup>th</sup> Avenue, Ste. W  
Portland, Oregon 97219

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk

E41 54 ATLJH  
Total : 286.00

2007-211237 12/11/2007 03:02:49pm

**DECLARATION SUBMITTING  
MARIANNA CONDOMINIUMS  
TO CONDOMINIUM OWNERSHIP**

**MARIANNA CONDOMINIUMS, LLC  
Declarant**

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**DECLARATION SUBMITTING  
MARIANNA CONDOMINIUMS  
TO CONDOMINIUM OWNERSHIP**

THIS DECLARATION, pursuant to the provisions of the Oregon Condominium Act, is made and executed this 4<sup>th</sup> day of December, 2007, by MARIANNA CONDOMINIUMS, LLC, an Oregon limited liability company ("Declarant").

Declarant proposes to create a condominium to be known as MARIANNA CONDOMINIUMS, that will be located in the City of Portland, Multnomah County, Oregon. The purpose of this Declaration is to submit the property described in Article 2 below to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act.

NOW, THEREFORE, Declarant does hereby declare and provide as follows:

**Article 1**

**DEFINITIONS**

When used in this Declaration the following terms shall have the following meanings:

**1.1 "Association"** means the association of unit owners established pursuant to Article 14 below.

**1.2 "Bylaws"** means the Bylaws of the Marianna Condominiums Owners Association adopted pursuant to Section 14.4 below as the same may be amended from time to time.

**1.3 "Condominium"** means all of Real Property, the building/structure constructed thereon and all improvements made thereto, and all easements, rights and appurtenances belonging thereto, all of which are herewith submitted to the provisions of the Oregon Condominium Act.

**1.3 "Common Elements"** means the general common elements and the limited common elements.

**1.4 "Declarant"** means MARIANNA CONDOMINIUMS, LLC, an Oregon limited liability company, and its successors and assigns.

**1.5 "Declaration"** means this Declaration as the same may hereafter be amended.

**1.6 "Dwelling Unit"** means the airspace encompassed by the boundaries as set forth in Section 4.3 of this Declaration and has the same meaning as used in ORS 100.305 to 100.320 and ORS 90.100.

1.7 "General Common Elements" means those Common Elements consisting of the parts of the Condominium described in Section 5 of this Declaration and ORS 100.105(b) of the Act.

1.8 "Limited Common Elements" means those Common Elements consisting of the parts of the Condominium described in Article 7 of the Declaration.

1.9 "Mortgage", respectively, a recorded mortgage, trust deed or contract of sale that creates a lien against a unit.

1.10 "Mortgagee" means any person who is:  
(a) A mortgagee under a mortgage;  
(b) a beneficiary under a trust deed; or  
(c) The vendor under a land sale contract.

1.11 "Parking Unit" means the air space encompassed by the boundaries set forth in Section 4.5 of this Declaration.

1.12 "Plat" means the plat of Marianna Condominiums recorded simultaneously with the recording of this Declaration.

1.13 "Unit" means either a Dwelling Unit or Parking Unit or may generically refer to all, as the context requires.

1.14 **Incorporation by Reference.** Except as otherwise provided in this Declaration, each of the terms defined in ORS 100.005, a part of the Oregon Condominium Act, shall have the meanings set forth in such section.

## Article 2

### **SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE**

The property submitted to the Oregon Condominium Act by this Declaration is held by Declarant and conveyed by Declarant in fee simple estate. The land submitted is located in the City of Portland, Multnomah County, Oregon, and is more particularly described in the attached Exhibit A. The property submitted includes the land so described, all buildings, improvements and structures, all easements, and rights and appurtenances located on, belonging to or used in connection with such land.

## Article 3

### **NAME OF CONDOMINIUM**

The name by which the Condominium shall be known is "Marianna Condominiums."

## Article 4

### UNITS

**4.1 General Description of Building.** The Condominium which was built in 1917, consists of one building consisting of eleven (11) Dwelling Units and five (5) Parking Units. The building contains three (3) stories. Attic spaces exist between the upper floor ceiling and flat roof. The building is of concrete construction, with a light skim trowel finish and multiply built up flat roof.

**4.2 General Description, Location and Designation of Units.** The Condominium contains eleven (11) Dwelling Units. All of the Dwelling units contain one story. The condominium contains five (5) Parking Units. The designation, location, description of boundaries and area in square feet of each unit are shown on the Plat and the attached Exhibit B.

**4.3 Boundaries of Dwelling Units.**

(1) Each Dwelling Unit shall be bound by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim.

(2) All lath, furring, wallboard, plaster-board, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces thereof shall be a part of the Unit, except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the Condominium. All other portions of the walls, floors or ceilings shall be a part of the common elements.

(3) The following shall be a part of the Unit:

(a) All spaces, nonbearing interior partitions, windows, window frames, interior doors, door frames and all other fixtures and improvements within the boundaries of the unit; and

(b) The glazing and screening of windows and unit access doors; and

(c) All outlets of utility and communications service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal, security, cable television and telephone, within the boundaries of the unit, but shall not include any part of such lines or ducts themselves.

**4.4 Use of Dwelling Units.** The Dwelling Units shall be occupied and used by the respective owners only for residential purposes for the owner, family, tenant and social guests and for no other purposes. The owners of the respective units shall have the right to lease or rent the unit; provided, that any such lease or rental agreement shall be subject to the covenants and restrictions contained in this declaration, the bylaws, and the rules and regulations of the Association. The unit owner shall be responsible for the maintenance, repairs and replacement of the unit.

**4.5 Boundaries of Parking Units.** Each Parking Unit shall be bounded by the paved surface of the Parking Unit as shown on the Plat, a vertical plane extending upwards at a 90 degree angle from the boundaries of the paved surface of the Parking Unit for a distance of six and one-half (6 1/2) feet, and a horizontal plane co-extensive with the boundaries formed by the

uppermost edge of each vertical plane and all air space so enclosed. Accordingly, each Parking Unit constitutes cubic air space in which to park a vehicle, but the surface beneath the air space is a general common element.

## Article 5

### GENERAL COMMON ELEMENTS

The general common elements consist of all portions of the Condominium that are not part of a unit or a limited common element, including, but not limited to, the following:

- 5.1 The land, pathways, parking driveway, concrete wall, fences, grounds and electrical room.
- 5.2 Pipes, ducts, flues, chutes, conduits, wires and other utility and communication installations to their outlets.
- 5.3 Roof, foundation, bearing and shear walls, perimeter walls, beams, columns and girders to the interior surfaces thereof and exterior doors.
- 5.4 Stairs, hallways, electrical room, storage, storage/gas, entry/porch and exits that are not part of a unit.
- 5.5 All other elements of the buildings and the Condominium necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated in this Declaration as part of a unit or a limited common element.

## Article 6

### PARKING UNITS

6.1 **Parking Units.** Parking units P-1 through P-5 are the only parking units present in the Condominium. Only the owner of a Dwelling Unit may own a Parking Unit, and such Parking Unit shall be used in conjunction with the use of such Dwelling Unit and only for parking passenger vehicles. Transfer of Parking Units between or among Dwelling Unit owners shall be accomplished by delivering executed Parking Unit deeds. Provided, however, the Declarant may own Parking Units even if it owns no Dwelling Units and may use such Parking Units itself, lease them to owners or occupants of Dwelling Units, or convey them to the Association (free of any lien other than property taxes not yet due). The Association shall accept such conveyance. The Association may lease any Parking Units owned by it to an owner or occupant of a Dwelling Unit. Parking Units are not entitled to voting rights.

6.2 **General common element Parking.** There are no general common

element parking spaces in the Condominium. Parking on the general common element Driveway is prohibited.

#### Article 7

#### LIMITED COMMON ELEMENTS

The following shall constitute limited common elements, the use of which shall be restricted to the Dwelling Units to which they pertain:

7.1 The utility closet located on the first floor labeled as "Utility L.C.E." which shall pertain to Unit 101 as shown on the Plat.

7.2 The utility closet located on the second floor labeled as "Utility L.C.E." which shall pertain to Units 201 and 203 as shown on the Plat.

7.3 The utility closet located on the third floor labeled as "Utility L.C.E." which shall pertain to Units 301 and 303 as shown on the Plat.

#### Article 8

#### ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS; COMMON PROFITS AND EXPENSES; VOTING

8.1 **Allocation of Interest in Common Elements.** Each Dwelling Unit's undivided interest in the Common Elements shall be an equal 1/12 as shown on the attached Exhibit B. ORS 100.515. Each Parking Unit Owner's percentage interest in the Common Elements is an equal 1/60 as shown on the attached Exhibit B. Each Dwelling Unit Owner's interest in the Common Elements and Limited Common Elements, and each Parking Unit's interest in the Common Elements, shall be inseparable from the unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of any undivided interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

8.2 **Allocation of Common Profits and Expenses.** The common profits and common expenses of the Condominium shall be solely allocated to each Dwelling Unit equally, so that each unit shall be entitled to and bear one-eleventh (1/11) of such profits and expenses. Except upon termination of the Condominium or as otherwise provided in the Bylaws with respect to damage, destruction or condemnation, any such common profits shall be used solely for the purpose of maintaining, repairing and replacing the common elements or for other expenses or reserves of the Association.

8.3 **Allocation of Voting Rights.** The owner or co-owners of each Dwelling Unit



shall be entitled to one (1) vote per Dwelling Unit. No voting rights shall appertain to any Parking Units. The method of voting shall be as specified in the Bylaws. Hence, "Majority" or "majority of unit owners" shall mean the owners of more than 50% of the voting rights allocated to the units by the declaration. The calling and conducting of meetings of the association of unit owners and the exercise of voting rights shall be controlled by Article 2.6 of the bylaws.

## **Article 9**

### **SERVICE OF PROCESS**

The designated agent to receive service of process in cases provided in subsection (1) of ORS 100.550 is named in the Condominium Information Report that will be filed in accordance with ORS 100.250(1)(a).

## **Article 10**

### **USE OF PROPERTY/CONVERSION CONDOMINIUM**

Each Dwelling Unit is to be used for residential purposes as described in the Bylaws. Additional limitations on use are contained in the Bylaws and the rules and regulations adopted pursuant to the Bylaws. Each unit owner shall be bound by each of such documents. This is a conversion condominium and the Declarant has given tenants notice as required under ORS 100.305. As used in ORS 100.305 to 100.320, "dwelling unit" and "tenant" have the meanings given those terms in ORS 90.100.

## **Article 11**

### **MAINTENANCE OF COMMON ELEMENTS**

#### **11.1 Maintenance, Repair, and Replacement of Common Elements.**

(1) The cost of maintenance, repair, and replacement of the common elements shall be a common expense, and the performance of such work shall be the responsibility of the association, except that any damage caused by the negligence or intentional act of an owner, his or her invitee, guest, or servant shall be repaired by the association at such owner's sole cost and expense. Common expenses shall be assessed and apportioned among the owners as set forth in Article 8 of this declaration.

(2) Unless otherwise provided in the declaration or bylaws:

- (a) The responsibility for maintenance, repair and replacement of the common elements is the responsibility of the association of unit owners; and
- (b) The cost of maintenance, repair and replacement is a common expense of the association.

**11.2 Mortgagee's Rights upon Failure to Maintain.** If the Mortgagee of any Dwelling Unit determines that the board of directors is not providing an adequate maintenance, repair and replacement program for the common elements, such Mortgagee, at its option, may give a

notice to the board of directors by delivering same to the registered agent, setting forth the particular defect that it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within 90 days subsequent to receipt of such notice, then the Mortgagee, upon written notice to the registered agent that it is exercising its proxy rights, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each Dwelling Unit on which it holds a Mortgage on all business coming before such meeting. Such proxy rights shall continue until the defects listed on the notice are corrected.

## **Article 12**

### **EASEMENTS**

**12.1 In General.** Each unit has an easement in and through each other unit and the common elements for all support elements and utility, wiring, heat, plumbing, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium, including, without limitation, easements as required for the electrical wiring and plumbing for each unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common elements reserved by law. Each unit owner has an unrestricted right of ingress and egress to his or her unit. This right is perpetual and passes with the ownership of the unit.

**12.2 Encroachments.** Each unit and all common elements shall have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments shall exist, and the rights and obligations of owners shall not be altered in any way by the encroachment. The encroachments described in this Section 12.2 shall not be construed to be encumbrances affecting the marketability of title to any unit.

**12.3 Granting of Easements by Association.** Subject to the requirements of ORS100.405(6), the Association may grant, execute, acknowledge, deliver and record on behalf of the unit owners leases, easements, rights-of-way, licenses, and similar interests affecting the common elements and consent to vacation of roadways within and adjacent to the Condominium. Any such instrument shall be executed by the chairperson and secretary of the Association. No such interest may be granted with regard to a limited common element unless the owners and Mortgagees of the units having the right to use such limited common element consent to and join in the instrument granting the interest.

**12.4 Right of Entry.** The board of directors of the Association, managing agent, manager or any other person authorized by the board of directors shall have the right to enter any unit and limited common element in the case of an emergency originating in or threatening

such unit or other condominium property, whether or not the owner is present at the time. Such persons shall also have the right to enter any unit and limited common element for the purpose of performing installations, alterations or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in this Declaration and the Bylaws, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner.

**12.5 Easements for Declarant.** Declarant and Declarant's agents, successors and assigns shall have an easement over and upon the common elements as may be reasonably necessary for the purpose of completing or making repairs to existing structures, for the purpose of carrying out sales and rental activities necessary or convenient for the sale or rental of units, including, without limitation, the right to use the units owned by Declarant as model units and the right to use a unit as a sales office, and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Oregon Condominium Act or reserved in this Declaration or the Bylaws. For a period of ten (10) years following recording of this Declaration, Declarant shall have a right to inspect the common elements of the Condominium and the Association's records regarding inspections and maintenance of the Condominium.

### Article 13

#### **APPROVAL BY MORTGAGEES**

**13.1 Notice of Action.** Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the unit number or address of the unit on which it has (or insures or guarantees) the Mortgage, any such Mortgagee shall be entitled to timely written notice of the following:

- (a) Any condemnation or casualty loss that affects a material portion of the Condominium or affects the unit securing its Mortgage.
- (b) Any 60-day delinquency in the payment of assessments or charges owed by an owner of any unit on which it holds the Mortgage.
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.
- (d) Any proposed action that would require consent of a specified percentage of Mortgagees as required by this article.

#### **13.2 Termination and Amendment to Documents.**

(a) Unless a greater vote is required by this Declaration, the Bylaws or the Oregon Condominium Act, the approval of Mortgagees holding Mortgages on units that have at least 51 percent of the voting rights of units subject to Mortgages shall be required to terminate the legal status of the project as a condominium.

(b) Except when a greater percent is required by the Declaration or Bylaws, or a greater

or lesser percent is required by the Oregon Condominium Act, the consent of the Mortgagees holding Mortgages on units that have at least 51 percent of the voting rights of the units subject to Mortgages shall be required for any amendments to the Declaration or Bylaws of a material adverse nature to Mortgagees.

(c) An addition or amendment to the Declaration or Bylaws shall not be considered material or adverse for purposes of Section 13.2(b) if it is for the purpose of correcting technical errors, or for clarification only. Any Mortgagee who receives a written request to approve any termination, additions or amendments and who does not deliver or post to the requesting party a negative response within 60 days shall after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, be deemed to have approved such request.

**13.3 Additional Approvals.** In addition to any other or greater approvals required by the Oregon Condominium Act, this Declaration or the Bylaws, the prior written approval of two-thirds of the holders of first Mortgages on units in the Condominium (based upon one vote for each first Mortgage owned) or unit owners (other than Declarant) must be obtained for the following:

(a) Abandonment or termination of the Condominium regime.

(b) Any change in the pro rata interest or obligations of any individual unit for (i) purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each unit in the common elements.

(c) Abandonment, partition, subdivision, encumbrance, sale or transfer of the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause.

(d) Use of hazard insurance proceeds for losses to any condominium property, whether to units or to common elements, for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the units and/or common elements of the condominium project.

**13.4 Notice to First Mortgagees of Defaults.** Any first Mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the owner of the Mortgaged unit of any obligation under this Declaration, the rules and regulations or the Bylaws that is not cured within 60 days.

#### **Article 14**

#### **ASSOCIATION OF UNIT OWNERS**

**14.1 Organization.** Upon the recording of this Declaration an association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the Condominium. The name of this association shall be "Marianna Condominiums Owners Association," and the association shall be an incorporated nonprofit and the association shall remain an incorporated unit association.

**14.2 Membership; Board of Directors.** Each Dwelling Unit owner shall be a member of the Association. The affairs of the Association shall be governed by a board of directors as provided in the Bylaws.

**14.3 Powers and Duties.** The Association shall have such powers and duties as may be granted to it by the Oregon Condominium Act, including each of the powers set forth in ORS 100.405(4), together with such additional powers and duties afforded it by this Declaration or the Bylaws.

**14.4 Adoption of Bylaws, Declarant Control of Association.** Upon the execution and the recording of this Declaration, Declarant shall adopt Bylaws for the Association. Declarant specifically reserves the right to control the Association by appointing the interim directors of the Association until the organizational and turnover meeting of the Association has been held and the unit owners have elected regular directors as provided in Sections 2.2 and 3.3 of the Bylaws. In addition, Declarant shall have the right to consent to any amendment to the Declaration or the Bylaws as provided in Section 15.2 below and Section 9.2 of the Bylaws.

## Article 15

### AMENDMENT

**15.1 How Proposed.** Amendments to the Declaration shall be proposed by either a majority of the board of directors or by Dwelling Unit owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

**15.2 Approval Required.** Except as may otherwise be provided in this Declaration or by the Oregon Condominium Act, this Declaration may be amended if such amendment is approved by Dwelling Unit owners holding 75 percent of the voting rights of the Condominium, without regard to any weighted vote otherwise allocable to units owned by Declarant per section 2.6 of the Bylaws, and by Mortgagees to the extent required by Article 13. Declarant's prior written consent shall also be required so long as Declarant owns 25 percent or more of the Units in the Condominium, but no such consent shall be required after 10 years from the date of conveyance of the first unit to a person other than a successor Declarant. Except as otherwise permitted by the Oregon Condominium Act, no amendment may change the size, location, allocation of undivided interest in the common elements, the

method of determining liability for common expenses, the method of determining the right to common profits, or the method of determining voting rights of any unit unless such amendment has been approved by the owners and Mortgagees of the affected unit. Any amendment that would limit or diminish any special Declarant rights established in this Declaration or the Bylaws, including, without limitation, any amendment that could unreasonably interfere with the sale, lease or other disposition of units owned by Declarant or that could abridge, modify, eliminate or otherwise affect any right, power, easement, privilege or benefit reserved for Declarant or which would impose any discriminatory charge or fee against Declarant, shall require the written consent of Declarant.

**15.3 Recordation.** The amendment shall be effective upon recordation in the Deed Records of Multnomah County, Oregon, of the Declaration as amended or of the amendment thereto, certified to by the chairperson and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Oregon Condominium Act, and approved by the county assessor and the Real Estate Commissioner if such approvals are required by the Oregon Condominium Act.

## **Article 16**

### **SEVERABILITY**

Each provision of this Declaration and the Bylaws shall be deemed independent and severable, and the validity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision of this Declaration or the Bylaws.

## **Article 17**

### **APPLICABILITY**

Each unit owner, including Declarant as to any unsold unit, shall be subject to all of the rights and duties assigned to unit owners under the terms of the Declaration and Bylaws. All present and future owners, tenants, subtenants and occupants of units, and all present and future employees, agents, visitors and licensees of unit owners, shall be subject to and comply with the provisions of this Declaration, the Bylaws and all rules and regulations adopted thereunder, as they may be amended from time to time.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first set forth above.

Marianna Condominiums, LLC:  
an Oregon limited liability company

By: [Signature]  
Ben Henzel, Managing Member

STATE OF OREGON )  
 ) ss. December 4, 2007  
County of Multnomah )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of December 2007 by D. Ben Henzel, of MARIANNA CONDOMINIUMS, LLC, an Oregon limited liability company, on its behalf.



[Signature]  
Notary Public for Oregon  
My commission expires: 3-19-08  
Commission No.: 377273

The foregoing Declaration is approved this 11<sup>th</sup> day of December, 2007

ASSESSOR AND TAX COLLECTOR FOR  
MULTNOMAH COUNTY

By: [Signature]

LS  
The foregoing Declaration is approved pursuant to ORS 100.110 this 5<sup>th</sup> day of December, 2007 and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within two (2) years from this date.

OREGON REAL ESTATE COMMISSIONER:

By: [Signature]

## EXHIBIT A

### Legal Description

The legal description for the property located at 654 SW Grant Street, Portland, Multnomah County, Oregon is further described as follows:

IN A PORTION OF LOTS 1 AND 2, BLOCK 36, "CARUTHERS ADDITION TO CARUTHERS ADDITION TO THE CITY OF PORTLAND", AS DESCRIBED IN DEED DOCUMENT NO. 2006-018965, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE SOUTHEAST ONE QUARTER OF SECTION 4, TOWNSHIP ONE SOUTH, RANGE ONE EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 5, BLOCK 33 OF SAID "CARUTHERS ADDITION TO CARUTHERS ADDITION TO THE CITY OF PORTLAND", BEING REFERENCED BY A FOUND BRASS SCREW WHICH BEARS SOUTH 00° 01' 40" EAST 4.08 FEET; THENCE NORTH 35° 46' 20" WEST 246.50 FEET TO THE INITIAL POINT, BEING THE NORTHEAST CORNER OF SAID DEED DOCUMENT 2006-018965, SAID POINT BEING REFERENCED BY A FOUND 1.17 INCH DIAMETER BRONZE DISK IN CONCRETE, INSCRIBED "FOSTER L.S. 1934" WHICH BEARS NORTH 00° 01' 40" WEST 4.00 FEET, SAID POINT ALSO BEING ON THE SOUTH RIGHT-OF-WAY LINE OF S.W. GRANT STREET; THENCE ALONG THE EAST LINE OF SAID DEED, SOUTH 00° 01' 40" EAST A DISTANCE 100.00 FEET TO THE SOUTHEAST CORNER THEREOF, BEING A POINT ON THE SOUTH LINE OF LOT 2, BLOCK 36 "CARUTHERS ADDITION TO CARUTHERS ADDITION TO THE CITY OF PORTLAND"; THENCE ALONG SAID SOUTH LOT LINE, AND THE SOUTH LINE OF SAID DEED, SOUTH 90° 00' 00" WEST A DISTANCE OF 62.00 FEET, TO THE SOUTHWEST CORNER OF SAID DEED; THENCE LEAVING SAID SOUTH LOT LINE, ALONG THE WEST LINE OF SAID DEED, NORTH 01° 10' 25" WEST A DISTANCE OF 100.02 FEET TO THE NORTHWEST CORNER THEREOF, BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF S.W. GRANT STREET; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE NORTH 90° 00' 00" EAST A DISTANCE OF 64.00 FEET, TO THE INITIAL POINT. THE LAND HEREIN DESCRIBED CONTAINS 6,300 SQUARE FEET.



**EXHIBIT B**

**Unit Square Footage and Undivided Interests**

<u>Unit</u>	<u>Total Square Footage</u>	<u>Undivided Interest in Common Elements</u>	<u>Undivided Obligation for Gen. And Ltd. Common Element Expenses</u>
101	896	1/12	1/11
102	626	1/12	1/11
103	396	1/12	1/11
201	573	1/12	1/11
202	581	1/12	1/11
203	669	1/12	1/11
204	687	1/12	1/11
301	573	1/12	1/11
302	581	1/12	1/11
303	669	1/12	1/11
304	687	1/12	1/11
<b>Total</b>	<b>6938</b>	<b>11/12</b>	<b>1</b>

<u>Parking Unit #</u>	<u>Total Square Footage</u>	<u>Undivided Interest in Common Elements</u>	<u>Undivided Obligation for Gen. And Ltd. Common Element Expenses</u>
P1	176.4	1/60	0
P2	176.4	1/60	0
P3	176.4	1/60	0
P4	176.4	1/60	0
P5	163.44	1/60	0
<b>Parking Unit Total</b>	<b>869.04</b>	<b>5/60</b>	<b>N/A</b>
<b>All Units Total</b>	<b>7741.04</b>	<b>12/12</b>	<b>100%</b>

**NOTICE PER ORS 100.105(1)(e)**

**THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.**

**BYLAWS**  
**OF**  
**MARIANNA CONDOMINIUMS OWNERS ASSOCIATION**

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**BYLAWS OF  
MARIANNA CONDOMINIUMS**

**Article 1**

**PLAN OF CONDOMINIUM OWNERSHIP**

**1.1 Name and Location.** These are the bylaws of the **MARIANNA CONDOMINIUMS OWNERS ASSOCIATION** (the "**Association**"). **MARIANNA CONDOMINIUMS** (the "**Condominium**") is located in the City of Portland, Multnomah County, Oregon, and has been submitted to the Oregon Condominium Act by a declaration recorded simultaneously with these Bylaws (the "**Declaration**"). The location of the Condominium is more specifically described in the Declaration.

**1.2 Principal Office.** The principal office of the Association shall be located at such address as may be designated by the board of directors from time to time.

**1.3 Purposes.** This Association is formed under the provisions of the Oregon Condominium Act to serve as the means through which the unit owners may take action with regard to the administration, management and operation of the Condominium.

**1.4 Applicability of Bylaws.** The Association, all unit owners, and all persons using the Condominium property shall be subject to these Bylaws and to all rules and regulations that may be adopted pursuant to these Bylaws.

**1.5 Composition of Association.** The Association shall be composed of all the unit owners of the Condominium, including Marianna Condominiums, LLC, and its successors and assigns (the "**Declarant**"), and the Association, itself, to the extent any of these own any unit or units of the Condominium.

**1.6 Incorporation.** The Association shall be incorporated under the Oregon Non-Profit Corporation Law. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the bylaws of the incorporated association.

**1.7 Definitions.** The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

**Article 2**

**MEETINGS OF ASSOCIATION**

**2.1 Place of Meetings.** The Association shall hold meetings at such suitable place convenient to the unit owners as may be designated by the board of directors from time to time.

**2.2 Turnover Meeting.** Within three years after the date of conveyance of the first unit

to a person other than a successor declarant, or within ninety (90) days after Declarant has sold and conveyed to a person other than a successor declarant seventy-five percent (75%) or more of the units in the Condominium, whichever is earlier, the Declarant shall call the first meeting of the unit owners to organize the Association and to elect directors. If a quorum of the unit owners is present, the unit owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the board of directors. Notice of such meeting shall be given to all owners as provided in Section 2.5. If Declarant fails to call the meeting, the meeting may be called and notice given by any unit owner or Mortgagee of a unit. The expense of giving notice shall be paid or reimbursed by the Association. At the meeting, Declarant shall deliver to the Association such information and documents as may be required by the Oregon Condominium Act. Nothing in this Section shall be construed as preventing the Declarant from calling the organizational and turnover meeting prior to such date, or from calling informal, informational meetings of the unit owners.

**2.3 Annual Meetings.** The annual meetings of the Association shall be held on such date each year as may be established by the board of directors from time to time, or if the board does not establish such a date, then in the month of February at such hour and on such date as the chairperson may designate, or if the chairperson should fail to designate such date by the first day of February then on the last Tuesday in February. The annual meetings shall be for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting.

**2.4 Special Meetings.** Special meetings of the Association may be called by the chairperson or by a majority of the board of directors, and must be called by the chairperson or secretary upon receipt of a written request from any unit owner stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting. The Declarant may attend any special meeting.

**2.5 Notice of Meetings.** Notice of the annual meeting and all other meetings of the Association stating the time and place and the purpose or purposes for which the meeting is being called shall be given by the chairperson or secretary. Such notice shall be in writing by mail or, to the extent permitted by law, by electronic mail, facsimile or other form of electronic communication acceptable to the board of directors not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting to each unit owner. If mailed, it shall be sent to the owner at his or her address as it appears on the books of the Association. A copy shall be sent to any first Mortgagee requesting such notice. Proof of such notice shall be given by the affidavit of the person giving the notice. For a period of ten (10) years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant in the same manner as given to unit owners, and Declarant or a representative of Declarant shall be entitled to attend such meetings. Notice of meeting may be waived by any unit owner before or after meetings. When a meeting is adjourned for less than thirty (30) days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place. If the unit owners request a special meeting and the association does not give notice of the special meeting within thirty (30) days after the written request is delivered to the chairperson or secretary, any one of the unit owners who signed the request may set the time and place of the meeting and give notice thereof.

**2.6 Voting.** Each owner of a unit shall have one vote for each unit of the Condominium ; provided, however, that Declarant shall have five times the voting rights otherwise allocable to each unit owned by Declarant until earlier of when Declarant has sold and conveyed to a person other than a successor declarant 75 percent or more of the units the Condominium, or 3 years

after the date of the first conveyance of a unit to a person other than a successor declarant. The Declarant shall be entitled to vote as the unit owner of any then existing units retained by Declarant, and the board of directors shall be entitled to vote on behalf of any unit that has been acquired by or on behalf of the Association; provided, however, that the board of directors shall not be entitled to vote such units in any election of directors.

**2.7 Casting of Votes and Consents.** The voting rights or consent of a unit owner may be cast in person at a meeting of the Association or, at the discretion of the board of directors, by proxy in accordance with paragraph (a) of this Section, by absentee ballot in accordance with paragraph (b) of this Section, by written ballot in accordance with paragraph (c) of this Section, or by any other method specified in the Declaration, these Bylaws or the Oregon Condominium Act, except as otherwise provided in Section 2.8 below.

a) **Proxies.** A proxy must be dated and signed by the unit owner, is not valid if it is undated or purports to be revocable without notice, and terminates one year after its date unless the proxy specifies a shorter term. The board of directors may not require that a proxy be on a form prescribed by the board. A unit owner may not revoke a proxy given pursuant to this paragraph except by actual notice of revocation to the person presiding over a meeting of the Association or to the board of directors if a vote is being conducted by written ballot in lieu of a meeting. A copy of a proxy in compliance with this paragraph provided to the Association by facsimile, electronic mail or other means of electronic communication utilized by the board of directors is valid.

b) **Absentee Ballots.** An absentee ballot, if authorized by the board of directors, shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by absentee ballot shall include instructions for delivery of the completed absentee ballot, including the delivery location and instructions about whether the ballot may be canceled if the ballot has been delivered according to the instructions. An absentee ballot shall be counted as a unit owner present for the purpose of establishing a quorum. Even if an absentee ballot has been delivered to a unit owner, the unit owner may vote in person at a meeting if the unit owner has returned the absentee ballot and canceled the absentee ballot, if cancellation is permitted in the instructions given under this paragraph.

c) **Ballot Meetings.** At the discretion of the board of directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the association delivers a written ballot to every association member that is entitled to vote on the matter, to the extent and in the manner provided in ORS 100.425

d) **Electronic Ballots.** To the extent authorized by the board of directors and permitted by the Oregon Condominium Act, any vote, approval or consent of a unit owner may be given by electronic ballot.

e) **Mortgages.** A unit owner may pledge or assign such owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designed representative shall be entitled to receive all notices to which the unit owner is entitled under these Bylaws and to exercise the unit owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the board of directors. Any first Mortgagee may designate a representative to attend all or any meetings of the association.

**2.8 Fiduciaries and Joint Owners** An executor, administrator, guardian or trustee may



vote, in person or by proxy, at any meeting of the Association with respect to any unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that such person shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee, holding such unit in such capacity. Whenever any unit is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such unit may be exercised by any one of the owners then present, in the absence of protest by a co-owner. In the event of disagreement among the co-owners, the vote of such unit shall be disregarded completely in determining the proportion of votes given with respect to such matter unless a valid court order establishes the authority of a co-owner to vote.

**2.9 Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a unit shall be exercised by the owner/landlord. Unless otherwise stated in the contract, all voting rights allocated to a unit shall be exercised by the vendee of any recorded land sale contract on the unit.

**2.10 Quorum of Unit Owners.** At any meeting of the Association, members holding fifty percent (50%) of the voting rights, present in person or by proxy, shall constitute a quorum. The subsequent joinder of a unit owner in the action taken at a meeting by signing and concurring in the minutes of the meeting shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a unit owner or owners.

**2.11 Majority Vote.** The vote of the holders of more than fifty percent (50%) of the voting rights, present in person or by proxy at a meeting at which a quorum is constituted, shall be binding upon all unit owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these Bylaws.

**2.12 Order of Business.** The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

**2.13 Rules of Order.** Unless other rules of order are adopted by resolution of the

Association or the board of directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order* published by Robert's Rules Association.

### Article 3

#### **BOARD OF DIRECTORS**

**3.1 Number and Qualification.** The affairs of the Association shall be governed by a board of directors composed of one (1) to three (3) interim directors or four (4) regular directors, as provided in Sections 3.2 of this Article. All directors, other than interim directors appointed by Declarant, shall be owners or co-owners of units of the Condominium. For purposes of this Section, the officers members, managers, partners and any duly appointed employees of any corporation, limited liability company or partnership shall be considered co-owners of any units owned by such corporation, limited liability company or partnership.

**3.2 Interim Directors.** Upon the recording of the Declaration submitting the Condominium to the Oregon Condominium Act the Declarant shall appoint an interim board of one (1) to three (3) directors, who shall serve until replaced by Declarant or their successors have been appointed by the unit owners as provided below.

**3.3 Transitional Committee.** Unless the organizational and turnover meeting described in Section 2.2 above has already been held, Declarant shall call a meeting of the unit owners for the purpose of forming a transitional committee. The meeting shall be called within 60 days of conveyance to persons other than Declarant of 50 percent of the units that Declarant may submit to the Condominium. Declarant shall give notice of the meeting as provided in Section 2.5 above. The committee shall consist of two or more members elected by the unit owners other than Declarant and not more than one representative of Declarant. The members shall serve until the organizational and turnover meeting. The transitional committee shall be advisory only and its purpose shall be to enable ease transition from control of the administration of the Association by Declarant to control by the unit owners. The committee shall have access to the information, documents and records that Declarant must turn over to the unit owners at the time of the organizational and turnover meeting.

**3.4 Election and Term of Office.** At the first organizational and turnover meeting called by Declarant pursuant to Section 2.2 of these Bylaws, the interim directors shall resign and four (4) successors shall be elected to serve until the next annual meeting. Thereafter, at the expiration of the initial term of each respective director, his or her successor shall be appointed to serve for a term of one year. Directors shall hold office until their respective successors have been appointed. The owner of each unit shall be entitled to appoint one director. If the same owner owns more than one unit, such owner shall appoint one director who shall have the number of votes equal to the number of units owned.

**3.5 Managing Agent or Manager.** On behalf of the Association, the board of directors may employ or contract for a managing agent or a manager at a compensation to be established by the board of directors. The board of directors may delegate to the managing agent or manager such duties and powers as the board of directors may authorize. In the absence of such appointment, the board of directors shall act as manager.

**3.6 Contracts Entered into by Declarant or Interim Board.** Notwithstanding any

other provision of these Bylaws, any management contracts, service contracts or employment contracts entered into by the Declarant or the interim board on behalf of the Association shall have a term not in excess of three years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or board of directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after election of the permanent board at the organizational and turnover meeting described in Section 2.2 of these Bylaws.

**3.7 Organizational Meeting.** Unless otherwise agreed by the board, within fourteen (14) days following the annual meeting of the Association or following any meeting at which an election of directors has been held, the board of directors shall hold an organization meeting at such place and time as shall have been fixed by the directors at the meeting at which the election was held.

**3.8 Regular and Special Meetings.** Regular meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the board of directors may be called by the chairperson and must be called by the secretary at the written request of at least two directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone or to the extent permitted by the Oregon Condominium Act, by electronic mail, facsimile or other form of electronic communication acceptable to the board of directors at least seven (7) days prior to the day named for such meeting, and shall state the time, place and purpose of such meeting. For a period of ten (10) years following recording of the Declaration, notices of meetings (including agendas) shall also be given to Declarant in the same manner as given to Directors. Unless other rules of order are adopted by resolution of the Association or the board of directors, all meetings of the board of directors shall be conducted according to the latest edition of *Robert's Rules of Order* published by Robert's Rules Association.

### **3.9 Open Meetings.**

(a). All meetings of the board of directors shall be open to unit owners and, for a period of ten (10) years following recording of the Declaration, to Declarant or a representative of Declarant, except that, in the discretion of the board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties; and (iv) collection of unpaid assessments. Except in the case of an emergency, the board of directors shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in the executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b). Meetings of the board of directors may be conducted by telephonic communication or by other means of communication that allows all members of the board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the units are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each board of directors' meeting shall be posted

at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the unit owners of such meeting; and (ii) only emergency meetings of the board of directors may be conducted by telephonic communication or such other means. The meeting and notice requirements of this Section may not be circumvented by chance or social meetings or by any other means.

**3.10 Waiver of Notice.** Any director may, at any time, waive notice of any meeting of the board of directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall constitute a waiver of notice by such director, except where the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all of the directors are present at any meeting of the board, no notice to directors shall be required and any business may be transacted at such meeting.

**3.11 Quorum of Board of Directors.** At all meetings of the board of directors, a majority of the directors then serving shall constitute a quorum for the transaction of business, and the votes of a majority of the voting rights of the directors shall constitute the decision of the board of directors. If at any meeting of the board of directors less than a quorum should be present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice to directors.

**3.12 Voting.** A director who is present at a meeting of the board of directors at which action is taken on any Association matter is presumed to have assented to the action unless the director votes against the action or abstains from voting on the action because the director claims a conflict of interest. When action is taken on any matter at a meeting of the board of directors. The vote or abstention of each director present must be recorded in the minutes of the meeting. Directors may not vote by proxy or by secret ballot at meetings of the board of directors, except that officers may be elected by secret ballot.

**3.13 Compensation.** No director shall receive any compensation from the Association for acting as such.

**3.14 Liability and Indemnification of Directors, Officers and Manager.** A member of the board of directors or an officer of the Association shall not be liable to the Association, any unit owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. A director appointed under Section 3.2 of these Bylaws and Section 14.4 of the Declaration, or acting under ORS 100.200, shall not be liable to the Association, any unit owner or any third party under ORS 65.35765.361, ORS 100.417 or associated rules of common law for any damage, loss or prejudice suffered or claimed on account of any action or failure to act that represents the exercise of authority established in Section 14.4 of the Declaration and ORS 100.200, including any action or failure to act requested by the Declarant or resulting from any prior or concurrent duty or loyalty owed by such director to the Declarant; provided that nothing in this section limits the liability of the Declarant for such actions or failure to act by a director. In the event any member of the board of directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the

Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The manager of the Association, and its officers and employees, shall not be liable to the Association, the unit owners or any third party on account of any action or failure to act in the performance of its duties as manager, except for acts of gross negligence or intentional acts. Prior to the Organizational and Turnover Meeting described in Section 2.2, the manager shall not be liable to the Association, any unit owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act that represents the exercise of authority established in Section 14.4 of the Declaration and ORS 100.200, including any action or failure to act requested by the Declarant or resulting from any prior or concurrent duty or loyalty owed by such director to the Declarant; provided that nothing in this section limits the liability of the Declarant for such actions or failure to act by the manager. In the event the manager is threatened with or made a party to any proceeding, the Association shall defend the manager against such claims and indemnify the manager and its officers and employees from any such claims to the maximum extent permitted by law.

**3.15 Insurance.** The board of directors shall obtain the insurance and fidelity bonds required in Article 8 of these Bylaws. In addition, the board of directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association or unit owners. The board of directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the Condominium.

**3.16 Deadlock Resolution.** If the board of directors is deadlocked on any matter properly before the board in accordance with these Bylaws, and the matter cannot be settled through direct discussions, the board of directors shall resolve the matter by mediation within ten (10) business days following the date of the meeting. The mediation will be held in Portland, Oregon by a mediator selected by the board of directors. If the board of directors cannot agree upon a mediator, then one shall be selected through the process provided by a recognized mediation service designated by the first director who notifies the others of the mediation service selected. Thereafter, if the matter cannot be resolved by mediation, the matter shall be resolved by arbitration as provided in Article 10 below.

#### Article 4

#### OFFICERS

**4.1 Designation.** The principal officers of the Association shall be the chairperson, the secretary and the treasurer, all of whom shall be elected by the board of directors. The directors may appoint a vice chairperson, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary. The chairperson shall be a member of the board of directors, but the other officers need not be directors or unit owners.

**4.2 Election of Officers.** The officers of the Association shall be elected annually by the board of directors at the organization meeting of each new board and shall hold office at the pleasure of the board. If any office shall become vacant, the board of directors shall elect a successor to fill the unexpired term at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

**4.3 Removal of Officers.** Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and a successor may be elected at any

regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

**4.4 Chairperson.** The chairperson shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the board of directors. The chairperson shall have all of the general powers and duties that are usually vested in the chief executive officer of an association, including but not limited to the power to appoint committees from among the unit owners from time to time as the chairperson may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

**4.5 Secretary.** The secretary shall keep the minutes of all proceedings of the board of directors and the minutes of all meetings of the Association. He or she shall attend to the giving and serving of all notices to the unit owners and directors and other notices required by law. The secretary shall keep the records of the Association, except for those of the treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the chairperson. In addition, the secretary shall act as vice chairperson, taking the place of the chairperson and performing the chairperson's duties whenever the chairperson is absent or unable to act, unless the directors have appointed another vice chairperson.

**4.6 Treasurer.** The treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of required financial statements. He or she shall be responsible for overseeing the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the board of directors, and shall disburse or cause to be disbursed funds of the Association upon properly authorized vouchers. The treasurer shall perform all other duties incident to the office of treasurer of an association and such other duties as may be assigned to him or her by the board of directors.

**4.7 Execution of Instruments.** All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the board of directors and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the chairperson. All checks shall be signed by the treasurer, or in the absence or disability of the treasurer, by the chairperson or any duly elected assistant treasurer, or by the manager.

**4.8 Compensation of Officers.** No officer who is a member of the board of directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the unit owners. The board of directors may fix any compensation to be paid to any officers who are not also directors.

## Article 5

### **BUDGET, EXPENSES AND ASSESSMENTS**

**5.1 Budget.** The board of directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the common expenses expected to be incurred, less any previous over assessment and plus any under assessment, and assess the common expenses to each unit owner in the proportion set forth in the Declaration. The budget shall provide for a

reserve fund in accordance with Section 5.5 below and shall take into account the Maintenance Plan required by Section 7.2. Within thirty (30) days after adopting the annual budget, the board of directors shall provide a summary of the budget to all owners. If the board of directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

**5.2 Determination of Common Expenses. Common expenses shall include:**

- (a) Expenses of administration, including management fees.
- (b) Expenses of maintenance, repair or replacement of common elements, any other portions of the Condominium required to be maintained by the Association pursuant to the Declaration or these Bylaws, and any Association property.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) A general operating reserve, including an amount sufficient to cover the deductible under the property damage insurance policy.
- (e) Reserve for replacements, repairs and maintenance.
- (f) Any deficit in common expenses for any prior period.
- (g) Utilities and services for the common elements and other utilities and services with a common meter or commonly billed, such as trash collection, exterior lighting, water and sewer.
- (h) Any other items properly chargeable as an expense of the Association.

**5.3 Assessment of Common Expenses.**

(a) **Obligation to pay.** All unit owners shall be obligated to pay common expenses assessed to them by the board of directors on behalf of the Association pursuant to these Bylaws and the Declaration. No unit owner by the owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the owner of use or enjoyment of any of the common elements or by abandonment by the owner of the owner's unit. A unit owner may not claim an offset against an assessment for failure of the Association to perform its obligations and no unit owner may offset amounts owing or claimed to be owing by the Association or Declarant to the unit owner. Declarant shall be assessed as the unit owner of any unsold unit, but such assessments shall be prorated to the date of sale of the unit. The board of directors, on behalf of the Association shall assess the common expenses against the unit owners from time to time, and at least annually, and shall take prompt action to collect from a unit owner any common expense due that remains unpaid for more than thirty (30) days from the due date for its payment. The board may elect to round assessments to the nearest dollar.

(b) **Working capital fund.** At the time of closing of the initial sale of each unit to a person other than a successor declarant and thereafter on any subsequent sale of a unit, the purchaser shall make a contribution to the working capital of the Association equal to two (2)

months' regular association assessments for the unit, which sums shall be held in a segregated working capital fund established in the name of the Association. At the time of the organizational and turnover meeting, the Declarant shall pay such contribution for all unsold units, but may obtain reimbursement for such sums from the purchaser upon the sale of each such unit. Such contribution shall be in addition to the regular monthly common expense assessment and shall not be considered as an advance payment of regular assessments. The working capital fund shall be held by the Association for deposit to a segregated fund at the time of the organizational and turnover meeting. Declarant may not use the working capital fund to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association. After the organizational and turnover meeting, the board of directors, at its discretion, may use working capital funds for regular operating expenses, extraordinary items of maintenance, repair or replacement or capital additions, or may deposit all or a portion of such funds into the reserve account.

(c) **Commencement of regular operating expense assessments.** Regular monthly assessments for common operating expenses shall commence upon closing of the first sale of a unit in the Condominium.

(d) **Commencement of assessment for replacement reserves.** Regular monthly assessments for replacement reserves as described in Section 5.5 for all units in the Condominium shall commence upon the closing of the sale of the first unit in the Condominium. Declarant may elect to defer payment of such reserve assessments to the Association for each unit owned by Declarant until the closing of the sale of such unit, but not beyond the date of the turnover meeting referred to in Section 2.2 above, or if no turnover meeting is held, the date the owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all reserve assessments.

#### **5.4 Special or Extraordinary Assessments.**

(a) **Special Assessments for Capital Improvements.** In the case of any duly authorized capital improvement to the common elements, the board of directors may by resolution establish separate assessments for the same, which may be treated as capital contributions by the unit owners, and the proceeds of which shall be used only for the specific capital improvements described in the resolution. The Association shall not assess units owned by the Declarant for additional capital improvements to the Condominium without the written consent of Declarant as long as Declarant owns more than two units.

(b) **Other Special or Extraordinary Assessments.** In the event the board of directors determines that the assessments established upon adoption of the budget as provided in Section 5.1 above will be insufficient to pay the common expenses, or the board of directors determines that additional funds will be needed to meet unexpected or unbudgeted common expenses, the board may levy an additional special or extraordinary assessment. Such assessment shall be allocated to each unit in the same proportion set forth in the Declaration, and may be payable in installments over a specified period, in a lump sum, or in a lump sum with option to pay in installments with interest, as determined by the board of directors.

#### **5.5 Replacement Reserves.**

(a) **Establishment of Account.** The Declarant on behalf of the Association has conducted an initial reserve study in paragraph (c) of this Section and has established a



reserve account to fund major maintenance repair or replacement of those common elements all or a part of which will normally require replacement in more than one and less than 30 years, including items required by the Maintenance Plan established pursuant to Section 7.2 and for exterior painting if the common elements include exterior painted surfaces. The reserve account need not include those items that can reasonably be funded from the general budget or other funds of the Association or for common elements for which maintenance and replacement are the responsibility of one or more, but less than all unit owners under the provisions of the Declaration or these Bylaws.

(b) **Funding of Account.** The reserve account shall be funded by assessments against the individual units for the purposes for which the reserve account is being established, which sums shall be included in the regular monthly assessment for the unit, except as otherwise provided in Section 5.3(b). The reserve account shall be established in the name of the Association, which shall be responsible for administering the account and for making periodic payments into the account.

(c) **Reserve Studies and Maintenance Plan.** The board of directors annually shall review and update the reserve study and accompanying maintenance plan and repair program to determine the reserve account requirements for the items described in paragraph (a) of this Section and may adjust the amount of payments in accordance with the study or review and may provide for other reserve items that the board of directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall:

- (1) Identify of all items for which reserves are to be established;
- (2) Include the estimated remaining useful life of each item as of the date of the reserve study; and
- (3) Include for each item, as applicable, an estimated cost of maintenance, and repair and replacement at the end of its useful life; and

(d) **Use of Reserve Funds.** The reserve account shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the organizational and turnover meeting described in Section 2.2, however, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. In addition to the authority of the board of directors under paragraph (c) of this Section, after the organizational and turnover meeting, the Association may, on an annual basis, elect not to fund the reserve account described in paragraph (a) of this Section by unanimous vote of the owners or elect to reduce or increase future assessments for the reserve account by an affirmative vote of at least seventy-five percent (75%) of the voting rights.

(e) **Sale of Units.** Nothing in this Section shall prohibit prudent investment of the reserve account. Assessments paid into the reserve account are the property of the

Association and are not refundable to sellers of units. Sellers of the units, however, may treat their outstanding share of the reserve account as a separate item in any sales agreement.

**5.6 Default in Payment of Assessments.** In the event of default by any unit owner in paying any assessments to the Association, including assessed common expenses and any other charge imposed or levied by the Association pursuant to the provisions of the Declaration, these Bylaws or the Oregon Condominium Act, such unit owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on such assessment from the due date thereof, or at such greater rate as may be established by the board of directors from time to time, not to exceed the maximum lawful rate, if any. In addition, the defaulting unit owner shall pay a late charge for any assessment not paid within ten (10) days of its due date in the amount of five percent (5%) of the delinquent payment, or such other reasonable late charge or administrative fee, or both, as may be established by the board of directors from time to time by resolution that is delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing address designated by the unit owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the board of directors may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable and may terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Condominium until assessments have been brought current. The board of directors shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorneys' fees, by an action brought against such unit owner or by foreclosure of the lien upon the unit granted by the Oregon Condominium Act. The board of directors shall notify the holder of any first Mortgage upon a unit of any default not cured within sixty (60) days of the date of default.

**5.7 Foreclosure of Liens for Unpaid Assessments.** In any suit brought by the Association to foreclose a lien on a unit because of unpaid assessments, the unit owner shall be required to pay a reasonable rental for the use of the unit during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The board of directors, acting on behalf of the Association, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold, lease, Mortgage, vote the votes appurtenant to, convey, or otherwise deal with the unit. A suit or action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing the liens securing the same.

**5.8 Statement of Assessments.** The board of directors shall advise each unit owner in writing of the amount of assessments payable by such owner, and furnish copies of each budget on which such assessments are based to all unit owners and, if requested, to their Mortgagees. The board of directors shall promptly provide any unit owner who makes a request in writing with a written statement of the owner's unpaid assessments.

**5.9 Priority of Lien; First Mortgages.** To the extent provided by the Oregon Condominium Act, any lien of the Association against a unit for assessments shall be subordinate to tax and assessment liens and any first Mortgage of record. Unless otherwise provided in the Oregon Condominium Act, where the purchaser or Mortgagee of a unit obtains title to the unit as a result of foreclosure of a first Mortgage, such purchaser or Mortgagee, its successors and assigns, shall only be liable for a maximum of six (6) months of the assessments chargeable to such unit that became due prior to the acquisition of title to such unit by such

purchaser or Mortgagee. Any additional unpaid share of assessments shall be a common expense and reallocated on a pro rata basis for all units, including the Mortgaged unit. The purchaser or Mortgagee shall not be relieved of the obligation to pay further assessments. A deed in lieu of foreclosure accepted by the holder of a first Mortgage shall extinguish a lien filed by the Association to secure unpaid assessments under the circumstances described in ORS 100.465.

**5.10 Voluntary Conveyance.** In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an owner or an owner's agent, for the benefit of a prospective purchaser, the board of directors shall make and deliver a statement of the unpaid assessments against the prospective grantor or the unit effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid assessments against the grantor not included in the written statement.

## Article 6

### RECORDS AND AUDITS

**6.1 General Records.** The board of directors and the manager, if any, shall keep detailed records of the actions of the board of directors and the manager, minutes of the meetings of the board of directors and minutes of the meetings of the Association. The board of directors shall maintain a Book of Resolutions containing the rules, regulations and policies adopted by the Association, board of directors and the manager. The board of directors shall maintain a list of owners entitled to vote at meetings of the Association and a list of all Mortgagees of units. All documents, information and records delivered to the Association by the Declarant pursuant to ORS 100.210 and other records of the Association shall be kept within the State of Oregon for the time periods specified in ORS 100.480.

**6.2 Financial Records and Accounts.** The board of directors or its designee shall keep financial records sufficient for proper accounting purposes and as required by the Oregon Condominium Act. All assessments shall be deposited in the name of the Association in a separate federally insured account at a financial institution as defined in ORS 706.008, other than an extranational institution. All expenses of the Association shall be paid from the Association's bank account.

**6.3 Assessment Roll.** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.

**6.4 Payment of Vouchers.** The treasurer or manager shall pay all vouchers for all budgeted items and for any nonbudgeted items up to \$1,000 signed by the chairperson, managing agent, manager or other person authorized by the board of directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the chairperson. Any checks written on reserve accounts must be signed by a member of the board of directors.

**6.5 Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the board of

directors to all unit owners and to all Mortgagees of units who have requested the same within ninety (90) days after the end of each fiscal year. Commencing with the fiscal year following the Turnover Meeting, if the annual assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within one hundred, eighty (180) days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the annual assessments are \$75,000 or less, shall cause such review within 180 days after receipt of a petition requesting such review signed by owners holding at least a majority of the voting rights. The board of directors need not cause such a review to be performed if so directed by an affirmative vote of unit owners holding at least sixty percent (60%) of the voting rights, not including votes of Declarant with respect to units owned by Declarant. Upon written request, any holder, insurer or guarantor of a first Mortgage shall be entitled to an audited financial statement for the immediately preceding fiscal year at the expense of the requesting party, if one is not otherwise available.

**6.6 Notice of Sale, Mortgage, Rental or Lease.** Upon the sale, mortgage, rental or lease of any unit, such unit owner shall promptly inform the secretary or manager of the name and address of the vendee, Mortgagee, lessee, or tenant.

**6.7 Availability of Records.** Except as otherwise provided in ORS 100.480(5)(4) during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by unit owners, lenders and holders, insurers, or guarantors of any first Mortgage that make the request in good faith for a proper purpose, current copies of the Declaration, bylaws, other rules concerning the Condominium, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. The Association, within ten (10) business days after receipt of a written request by a unit owner, shall furnish copies of such documents to the requesting unit owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs incurred to furnish the information.

**6.8 Statement of Assessments Due.** The Association shall provide, within ten (10) business days of receipt of a written request from an owner, a written statement that provides: (a) the amount of assessments due from the owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed rate charge for late payment. The Association is not required to comply with this Section if the Association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.

## Article 7

### MAINTENANCE AND USE OF CONDOMINIUM PROPERTY

**7.1 Maintenance and Repair.** Except as otherwise provided in Section 7.3 for damage or destruction caused by casualty:

(a) **Units.** All maintenance of and repairs to any unit shall be made by the owner of such unit, who shall keep the same in good order, condition and repair and shall do all redecorating, painting and staining that at any time may be necessary to maintain the good appearance and condition of the unit. In addition, each unit owner shall be responsible for the maintenance, repair, or replacement of window glass, interior doors, any plumbing, heating or air conditioning fixtures, telephones, water heaters, automatic garage door openers, fans, vents, lighting fixtures and lamps, electrical outlets, blinds, garbage disposals, fireplaces, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in or connected with such owner's unit. The Association, however, may repair or replace, at the Association's expense, portions of units to the extent reasonably necessary for the preservation of the common elements in good condition and working order.

(b) **Common elements.** All maintenance, repairs and replacements to the general and limited common elements and to Association property shall be made by the Association and shall be charged to all the unit owners as a common expense. Each unit owner, however, shall keep the limited common elements that pertain to such owner's unit in a safe, neat, clean and sanitary condition.

(c) **Maintenance manual.** Any new owners get a maintenance manual and every seller of a condo unit is responsible to give a maintenance manual to the buyer. Any new owner of a unit is deemed to have received a maintenance manual upon purchase of their unit. It is a responsibility to obtain a maintenance manual and read through it thoroughly.

**7.2 Maintenance Plan.** Declarant has prepared and thereafter the board of directors shall implement, review and update the maintenance plan (the "Maintenance Plan") for the maintenance, repair and replacement of all property for which the Association has maintenance, repair or replacement responsibility under the Declaration or these Bylaws or the Oregon Condominium Act.

(a) **Contents of Maintenance Plan.** The maintenance Plan shall describe the maintenance, repair or replacement to be conducted, include a schedule for maintenance, repair or replacement, be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the Association and address issues that include, but are not limited to, warranties and the useful life of the items of which the Association has maintenance, repair or replacement responsibility.

(b) **Inspections.** The maintenance Plan shall provide for inspections of the property for evidence of water intrusion or other needed repairs by a knowledgeable independent party every other year. The board shall reasonably address any matters revealed by the inspection. For a period of 10 years following recording of the Declaration, Declarant (or any designee of declarant specified in any written notice by Declarant to the Association) shall be notified prior to the inspections, shall have a right for Declarant or its designees, employees or contractors to be present during the inspections and have a right to receive a copy of the inspection reports.

(c) **Reviews and Updates to Maintenance Plan.** The board of directors shall review and update the Maintenance Plan as necessary. Changes or updates to the Maintenance Plan shall be based on advice of competent experts or consultants. For a period

of 10 years following recording of the Declaration, any changes to the Maintenance Plan without the approval of the Declarant and the original general contractor may void any applicable warranty and will release them from liability for any damage resulting from such change.

### **7.3 Additions, Alterations or Improvements.**

(a) A unit owner may make any improvements or alterations to such owner's unit that do not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. A unit owner shall make no repair or alteration or perform any other work on such owner's unit that would jeopardize the soundness or safety of the property, reduce the value of the Condominium, impair any easement or hereditament or increase the common expenses of the Association unless the consent of all the other unit owners affected is first obtained.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may submit a written request to the board of directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element. The board of directors shall approve the change unless it determines within forty-five (45) days that the proposed change will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The board of directors may require the unit owner, at such owner's own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

(c) A unit owner may not change the appearance of the common elements or the exterior appearance of a unit without the prior written permission of the board of directors. No person shall install wiring for electrical or telephone installation, television antennas or satellite dishes, machines or air conditioning units, or similar devices on the exterior of the Condominium or cause them to protrude through the walls or the roof of the Condominium except as authorized by the board of directors. No person shall install wiring for electrical or telephone installation, television antennas or satellite dishes, machines or air conditioning units or similar devices on the exterior of the Condominium or cause them to protrude through the walls or the roof of the Condominium except as authorized by the board of directors. No exterior window guards, awnings, or shades shall be installed without prior consent of the board of directors.

**7.4 Damage or Destruction by Casualty of Condominium Property.** In the case of damage or destruction that affects a material portion of the Condominium, timely written notice shall be given to the unit owners and their Mortgagees and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of Condominium property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of such damage or destruction, the board of directors or unit owners holding more than ten percent (10%) of the voting rights shall have requested a special meeting of the Association. Such special meeting must be held within sixty (60) days of the date of damage or destruction. At the time of such meeting, unless unit owners holding all of the voting rights, whether in person, by writing or by proxy, with the approval of Mortgagees as required by the Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or

destruction shall be repaired, reconstructed or rebuilt. If the damage or destruction is not repaired, reconstructed or rebuilt, then the property shall be removed from condominium ownership in the manner provided in the Oregon Condominium Act.

(b) The Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the common elements and, to the extent of the Association's insurance coverage, all such damage or destruction to the units. Each unit owner shall be responsible for the cost of such repairing, reconstructing or rebuilding of his or her unit as is not so covered by the Association's insurance and to the extent of any deductible under the Association's insurance.

(c) If, due to the act or neglect of a unit owner, or of a member of such owner's family or household pet or of a guest or other occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit owned by others, or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not fully covered by the Association's insurance.

(d) In the event any portion of the insurance proceeds paid to the Association is not used to repair, reconstruct or rebuild the damaged or destroyed property, the Association shall distribute the proceeds among the unit owners and their Mortgagees (as their interests may appear) in the same proportion as common expenses are shared, unless the property is removed from unit ownership. If the property is removed from unit ownership, the insurance proceeds, together with the proceeds from the sale of the property, shall be distributed to the unit owners and their Mortgagees (as their interests may appear) in the manner described in the Oregon Condominium Act.

**7.5 Condemnation.** If any portion of the Condominium is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each unit owner and to each Mortgagee. The Association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the common elements, and each unit owner appoints the Association to act as his attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking, other than any award for moving expenses of specific unit owners, shall be payable to the Association and allocated and distributed as provided in this Section 7.4.

(a) **Complete Taking.** If the entire Condominium property is taken, or if unit owners holding all of the voting rights agree that such substantial portion of the Condominium has been taken as to make the project obsolete, then the property shall be deemed removed from unit ownership. In such event, any proceeds of the condemnation paid to the Association, together with any other proceeds upon sale of the remaining Condominium property, shall be distributed among the unit owners and their Mortgagees, as their interests may appear, in accordance with the provisions of the Oregon Condominium Act.

(b) **Partial Taking.** If less than the entire Condominium property is

taken and the property is not determined to be obsolete as provided in paragraph (a) above, then as soon as practicable the board of directors shall, reasonably and in good faith, allocate the award among the units in accordance with the reduction in the value of each unit and its interest in the common elements, compared to the total reduction in value of all units and their interest in the common elements. In the event any unit owner or Mortgagee objects to the allocation determined by the board of directors, the matter shall be submitted to arbitration in accordance with Article 10 below. The cost of such determination shall be paid out of the proceeds of the condemnation. Any portion of the award allocated to a unit owner under this paragraph shall be paid first to all Mortgagees and holders of liens on the unit owner's interest in accordance with the existing priorities, and the balance to the unit owner. If any reconstruction or repair is undertaken as a result of the condemnation, the board of directors may retain and apply such portion of each unit owner's share of the award as is necessary to discharge the owner's liability for any special assessment arising from such reconstruction or repair.

**7.6 Restrictions and Requirements Respecting Use of Condominium Property.** The following restrictions and requirements are in addition to all other restrictions and requirements contained in the Declaration and these Bylaws:

(a) **Residential use.** No commercial activities of any kind shall be carried on in any unit or in any other portion of the Condominium without the consent of the board of directors of the Association, except activities relating to the rental or sale of units. This provision, however, shall not be construed so as to prevent or prohibit a unit owner from using his or her unit as a home office or studio, including meeting with associates, clients or customers on a by-appointment basis, to the extent permitted by applicable zoning codes.

(b) **Use of common elements.** The common elements shall be used for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the units. The use, operation and maintenance of the common elements shall not be obstructed, damaged or unreasonably interfered with by any unit owner.

(c) **Offensive or unlawful activities.** No noxious or offensive activities shall be carried on in any unit nor shall anything be done in or placed upon any unit or common element that interferes with or jeopardizes the enjoyment of other units or the common elements or which is a source of annoyance to residents. Unit occupants shall exercise extreme care not to make noises that may disturb other unit occupants, including the use of musical instruments, radios, televisions and amplifiers. No unlawful use shall be made of the Condominium nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other owners, occupants, guests, or invitees, or directed at the manager, its agents or employees, or vendors.

(d) **Animals.** No animals or fowls shall be raised, kept or permitted within the Condominium or any part thereof, except domestic dogs, cats, and a reasonable number of other ordinary household pets kept within a unit and no more than a total of two (2) pets of any size shall be permitted. No such dogs shall be permitted to run at large, nor shall any dogs, cats or pets be kept, bred or raised for commercial purposes or in unreasonable numbers. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof, and owners shall be responsible for clean up and removal of wastes of their animals. All pets shall be kept under reasonable control at all times and shall be carried or kept on a leash while outside a unit. Each Owner and occupant shall be responsible for



seeing that his or her pets do not endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners and occupants of other units. The board of directors, after notice and a hearing, may require the permanent removal of any animal that the board determines to be a danger to the health and safety of any occupant in the Condominium, or otherwise to be a nuisance within the Condominium. The board may find that an animal is a nuisance if the animal or its owner continue to violate these Bylaws or the rules regulating pets after receipt by the Owner of a written demand from the board to comply with these Bylaws or the rules.

(e) **Exterior lighting or noise making devices and antennas.** Except with the consent of the board of directors of the Association, no exterior lighting or noise making devices shall be installed or maintained on any unit. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday. Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon the general common elements, and may not be placed on any unit or limited common element except in accordance with rules established by the board of directors.

(f) **Windows, decks, and outside walls.** In order to preserve the attractive appearance of the Condominium and regulate load limits, the board of directors of the Association may adopt rules regulating the nature of items that may be placed in or on windows, decks, and the outside walls so as to be visible from other units, the common elements, or outside the Condominium. Garments, rugs, laundry, sheets, reflective surfaces and other similar items may not be hung from windows, facades, or decks.

(g) **Parking of Vehicles.** Except with the consent of the board of directors of the Association, no vehicle in an extreme state of disrepair, trailer, truck camper, motorcycle, boat or boat trailer, or other recreational vehicle or truck rated as one ton or more shall be parked on any portion of the Condominium, except within garages. A vehicle shall be deemed in an "extreme state of disrepair" when the board of directors reasonably determines that its presence offends the occupants of the Condominium due to its appearance or continued inoperability. The Association, by rule, may regulate the length of time vehicles may be parked in driveways.

(h) **Signs.** Unless written approval is first obtained from the board of directors, no sign of any kind shall be displayed to the public view on or from any unit or the common elements except signs used by the Declarant to advertise units for sale or lease.

(i) **Trash.** No part of any unit or any part of the common elements shall be used or maintained as a dumping ground for rubbish, trash, garbage, recycling materials or other waste. No garbage, trash, recycling materials or other waste shall be kept or maintained on any part of the property, except in sanitary containers in the designated areas.

(j) **Insurance.** Nothing shall be done or kept in any unit or in the common elements that will increase the cost of insurance on the common elements. No owner shall permit anything to be done or kept in his or her unit or in the common elements that will result in cancellation of insurance on any unit or any part of the common elements.

(k) **Water beds.** Water beds may not be placed in any unit, except with

the prior consent of the board of directors. If such consent is given, the unit owner shall carry insurance covering damage caused by the water bed and shall be responsible for all damages to any unit or the common elements that might be caused by the water bed.

(l) **Washing Machines.** Each unit contains a washing machine hookup. The unit owner shall be responsible for all damages to any unit or the common elements that might be caused by the washing machine or leakage from the washing machine.

(m) **Association rules and regulations.** In addition, the board of directors from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the units and common elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Condominium property, including, without limitation, establishment of reasonable administrative fees, such as fees for new owner set-up and owner's packet, move-in and move-out fees, etc. Any action by the board of directors adopting, modifying or revoking any rule or regulation may be overruled by a vote of not less than seventy-five percent (75%) of the voting rights present, in person or by proxy, at any meeting, the notice of which shall have stated that such adoption, modification or revocation of rules and regulations will be under consideration. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the secretary promptly to each unit owner and shall be binding upon all unit owners and occupants of all units from the date of delivery.

#### **7.7 Leasing and Rental of Units.**

(a) Any owner who wishes to lease or rent his or her unit must meet each of the following requirements, and the lease or rental agreement will be subject to these requirements whether or not they are included within the lease or rental agreement:

- (1) all leases and rentals must be in writing;
- (2) the unit may not be rented for transient or hotel purposes, and all leases and rentals shall be for a term of not less than thirty (30) days;
- (3) the lease or rental must be for the entire unit and not merely parts of the unit, unless the owner remains in occupancy;
- (4) all such leases and rentals shall be subject in all respects to provisions of the Declaration, these Bylaws, and all rules and regulations adopted by the Board;
- (5) all owners who lease or rent their units shall promptly notify the Association in writing of the names of all tenants and members of tenants' family occupying such units and shall provide the Association with a complete copy of the lease or rental agreement. All owners leasing their unit shall promptly notify the Association of the address and telephone number where such owner can be reached.
- (6) Any failure of a tenant to comply with the Declaration, Bylaws, and Association rules and regulations, shall be a default under the lease

or rental agreement, regardless of whether the lease or rental agreement so provides. In the event of any such default, the owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant.

(b) If any tenant is in violation of the provisions of the Declaration, Bylaws, or rules and regulations of the Association, the Association may bring an action in its own name and/or in the name of the owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, these Bylaws, or the rules and regulations of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association may have. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

(c) The Association shall give the tenant and the owner notice in writing of the nature of the violation, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

(d) Each owner shall provide a copy of the Declaration, these Bylaws and all rules and regulations of the Association to each tenant of his or her unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, these Bylaws and the rules and regulations of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, these Bylaws, and rules and regulations of the Association.

**7.8 Abatement and Enjoining of Violations.** The violation of any provision of the Declaration or these Bylaws, of any rule or regulation adopted pursuant to these Bylaws, or of any decision of the Association made pursuant to such documents, shall give the board of directors, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws, to do any or all of the following after giving written notice and an opportunity to be heard:

(1) to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the board of directors shall not thereby be deemed guilty of any manner of trespass, provided, however, that judicial proceedings shall be instituted before any items of construction may be altered or demolished; or

(2) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings; or

(3) to levy reasonable fines based upon a resolution adopted by the board of directors that is delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing address designated by the owner of each unit in writing; or

(4) to terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Condominium until the correction of the violation has occurred; or

(5) the the offending unit owner shall be liable to the Association for a reasonable administrative fee as established by the board of directors and all costs and attorneys' fees incurred by the Association, whether or not legal proceedings are instituted and including attorneys' fees at trial, in arbitration or on appeal or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or unit owners, or fines so levied. Such sums shall be assessed against the offending unit as an assessment and enforced as provided in Article 5. In addition, any aggrieved unit owner may bring an action against such other unit owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

#### **7.9 Failure to Follow Maintenance Plan.**

(a) **Association.** The association shall perform all inspections and maintenance as recommended by the Maintenance Plan described in Section 7.2 above and make such repairs and maintenance as may be necessary to reasonably address the results of the inspections. If the association by Declarant, then neither the Association nor any unit owner shall have any claim against Declarant or its design professionals, contractors and subcontractors and their consultants, including without limitation, all of their officers, members, managers, directors, employees, agents and brokers, for loss or damage to the extent that they result from such failure and shall indemnify such persons and entities from and against claims by unit owners or other persons or entities for loss or damage resulting from such failure.

(b) **Unit Owners.** Each unit owner shall perform such inspections of maintenance to the owner's unit as may be recommended by Owner's Manual delivered to the owner by Declarant. If the unit owner fails to follow such inspections and maintenance recommendations, neither the unit owner nor the Association shall have any claim against Declarant or its design professionals, contractors and subcontractors and their consultants, including without limitation, all of their officers, members, managers, directors, employees, agents and brokers, for loss or damage to the extent the same results from such failure to follow the Owner's Manual, and shall indemnify such persons and entities from and against claims by the association, unit owners or other persons or entities for loss or damage resulting from such failure.

### **Article 8**

#### **INSURANCE**

**8.1 Types of Insurance.** For the benefit of the Association and the unit owners, the board of directors shall obtain and maintain at all times, and shall pay for out of the common expense funds, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance

covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the units and common elements (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a maximum deductible of the lesser of \$10,000 or one percent (1%) of the policy amount.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the common elements and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each unit.

(4) Such policy or policies shall name the Association as insured, and shall provide for loss payable in favor of the Association, as a trustee for each unit owner and each such unit owner's Mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) that is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the board of directors, the unit owners and the manager, against liability to the public or to the owners of units and of common elements, and their invitees or tenants, incident to the operation, maintenance, ownership or use of the property, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of a unit owner (other than as a member of the Association or board of directors) for liability arising out of acts or omission of such unit owner and liability incident to the ownership and/or use of the part of the property as to which such unit owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

(1) The Association shall maintain fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association has retained a manager, such manager shall maintain fidelity insurance for its officers, employees and agents

handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance shall be at the expense of the Association.

(2) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the board of directors. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessments on all units plus reserve funds.

(3) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and each servicer on behalf of the Federal National Mortgage Association ("**FannieMae**").

(f) **Directors' and Officers' Liability Insurance.** The Association shall maintain a policy of directors' and officers' liability insurance with coverage in the amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible.

(g) **Insurance by Unit Owners.** The Association has no responsibility to procure or assist in procuring property loss insurance for any owner or tenant for (i) damage to a unit or limited common elements not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies required by these Bylaws or held by the Association); or (ii) for any damage or loss to the owner's or tenant's personal property. Owners must be responsible for purchasing insurance policies insuring their units and appurtenant limited common elements for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage. Proof of such insurance coverage must be provided to the Association by the unit owner. Tenants must be responsible for insuring their own personal property for any loss or damage. The Association shall notify all owners of the amount of the deductible under the Association policies. To the extent reasonably practicable, the Association shall give at least thirty (30) days' notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies. Owners and tenants of all units must procure and maintain comprehensive liability policies having combined limits in amounts reasonably set by the board of directors no more often than every three years. Such insurance must provide coverage for, without limitation, the negligent acts of the owner and tenant and their guests or other occupants of the unit for damage to the general and limited common elements and other units and the personal property of others located therein.

**8.2 Other Insurance Requirements.** Insurance obtained by the Association shall be governed by the following requirements:

(a) Every owner must obtain and have proof of their own individual condo insurance policy for inside of their unit.

(a) All policies shall be written with the State of Oregon or a company licensed to

do business in the State of Oregon acceptable to FannieMae which falls into a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports — International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims—paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims — paying ability in Standard and Poor's International Confidential Rating Service.

(b) Notwithstanding the provisions of Section 8.1 above, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement, or any successor to such trustee. Such insurance trustee shall have exclusive authority to negotiate losses under any property or liability insurance policy. Each unit owner appoints the Association, or any insurance trustee or substitute trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purchase. The Association or insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first Mortgage holders, as their interests may appear.

(c) All property insurance policies shall contain a "Special Condominium Endorsement" or its equivalent providing for the following: recognition of any Insurance Trust Agreement, a waiver of the right of subrogation against unit owners individually, that the insurance is not prejudiced by any act or neglect of individual unit owners that is not in the control of such owners collectively, and that the policy is primary in the event the unit owner has other insurance covering the same loss.

(d) For purposes of this article, insurance policies are unacceptable where  
(i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against FannieMae, the designee of FannieMae, or the Association or unit owners, or  
(ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (iii) policy includes any limiting clauses (other than insurance conditions) that could prevent FannieMae or the owners from collecting insurance proceeds.

(e) All policies required by this article shall provide that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each holder of a first Mortgage which is listed as a scheduled holder of a first Mortgage in the insurance policy. Evidence of insurance shall be issued to each unit owner and Mortgagee upon request.

(f) Each unit owner shall be required to notify the board of directors of all improvements made by the owner to his or her unit, the value of which is in excess of Five Hundred Dollars (\$500). Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the board of directors pursuant to Section 7.2.

(g) Any unit owner who obtains individual insurance policies covering any portion of the property other than such owner's personal property and fixtures shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

**8.3 Optional Provisions.** The board of directors shall make every effort to secure insurance policies that will provide for the following:

(a) To the extent appropriate and available at reasonable cost, the Association shall maintain additional coverages against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employer's liability insurance, comprehensive automobile liability insurance, and an endorsement patterned after "use and occupancy" insurance providing relief from monthly assessments while a unit is uninhabitable due to a covered loss.

(b) If reasonably available, the insurance policies shall include Inflation Guard Endorsement, and Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement, and an Increased Cost of Construction Endorsement).

(c) Flood Insurance, if the Condominium is in a Special Flood Hazard Area.

(d) If reasonably available, waiver of subrogation by the insurer as to any claims against the board of directors, any unit owner or any guest of a unit owner.

**8.4 FannieMae and GNMA Requirements.** Notwithstanding any other provisions of this article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity requirements for condominium projects established by FannieMae, the Federal Home Loan Mortgage Corporation, and Government National Mortgage Association, so long as they are a Mortgagee or owner of a unit within the Condominium, except to the extent such coverage is not available or has been waived in writing by FannieMae, the Federal Home Loan Mortgage Corporation, or Government National Mortgage Association. FannieMae, the Federal Home Loan Mortgage Corporation, or their servicers, their successors and assigns, shall be named as a Mortgagee in the Association's policies.

**8.5 Insurance Deductible/Adoption of Resolution.**

**8.5.1** With regards to any Association Insurance Policy that imposes a maximum deductible amount of \$10,000 or less, if the board of directors determines that it is in the best interest of the association of unit owners and of the unit owners, as provided in subsection 8.5.2 of this section, the board may adopt a resolution authorizing the association to obtain and maintain an insurance policy with a deductible amount exceeding the specified maximum, but not in excess of the greater of:

(a) The maximum deductible acceptable to the Federal National Mortgage Association; or

(b) \$10,000.

**8.5.2** In making the determination under this section, the board of directors shall consider such factors as the availability and cost of insurance and the loss experience of the association.

**8.5.3** If the declaration or bylaws of a condominium created before the effective date of this 2007 Act do not assign the responsibility for payment of the amount of the deductible in an association insurance policy, the board of directors may adopt a resolution that assigns the



responsibility for payment of the amount of the deductible. The resolution must include, but need not be limited to:

(a) The circumstances under which the deductible will be charged against:

(A) A unit owner or the unit owners affected by a loss; or

(B) All unit owners;

(b) The allocation of the deductible charged under paragraph (a) of this subsection; and

(c) If a unit owner and the association have duplicate insurance coverage, the insurance policy that is primary, unless otherwise provided in the declaration or bylaws.

**8.5.4** If the board of directors adopts a resolution described in subsection 8.5.3 of this section, the resolution may require that a unit owner, in addition to any other insurance required by the declaration or bylaws, obtain and maintain:

(a) An insurance policy that insures the unit owner's unit and appurtenant limited common elements for not less than the amount of the deductible in the association's insurance policy for which the unit owner may be responsible and that insures the unit owner's personal property for any loss or damage; and

(b) Comprehensive liability insurance that includes, but is not limited to, coverage for negligent acts of unit owners and tenants, guests of unit owners and tenants and occupants of other units for damage to the general and limited common elements, to other units and to the personal property of other persons that is located in other units or the common elements.

**8.5.5** Unless otherwise provided in the declaration or bylaws, the board of directors may adopt a resolution that:

(a) Prescribes a procedure for processing insurance claims. The procedure may require that all claims against the association's insurance policy be processed through and coordinated by the board of directors or the managing agent, if authorized by the board.

(b) Assigns the responsibility for payment of charges for handling claims, including any charges by a managing agent.

**8.5.6** Not later than 10 days after adoption of a resolution under subsection 8.5.1, 8.5.3 or 8.5.5 of this section, the board of directors shall ensure that a copy of the resolution and a notice described in subsection 8.5.7 of this section are:

(a) Delivered to each unit owner; or

(b) Mailed to the mailing address of each unit owner or to the mailing address designated in writing by the unit owner.

**8.5.7** The notice required under subsection 8.5.6 of this section shall:

(a) Advise the unit owner to contact the unit owner's insurance agent to determine the effect of the resolution on the unit owner's individual insurance coverage; and

(b) Be in a form and style reasonably calculated to inform the unit owner of the importance of the notice.

**8.5.8** Failure to provide a copy of a resolution or a notice required under this section does not affect the responsibility of a unit owner to comply with a resolution adopted under this section.

## Article 9

### AMENDMENTS TO BYLAWS

**9.1 How Proposed.** Amendments to the bylaws shall be proposed by either a majority of the board of directors or any unit owner. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

**9.2 Adoption.** A resolution adopting a proposed amendment may be proposed by either the board of directors or by the unit owners and may be approved by the unit owners at a meeting called for this purpose or by ballot vote. Unit owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by unit owners holding a majority of the voting rights and by Mortgagees to the extent required by the Declaration, except that (a) any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration, and (b) any amendment relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units, or limitations on the rental or leasing of units must be approved by unit owners holding seventy-five percent (75%) of the voting rights. Declarant's consent shall also be required until the last stage is annexed and as long as Declarant or any member or manager of Declarant owns any of the units in the Condominium. Such consent shall not be required after ten (10) years from the date of conveyance of the first unit to a person other than a successor declarant. Any amendment that would limit or diminish any special Declarant rights established in these Bylaws shall require the written consent of Declarant and any amendment to Sections 3.4, 3.13, 9.2 and 10.3 of these Bylaws shall require the written consent of Declarant for a period of ten (10) years after the date of the Organizational and Turnover Meeting described in Section 2.2.

**9.3 Regulatory Amendments.** Notwithstanding the provisions of Section 9.2 above, until the turnover meeting as described in Section 2.2 has occurred, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of the Federal Housing Administration; the United States Department of Veterans Affairs; the Rural Development or the Farm Service Agency of the United States Department of Agriculture; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation; any department, bureau, board, commission or agency of the United States or the State of Oregon that insures, guarantees or provides financing for a condominium or units in a condominium.

**9.4 Execution and Recording.** An amendment shall not be effective until certified by the chairperson and secretary of the Association as being adopted in accordance with these Bylaws and the provisions of the Oregon Condominium Act and recorded as required by law. Any amendment adopted within five (5) years after the recording of the initial bylaws shall be approved by the Oregon Real Estate Commissioner to the extent required by the Oregon Condominium Act.

## Article 10

### DISPUTE RESOLUTION

**10.1 Claims Other than for Defective or Negligent Construction or Condition.** The following provisions of this Section 10.1(a) shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more unit owners, or any of them, arising out of or related to the Declaration, these Bylaws or the Condominium, other than claims relating to defective or negligent construction or condition as provided in Section 10.2 below:

- (a) **Mediation.**

(1) Except as otherwise provided in this Section 10.1(a), before initiating litigation, arbitration or an administrative proceeding in which the Association and an owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Multnomah County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

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

(3) If a qualified dispute resolution program exists within Multnomah County, Oregon, and an offer to use the program is not made as required under paragraph (1) of this Section 10.1(a), litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under paragraph (3) of this Section 10.1(a), if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

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

(6) The requirements of this Section 10.1(a) do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

b) **Arbitration.** Any such claim, controversy or dispute shall be first subject to mediation as provided in Section 10.1(a) above or otherwise, and, if not timely settled by mediation, resolved by arbitration in accordance with this Section 10.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

c) **Excluded Matters.** Notwithstanding the foregoing, the following matters

shall not be subject to mediation or arbitration under this Section 10.1 (but shall be subject to the applicable provisions of Section 10.1(d) below): (I) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (ii) actions to enforce any order, decision or award rendered by arbitration pursuant to Section 10.3. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Section 10.1.

(d) **Costs and Attorney's Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. In any suit or action brought by the Association to foreclose its lien or to collect delinquent assessments or in any suit or action brought by Declarant, the Association or any owner or class of owners to enforce compliance with the terms and provisions of the Oregon Condominium Act, the Declaration or these Bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the Association, the prevailing party shall be entitled to recover reasonable attorney fees therein and in any appeal therefrom. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

**10.2 Claims for Negligent or Defective Construction or Condition.** The following alternative dispute resolution procedures shall apply to any claim by the Association or any unit owner against Declarant or any contractor, subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Condominium, and their agents, brokers, successors, employees, affiliates, representatives, officers, directors and members, and their insurers and re-insurers, related to the design, construction or condition of the Condominium, including, but not limited to, claims for defective or negligent construction or design or failure to disclose a defective condition.

(b) **Initial Dispute Resolution Procedures.** In the event of a claim for a construction defect governed by ORS 701.550 to 701.595, the parties shall first comply with the provisions contained therein. In the event the claim is not for a construction defect governed by such provisions, but relates to a claimed defect in the condition of the project, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis upon which the recipient is claimed to be liable for the defect. Compliance with the procedures contained in this Section 10.2(a) shall be a condition precedent to mediation, arbitration or litigation of any such Claims.

(c) **Mediation.** If the initial dispute resolution proceedings under Section 10.2(a) do not resolve the claims, the parties shall then engage in mediation to resolve the claims. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this section shall be a condition precedent to the filing of any arbitration or litigation proceedings or any claims relating to the matter with the Oregon Construction Contractors Board, and the Association and unit owners waive any right to file any

such claims if the Association and unit owners have not fully complied with this Section 10.2(b). The mediation shall be conducted in accordance with the following procedures:

(1) Within sixty (60) days after completion of the proceedings under Section 10.2(a) and delivery of a demand for mediation by one of the parties to the other parties, the parties shall agree upon a neutral mediator. If the parties are unable to agree on a mediator within that period, upon application of any party, the Presiding Judge of the Circuit Court of Multnomah County, Oregon, shall designate the mediator within sixty (60) days after delivery of the demand for mediation, the parties shall exchange with each other all inspection and consultant's reports in their possession pertaining to the claims.

(2) The parties shall have ninety (90) days after exchanging reports in which to perform additional inspections. Any additional reports resulting from such inspections shall be furnished to the other parties prior to mediation.

(3) The mediation shall be conducted after completing parts (1) and (2) above, but within one hundred eighty (180) days following delivery of the demand for mediation. The mediator may elect to adjourn the mediation to additional sessions if the mediator determines that further sessions would be beneficial in resolving the disputes.

(4) Each party shall send to the mediation a representative with authority to settle the dispute and will attempt in good faith to resolve all disputes in the mediation.

(5) Any settlement agreed upon in mediation shall be documented and executed within 60 days following completion of the mediation.

(f) **Arbitration.** All claims that have not been resolved by mediation shall be resolved by arbitration in accordance with Section 10.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

(g) **Third Parties.** Upon demand by any party, claims between or among the parties and third parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of Section 10.2(c) above, in the event any claim involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the claim and the third party claim determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(h) **Attorney Fees.** Except to the extent otherwise provided by law, in the event of any claim determined by arbitration or by a court of law under Sections 10.2(c) or 10.2(d) above, each party shall bear their own costs, including, without limitation, filing fees, attorney's fees, investigation expenses, consultant's fees and expert's fees. The other costs of arbitration and other court costs shall be divided and paid equally by the parties. To the extent permitted by law,

statutory attorney's fees under the Unlawful Trade Practices Act or any other applicable statute are hereby waived.

(i) **Confidentiality.** The parties shall keep all discussions of disputes,

settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties other than their attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. In the event of a breach of this confidentiality obligation, the other party shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and the breaching party waives any claim or defense that the other party has an adequate remedy at law for any such breach, and such party shall not be required to post any bond or other security in connection with any such equitable relief

(j) **Time Periods within which Claims must be Asserted.**

(1) **Other claims.** Any other claims under this section 10.2, including,

without limitation allegations of property damage or personal injury claims arising out of fungus, spores, or mold, any water intrusion or dampness, or otherwise, regardless of the legal theory or basis of alleged causation, including but not limited to, negligence, professional errors or omissions, strict liability, breach of contract, or non-statutory warranty, must be commenced under Section 10.2(a) above within ninety (90) days after the date the Association or the unit owner knew or reasonably should have known of facts sufficient to put them on notice of the claim, **or if earlier**, with respect to the unit and related limited common elements, by no later than the first anniversary of the closing date of the sale of the unit to the first purchaser or, with respect to the general common elements, within ninety (90) days after the date of the Turnover Meeting as described in Section 2.2 of these Bylaws. Any arbitration or litigation based upon such claims must be instituted within ninety (90) days after completion of the mediation proceedings under Section 10.2(b), or if shorter, the applicable statute of limitations. Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or unit owners actually discovered the alleged basis for the claim.

**10.3 Arbitration.** Any arbitration under these Bylaws shall be conducted in the Portland, Oregon metropolitan area, or such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

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

(b) **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

Notwithstanding the provisions of Section 10.2(c), in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(c) **Discovery.** The parties to the arbitration shall be entitled to such discovery as would be available to them in an action in Multnomah County Circuit Court. The arbitrator shall have all of the authority of the Court incidental to such discovery, including without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate -sanctions including without limitation award against a party for failure to comply with any order.

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

**10.4 Survival.** The mediation and arbitration agreements set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Condominium and any unit therein and the termination of the Declaration or these Bylaws.

## Article 11

### MISCELLANEOUS

**11.1 Notices.** All notices to the Association or to the board of directors shall be sent care of the manager, or if there is no manager, to the principal office of the Association or to such other address as the board of directors may designate from time to time. All notices to any unit owner shall be sent to such address as may have been designated by such owner from time to time, in writing, to the board of directors, or, if no address has been designated, then to the owner's unit. In the discretion of the board of directors, any notice, information or other written material required to be given to a unit owner or director under the Declaration or these Bylaws or pursuant to the Oregon Condominium Act, may be given by electronic mail, facsimile or other form of electronic communication acceptable of the board of directors, except for the following notices; failure to pay an assessment; foreclosure of an association lien under ORS 100.405; an action the Association may take against a unit owner; or an offer to use the dispute resolution program under ORS 100.405. A unit owner or director may decline to receive notice by electronic mail, facsimile or other manner permitted under the Declaration or these Bylaws or the Oregon Condominium Act.

**11.2 Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**11.3 Action Without a Meeting.** Any action that the Oregon Condominium Act, the Declaration or these Bylaws require or permit the owners or directors to take at a meeting or


ballot meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the owners or directors, shall be filed in the records of minutes of the Association.

**11.4 Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

**11.5 Conflicts.** These Bylaws are intended to comply with the Oregon Condominium Act and the Declaration. In case of any irreconcilable conflict, such statute and document shall control over these Bylaws or any rules and regulations adopted hereunder.

DATED this December 4 day of, 20 07

MARIANNA CONDOMINIUMS, LLC,  
An Oregon limited liability company:

By:   
Ben Henzel