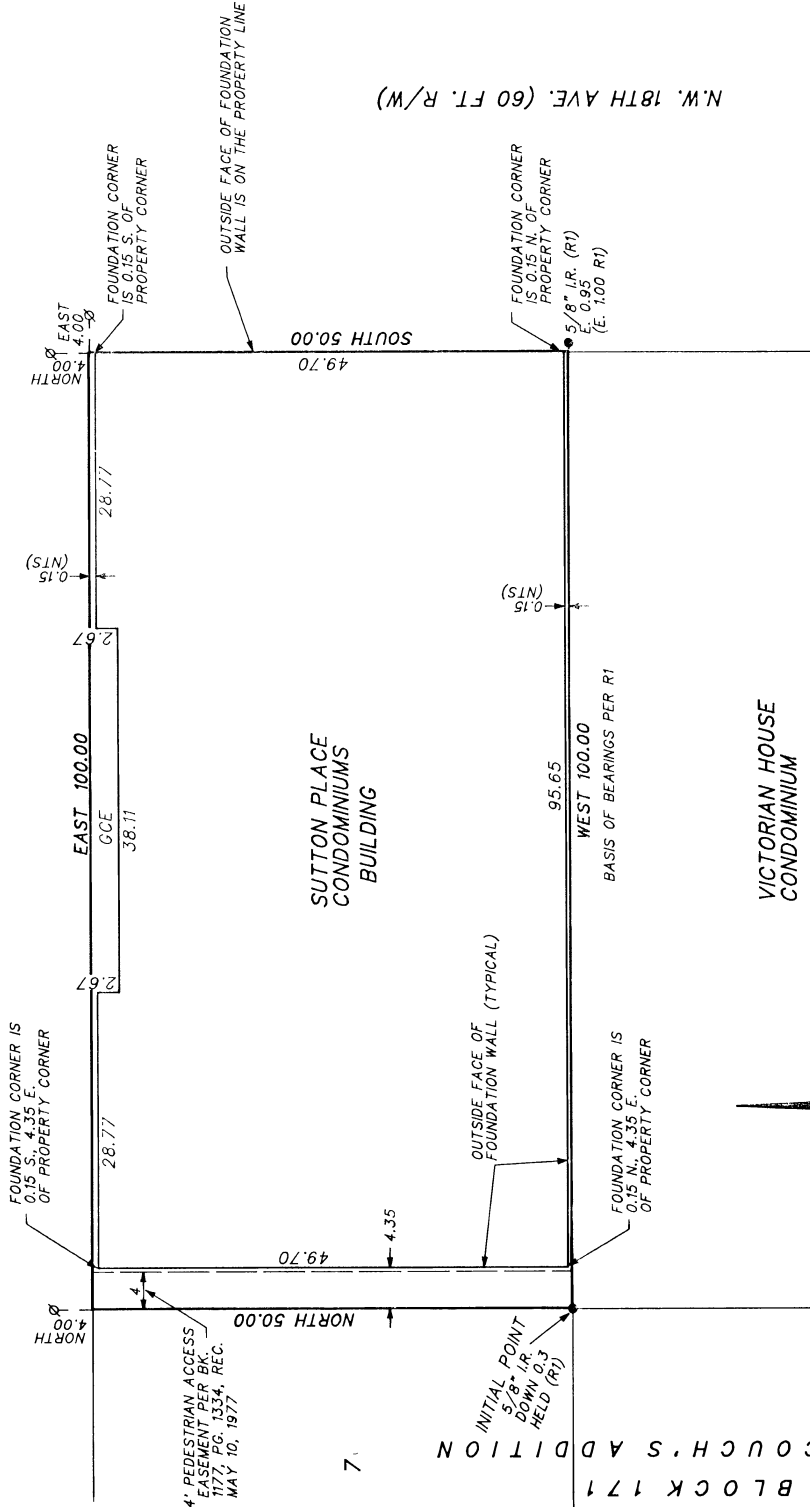


# SUTTON PLACE CONDOMINIUMS

A REPLAT OF LOT 8, BLOCK 171, COUCH'S ADDITION, SITUATED IN THE SE 1/4 OF SECTION 33, T. 1 N., R. 1 E., W.M., CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

N.W. EVERETT ST. (60 FT. R/W)



### LEGEND

- Ø = Brass Screw with 3/4" Brass Washer Stamped "LS 2231" Found and held per SN 56371.
- = Monument found as noted.
- ( ) = Record Information
- P = Plat of Couch's Addition
- RI = Victorian House Condominium
- GCE = General Common Element
- I.R. = Iron Rod
- N/S = Not to Scale
- SN = Multnomah County Survey Record
- R/W = Right of Way

### NOTES

1. Narrative - Basis of bearings and boundary control per SN 56371.
2. Purpose - To plat subject property into condominium units as shown.
3. There is no geodetic survey monument within one half mile radius of the subject plot boundary.
4. All building walls are parallel or perpendicular to the property line.

SHEET 1 OF 4

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Steve P. Buckles*  
OREGON  
JULY 1986  
STEVEN P. BUCKLES  
EXPIRES: 12/31/89

I certify that this tracing is a true and exact copy of the original plat.

### SHEET INDEX

- Sheet 1 - Boundary and Building Location
- Sheet 2 - Foundation and Unit Details
- Sheet 3 - Unit Details
- Sheet 4 - Certificate, Approvals, Acknowledgement and Declaration.

SCALE 1" = 10'

REPPETO & ASSOCIATES  
LAND SURVEYORS

1225 NW Murray Rd. - Room 202  
Portland, OR 97229  
(503) 643-8755

Date: December 23, 1998 Dwg. File: w8061c.ccd  
Drawn By: JWE Job No. 98061

7

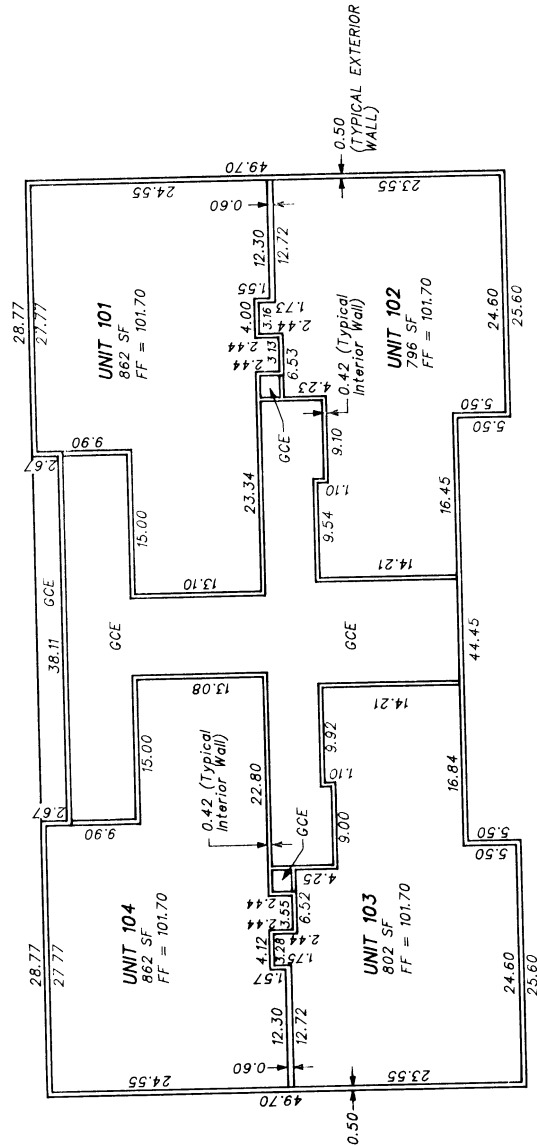
BLOCK 171  
COUCH'S ADDITION

6

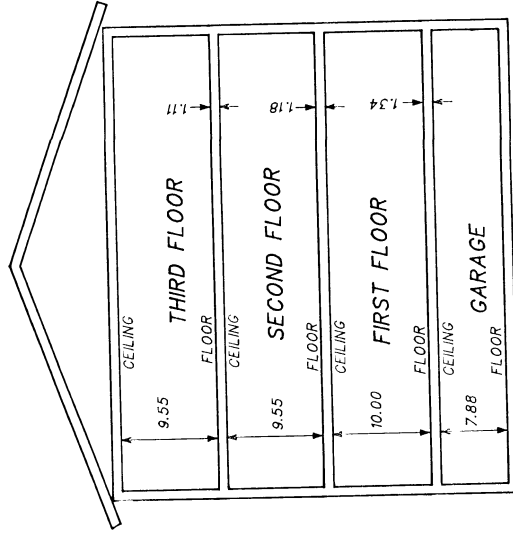
# SUTTON PLACE CONDOMINIUMS

A REPLAT OF LOT 8, BLOCK 171, COUCH'S ADDITION, SITUATED IN THE SE 1/4 OF SECTION 33, T. 1 N., R. 1 E., W.M., CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

FIRST FLOOR BUILDING DETAILS



SCALE 1" = 10'



TYPICAL CROSS SECTION

NOTES

1. Floor elevations are based on City of Portland Bench Mark number 2858, a brass cap in the curb, northwest corner of N.W. 20th Ave. and Flanders Street, elevation 111.30.
2. All walls shown are General Common Element. Outside face of exterior walls shown for the first floor reflect the outside face of foundation walls shown on sheet one. All building walls, storage space walls and parking spaces are 90 degrees at the corners.
3. All interior walls are 0.42 wide unless noted otherwise.
4. All parking spaces and storage spaces are limited common elements.
5. All parking spaces have an exterior dimension of 2.00 x 3.00 feet and an interior dimension of 1.80 x 2.80 feet. The common wall thickness between storage spaces is 0.20 feet. The outside wall thickness is 0.10.

LEGEND

- FF = Finish Floor Elevation
- GCE = General Common Element
- LCE = Limited Common Element
- SF = Square Feet
- PS = Parking Space
- S = Storage Space

I certify that this tracing is a true and exact copy of the original plat.

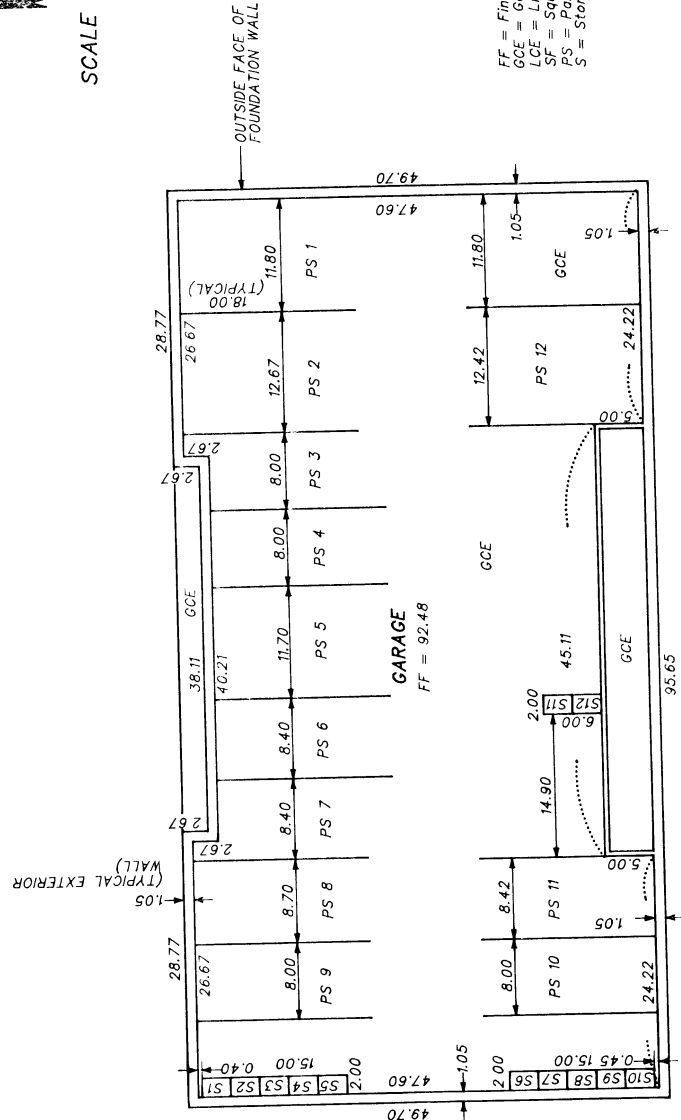
REGISTERED PROFESSIONAL LAND SURVEYOR  
 OREGON  
 JULY 17, 1988  
 STEVEN P. BUCKLES  
 2231  
 EXPIRES 12/31/99

SHEET 2 OF 4

REPPETO & ASSOCIATES  
 LAND SURVEYORS

1225 NW Murray Rd. - Room 202  
 Portland, OR 97229  
 (503) 643-8755

Date: December 23, 1998 Dwg. File: W80614.CDD  
 Drawn By: SPB  
 Job No: 98061

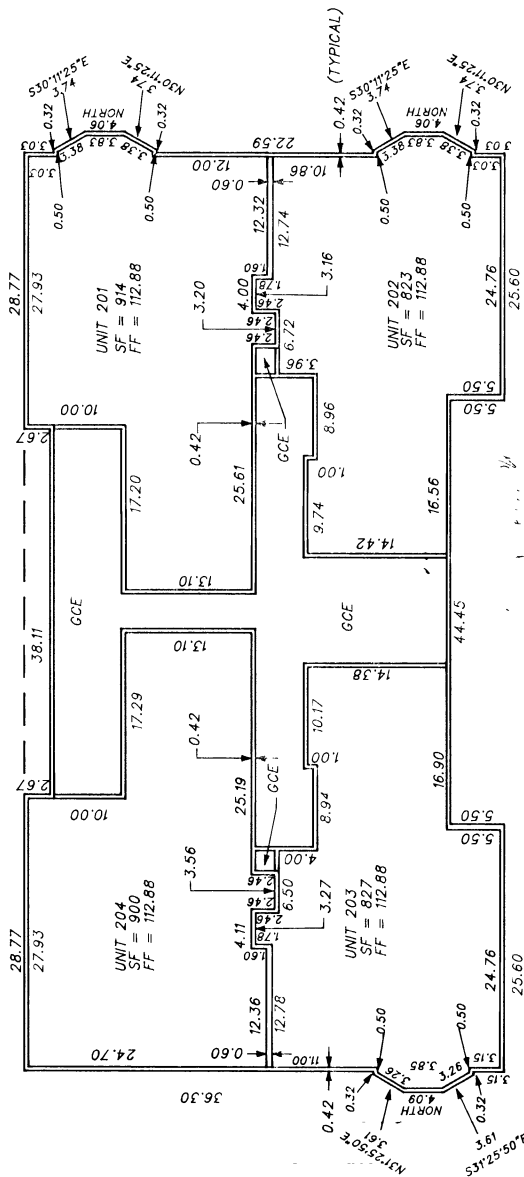


GARAGE FLOOR BUILDING DETAILS

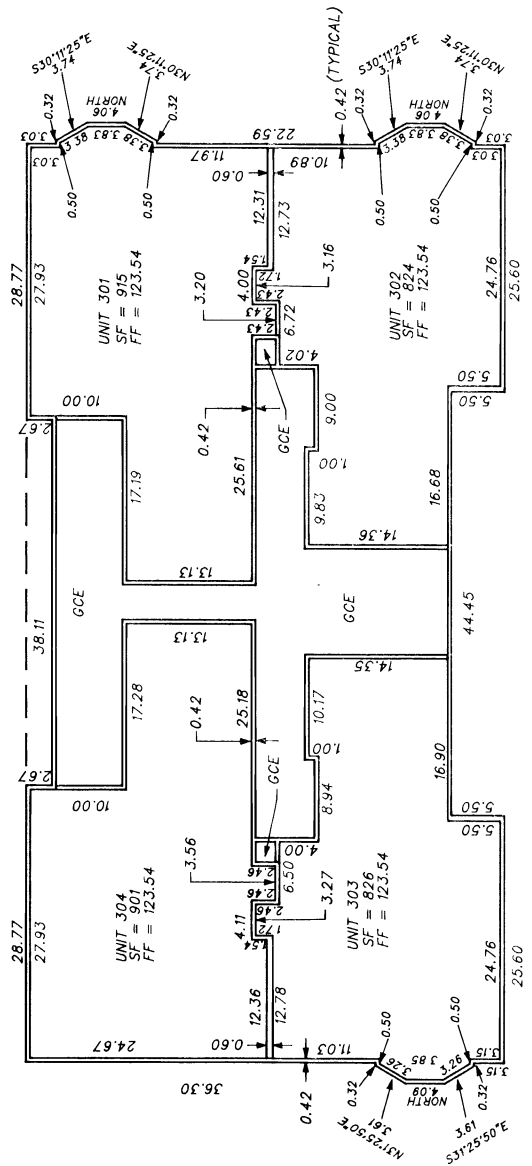
# SUTTON PLACE CONDOMINIUMS

A REPLAT OF LOT 8, BLOCK 171, COUCHS ADDITION, SITUATED IN THE SE 1/4 OF SECTION 33, T. 1 N., R. 1 E., W.M., CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

SECOND FLOOR BUILDING DETAILS



THIRD FLOOR BUILDING DETAILS



**LEGEND**

- FF = Finish Floor Elevation
- GCE = General Common Element
- LCE = Limited Common Element
- SF = Square Feet
- SS = Storage Space
- PS = Parking Space

**NOTES**

1. Floor elevations are based on City of Portland Bench Mark number 2858, a brass cap in the curb, northwest corner of N.W. 20th Ave. and Flanders Street, elevation 111.30.
2. All walls shown are General Common element. Outside face of exterior walls shown for the upper floor reflect the outside face of foundation walls shown on sheet 1, except the bay window areas. Upper floor units are directly above the lower floor units. All building walls are 90 degrees at the corners, unless noted otherwise.
3. All interior and exterior walls are 0.42 feet wide unless noted otherwise.

SHEET 3 OF 4

I certify that this tracing is a true and exact copy of the original plat.

REGISTERED PROFESSIONAL LAND SURVEYOR  
 JULIE COOK  
 STEVEN P. BUCKLES  
 2231  
 EXPIRES 7/31/99

REPPETO & ASSOCIATES  
 LAND SURVEYORS

1225 NW Murray Rd. - Room 202  
 Portland, OR 97229  
 (503) 643-8755

Date: December 23, 1998 File: W9806E.GCD

Drawn By: JWE

Job No. 98061

# SUTTON PLACE CONDOMINIUMS

A REPLAT OF LOT 8, BLOCK 171, COUCH'S ADDITION, SITUATED IN THE SE 1/4 OF SECTION 33, T. 1 N., R. 1 E., W.M., CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

## SURVEYOR'S CERTIFICATE

I, Steven P. Buckles, certify that I have correctly surveyed and marked with condominium plat the lands represented on the attached plat of SUTTON PLACE CONDOMINIUMS being a replat of Lot 8, Block 171, COUCH'S ADDITION, a plat of record, situated in the southeast 1/4 of Section 33, T. 1 N., R. 1 E., W.M., City of Portland, Multnomah County, Oregon, and that for the Initial Point I used a found 5/8 inch diameter iron rod at the southwest corner of said Lot 8; the lands being committed to said condominium are described as follows: Beginning at said Initial Point; thence, along the west line of said Lot 8, the north line of said Lot 8 and also along the west corner of said Lot 8, thence, along the St., EAST, 100.00 feet to the north-west corner of said Lot 8; thence, along the east line of said Lot 8, 100.00 feet to the southeast corner of said Lot 8; thence, along the Ave., SOUTH, 100.00 feet to the southeast corner of said Lot 8; thence, along the south line of said Lot 8, WEST, 100.00 feet to the Initial Point.

*Steven P. Buckles*  
Steven P. Buckles - Oregon PLS No. 2231

## APPROVALS

This condominium plat is in substantial conformity with the City of Portland, Bureau of Buildings permit records

Approved March 12, 1999  
City of Portland  
Bureau of Buildings  
By Margaret M Mahoney

Approved March 11, 1999  
County Surveyor  
Multnomah County, Oregon  
By Steve P. Buckles - Deputy

All taxes, fees, assessments or other charges as provided by O.R.S. 100.110 have been paid as of March 12, 1999  
Director, Division of Assessment  
and Taxation,  
Multnomah County, Oregon  
By Doris Smith  
Deputy

State of Oregon } s.s.  
County of Multnomah }  
I do hereby certify that the attached condominium plat was received for record and recorded March 12, 1999 at 2:03 P.M. in Book 12411 on Pages 85-88

County Recording Office  
By Don Spallone  
Deputy  
Document No. 99051316

## DECLARATION

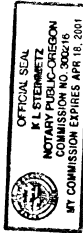
Know all persons by these presents that Flowers Development, LLC, an Oregon limited liability company, does hereby declare the attached map of SUTTON PLACE CONDOMINIUMS as described in the accompanying Surveyor's Certificate to be a true and correct map and plat thereof, and does hereby commit said plat to the provisions of Oregon Condominium Act as laid out in Chapter 100 of the Oregon Revised Statutes. The property and improvements described and depicted on the plat are subject to provisions of Oregon Revised Statutes 100.005 to 100.625.

Flowers Development, LLC  
*Jamshied Ameri*  
Jamshied Ameri, Managing Member

State of Oregon )  
County of Multnomah ) s.s.

## ACKNOWLEDGEMENT

This certifies that on this 20 day of September, 1999 before me personally appeared Jamshied Ameri, Managing Member of Flowers Development, LLC, an Oregon limited liability company, who did say that he is the identical person named in the foregoing instrument and that said instrument was a free act and deed by him on behalf of said limited liability company.

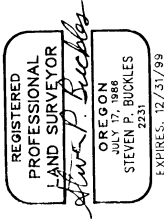


*Notary Public for Oregon*  
Notary Public for Oregon

I, Steven P. Buckles, a registered professional land surveyor, do hereby certify that the plat of SUTTON PLACE CONDOMINIUMS, fully and accurately depicts the boundaries of the units and of the improvements thereon and that construction of the units and buildings, as depicted on such plat, has been completed as of December 23, 1998.

*Steven P. Buckles*  
Steven P. Buckles - Oregon PLS No. 2231

I certify that this tracing is a true and exact copy of the original plat.



SHEET 4 OF 4

REPPETO & ASSOCIATES  
LAND SURVEYORS

1225 NW Murray Rd. - Room 202  
Portland, OR 97229  
(503) 643-8755

Date December 23, 1998 Dwg. File #980610 CDD  
Drawn By: JWE Job No. 98061

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
CQ6 8 ATLJH  
Total : 54.00

2003-135503 06/12/2003 03:38:59pm  
FIRST AMENDMENT TO THE

**BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF  
SUTTON PLACE CONDOMINIUMS**

This First Amendment to the Bylaws of the Association Unit Owners of Sutton Place Condominiums is made this 2 day of May, 2003.

**RECITALS**

On or about January 20, 1999, Declarant executed the Bylaws of the Association of Unit Owners of Sutton Place Condominiums (The "Bylaws") which was recorded in Multnomah County, Oregon on March 12, 1999 as recorder's number 99051318.

Not less than 75% of the Unit Owners of the Condominium have voted in favor of amending the Declaration to modify the restrictions on the renting and leasing of Units within the Condominium Project.

**AMENDMENT**

**NOW, THEREFORE**, pursuant to Article XIII of the Bylaws and ORS 100.410, Section 9.2 of the Bylaws is hereby amended to read as follows:

**Section 9.2. Use and Occupancy Restrictions: Internal Changes: Alterations.**

(a) **Leasing Restrictions.** As of the date this Amendment is recorded, any Unit Owner not currently renting his or her Unit may not enter into any new rental arrangement for such Unit except in compliance with this section. As used in this section, "Non-Owner Occupied" shall mean someone who is renting or leasing the unit from the Owner.

(i) **Term of Lease.** With the exception of a lender in possession of a Unit following default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure and except for Units held for sale under subparagraph (d) of this section, a Unit Owner needing to move into their Unit sooner as their primary place of residence, no Unit Owner shall rent or lease his or her Unit for a period of less than twelve (12) months. Any 12-month or longer lease may be extended beyond such term on a month-to-month basis.

(ii) **Limitation on Number of Rental Units.** Except in the event of a hardship, as defined below, the maximum

PLU 6-12-03  
Dinyar Menta  
BYLAWS Section 9.2 Amendment Page 1 of 8

8

6-12-03

number of Units that may be Non-Owner Occupied shall be three (3) Units. Occupancy shall be limited to the lessees, their household members, visitors and guests.

(iii) **Professional Management.** Unit Owners renting their Units as provided in this section shall have the rented Unit managed by a professional property manager during the rental period unless the Board consents otherwise in writing.

(iv) **Damage to Common Areas.** The Unit Owner will be held responsible by the Association for any damages caused to the common areas by the tenant or the tenant's guests.

(v) **Insurance.** Any Unit Owner who leases or rents a Unit shall obtain and maintain in full force and effect a policy specifically intended for condominium units rented to others providing coverage for liability related to, arising out of or resulting from the tenant's occupancy or use of the Unit and common elements, with limits of not less than two million dollars (\$2,000,000). The Association shall be named as an additional insured on the insurance policy. Prior to occupancy by any tenant, the Unit Owner shall provide a copy of the insurance policy to the Board.

(vi) **Other Restrictions.** The Unit Owner shall provide a fully executed copy of each lease agreement to the Board. No Unit Owner may lease or rent less than his or her entire Unit and no Unit Owner may rent such Owner's Unit for transient or hotel purposes. No Unit Owner may display a sign anywhere outside the building stating that his or her Unit is for lease or rent. No signs may be placed in Unit windows stating that the Unit is for lease or rent.

(b) **Hardship.** If the three (3) Unit threshold set forth in subparagraph (a)(ii) has already been reached, a Unit Owner may apply to the Board for a hardship-based exception to the three (3) Unit threshold; provided, however, that no hardship-based exception shall be granted if doing so causes the number of Non-Owner Occupied Units to exceed four (4) Units. The following situations may be considered for hardship-based exceptions, and if the Board determines that a hardship exists, the Board shall have the options specified below: (i) If the Unit Owner or his or her spouse or domestic partner relocates for work or educational purposes, the Board may permit the Unit to be leased for a period of up to one hundred

eighty (180) days; (ii) if the Unit Owner dies, is hospitalized for a protracted illness, or is placed in a nursing home or a convalescent home or other facility or with family members due to illness, or in the case of any other life changing circumstances as may be set forth in a resolution adopted by the Board, the Board may permit the Unit to be leased for a period of up to one (1) year; (iii) in the case of any type of hardship, the Board may permit the Unit to be leased to an immediate family member, such as a child, sibling or parent for a period to be set by the Board, not to exceed one (1) year; and (iv) if inability to rent a Unit will result in serious financial hardship to the Owner, the Board may permit the Unit to be leased to any party for a period to be set by the Board, not to exceed one (1) year. The Board, in its sole and unfettered discretion, shall determine whether a Unit Owner's situation meets any of the factual situations set forth above and thus qualifies for a hardship-based exception. The Board may then grant such exception only if doing so would not cause the number of Non-Owner Occupied Units to exceed four (4) Units.

(c) **Existing Tenancies.** The restrictions on renting or leasing Units shall not apply to any Unit that, as of the date of adoption of this Amendment, is being leased or rented (an "Exempt Unit"). However, the leased Unit shall count toward the three (3) or four (4) Unit maximum, whichever is applicable. The Unit Owner of such Exempt Unit may continue to rent such Unit until expiration or termination of the existing tenancy, after which the Unit Owner no longer may continue to rent such Unit without complying with the other provisions of this section. A Unit Owner with one exempt Unit is not automatically entitled to an exception with respect to any other Unit. The renting restrictions contained in this section apply independently to each Unit owned by a Unit Owner and exemptions may not be transferred to an Owner's successors and assigns, including, but not limited to, persons who acquire a Unit through inheritance or gift.

(d) **Units Held for Sale.** The Owner of a Unit may lease such Unit for a term shorter than twelve (12) months and may lease such Unit on a month-to-month basis if, and only if, such Unit is being held for sale and such rental will not cause the number of Non-Owner Occupied Units to exceed the maximum permitted by this section. Such exemption does not automatically apply to any other Unit owned by the same Owner, and the twelve (12) month requirement applies independently to such other Units and to such Unit Owner's successors and assigns, including, but not limited to, persons who acquire the Unit through inheritance or gift.

(e) **Procedure.** Prior to entering into any lease agreement, a Unit Owner shall notify the Board in writing of his or her intent to lease or rent such Owner's Unit, and the circumstances of the proposed arrangement. Within fifteen (15) days of such notification, the Board shall advise the Unit Owner whether such proposed tenancy would or would not exceed the

restriction on the number of rented Units, and if it would exceed such restriction, the Board shall place the Unit Owner on a waiting list and shall notify such Unit Owner when such Owner's Unit may be rented. Once a Unit Owner is notified that his or her Unit may be rented, such Unit Owner, within six (6) months from the date of such notice, may enter into a twelve (12) month lease with a tenant. If a notified Unit Owner has not entered into such a lease within such period, the Board shall place such Unit Owner at the end of the waiting list and shall notify the next Unit Owner on such list that such Unit Owner may rent his or her Unit. A Unit Owner who receives permission from the Board to rent his or her Unit may continue to rent such Unit upon the expiration or termination of such tenancy, provided that if the Unit Owner occupies it for any period exceeding thirty (30) days, the Unit Owner no longer may rent the Unit and shall reapply to the Board.

(f) **Compliance with Documents.** All tenants and guests of tenants shall be subject to the terms of the Declaration, these Bylaws and Rules and Regulations of the Association and the Board. Each tenant shall be provided copies of the Declaration, these Bylaws and Rules and Regulations by the Owner of the Unit being leased at the beginning of the lease term and thereafter with any amendments to such documents. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and these Bylaws, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease and that the Association with or without the consent of the Unit Owner landlord shall be entitled to enforce such default directly against the tenant. The lease or rental agreement shall provide standard covenants, exculpations and indemnities in favor of the landlord, be in a standard form, such as that of the Multifamily Housing Council, Stevens Ness Law Publishing or another recognized author of residential landlord tenant forms in Oregon with an appropriate addendum outlining the additional rental restrictions and requirements set forth herein. Unit Owners shall be responsible for the acts of their tenants, and Unit Owners and tenants shall be responsible for the acts of the tenant's guests. A Unit Owner may be assessed personally for any expenses incurred by the Association resulting from damage to the common elements caused by such Owner's tenant. After giving notice and an opportunity to be heard, Unit Owners may be fined for their tenant's noncompliance with any provision of the Declaration, these Bylaws and Rules and Regulations, and such fines shall be collectible as assessments as elsewhere provided in these Bylaws. If the Board finds that a lessee or tenant has violated any provision of the Declaration, these Bylaws or the Rules and Regulations, the Board may require the Unit Owner to terminate such lease or rental agreement.



(g) **Enforcement.** If a Unit Owner fails to follow the procedures set forth in this section with respect to the leasing of his or her Unit, then at any time after learning of such leasing, the Board may charge such Unit Owner an administrative fee, the amount of which shall be determined from time to time by Board resolution. The purpose of the fee is to reimburse the Association for time, costs and expenses of management time incurred to obtain information about the tenant and to provide such tenant with copies of Association documents. Charging a Unit Owner an administrative fee or providing such Unit Owner's tenant with copies of Association documents, however, shall not bar or limit the Association's remedies arising from such Unit Owner's violations of the provisions of the Declaration, these Bylaws and Rules and Regulations, including the right to file suit to remove the tenant in the event that the tenancy violates any provision of this section. If any tenant or occupant of a Unit violates or permits the violation by his guests and invitees of any laws or provisions of the Declaration, the Bylaws or of the Rules and Regulations of the Association, and the Board determines that such violations have been flagrant or repeated, the Board may give notice to the tenant or occupant of the Unit and the Unit Owner thereof to forthwith cease such violations; and if the violation is thereafter repeated, the Board shall have the authority, on behalf and at the expense of the Unit Owner, to evict the tenant or occupant if the Unit Owner fails to promptly do so after notice from the Board. The Board shall have no liability to a Unit Owner or tenant for any eviction made in good faith. The Unit Owner may be assessed individually for and the Association shall have a lien against the Owner's Unit for common expenses incurred through such tenant's fault or direction, for fines, charges and expenses incurred in enforcing the Declaration, Bylaws and Association Rules and Regulations with respect to such tenant, and for any costs incurred by it in connection with such eviction, including reasonable attorney's fees, all of which may be collected and foreclosed by the Association in the same manner as assessments are collected and foreclosed.

(h) **Rental and Transfer and Transfer of Parking Stalls.** The rental of a deeded parking space, separate from the rental of a Unit shall be allowed subject to applicable zoning restrictions for Unit occupancy and the same standards as apply to the lease or rental of Units as set forth in 9.2 (a) through (g) inclusive of both sections; provided, however, that any parking space rental shall be, consistent with Section 9.5 (j), restricted to another Unit Owner or tenant of a Unit Owner, that shall not be allowed with a third party living outside the Condominium; shall be subjected to termination by the Unit Owner upon thirty (30) days notice; and provided, further, that the rental or lease term shall automatically terminate without notice on the date the Unit Owner disposes of his or her interest in the

Unit to which the rented or leased space is appurtenant (whether such disposition is by deed, contract or otherwise).

(i) **Restriction on Alteration to Unit.**

(i) No Unit Owner shall make any repair, improvement, modification, alteration to or perform any work or allow a tenant or contractor to perform any work on his or her Unit or on any mechanical or structural installation located therein which: (A) would impair the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium, (B) would jeopardize the soundness or safety of the Condominium, (C) would reduce the value of the Condominium, (D) would impair any easement or hereditament or (E) would increase the common expenses of the Association, all unless the consent of all the other Unit Owners affected is first obtained in writing. [Act, sec. 100.535(2)].

(ii) Prior to undertaking any repairs or modifications to the structural or mechanical elements of or any installation in his or her Unit, the Unit Owner shall first notify the Association in writing, specifying the proposed work, through the managing agent, if any, or through the Chair of the Board, if no managing agent is employed. The Association shall either approve or disapprove of said proposed work (and if disapproving give specific reasons for the same) within thirty (30) days, and failure to do so within said period shall be deemed an approval of the proposed work by the Association. The Board may require the Unit Owner, at his or her expense, to submit an opinion of a licensed 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.

(i) **Permitted Unit Alterations.** Subject to the limitation in Section 9.2 (i) above, however, a Unit Owner may:

(i) Make any improvements or alterations to his or her Unit not restricted by paragraph 9.2 (i) (i) above; and

(ii) Subject to the restrictions set forth in Section 17 of the Declaration and ORS 100.130, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, a Unit Owner may submit a written request to the Board 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 creation of apertures shall be approved or disapproved according to the procedures provided in paragraph 9.2 (i) (ii) above.

CERTIFICATION

Dinyar Mehta, Chair and Mark Engberg, Secretary of the Association certify that this First Amendment to the Bylaws of the Sutton Place Condominiums has been adopted by 92 % of the Unit Owners of the Association on May 2, 2003 2003.

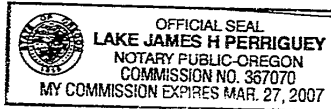
SUTTON PLACE CONDOMINIUM ASSOCIATION

By: D. Mehta May 2, 2003  
Dinyar Mehta, Chair Date

By: Mark Engberg May 2, 2003  
Mark Engberg, Secretary Date

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

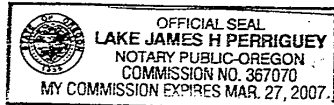
The foregoing instrument was acknowledged before me this May 2 day of May 2, 2003 by Mark Engberg, the secretary of the Sutton Place Condominium Association on behalf of the Association.



[Signature]  
Notary Public for the State of Oregon

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this May 2 day of May 2, 2003 by Dinyar Mehta, the chairman of the Sutton Place Condominium Association on behalf of the Association.

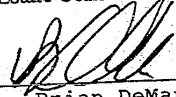


[Signature]  
Notary Public for Oregon

CONSENT OF STATE OF OREGON

The First Amendment to the Declaration of Sutton Place Condominium Association is approved pursuant to ORS 100.110, this 9 day of June, 2003, and in accordance with ORS 100.110(7), this approval shall automatically expire if this First Amendment to Declaration is not recorded within two (2) years of this date.

SCOTT W. TAYLOR  
Real Estate Commissioner

By:   
Brian DeMarco

BYLAWS Section 9.2 Amendment Page 8 of 8

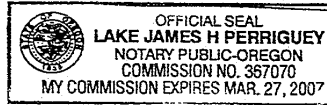
6-12-03



The foregoing instrument was acknowledged before me this 2 day of May, 2003 by Mark Engberg, the secretary of the Sutton Place Condominium Association on behalf of the Association.

*Lake James H. Perriguet*  
Notary Public for the State of Oregon

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )



The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of May, 2003 by Dinyar Mehta, the chairman of the Sutton Place Condominium Association on behalf of the Association.

CONSENT OF STATE OF OREGON

The First Amendment to the Declaration of Sutton Place Condominium Association is approved pursuant to ORS 100.110, this 9 day of June, 2003, and in accordance with ORS 100.110(7), this approval shall automatically expire if this First Amendment to Declaration is not recorded within two (2) years of this date.

SCOTT W. TAYLOR  
Real Estate Commissioner

By: *Brian DeMarco*  
Brian DeMarco

CONSENT OF COUNTY ASSESSOR

The First Amendment to the Declaration of Sutton Place Condominium Association is approved pursuant to ORS 100.110, this 2<sup>nd</sup> day of June, 2003.

Multnomah County Assessor

By: *Buffon*

6-12-03

After Recording, Return To:  
Walter W. McMonies, Jr.  
FOSTER PEPPER & SHEFELMAN LLP  
101 S.W. Main Street, 15<sup>th</sup> Floor  
Portland, OR 97201

Recorded in the County of Multnomah, Oregon  
C. Swick, Deputy Clerk



193.00

99051318 2:03pm 03/12/99

013 20023845 02 12  
C06 38 0.00 190.00 0.00 3.00 0.00

BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF  
SUTTON PLACE CONDOMINIUMS

ARTICLE I

PLAN OF UNIT OWNERSHIP

Section 1.1. Name and Location. These are the Bylaws of the Association of Unit Owners of Sutton Place Condominiums (the "Association"). Sutton Place Condominiums (the "Condominium") is located in the City of Portland, County of Multnomah, State of Oregon and has been submitted to the provisions of Oregon Revised Statutes, Sections 100.005 et seq., the Oregon Condominium Act (the "Act"), by a declaration recorded simultaneously with these Bylaws (the "Declaration"). The location of the Condominium is more specifically described in the Declaration.

Section 1.2. Principal Office. The principal office of the Association shall be located at c/o Kinsel, Ameri & Company, 522 N.W. 23<sup>rd</sup> Avenue, Suite 200, Portland, Oregon 97210, or such other address as may be designated by the Board from time to time.

Section 1.3. Purposes. The Association is formed under the provisions of the 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.

Section 1.4. Bylaws Applicability. The Association, all Unit Owners, and all tenants, employees or any other persons using the facilities of the Condominium in any manner shall be subject to these Bylaws and to all rules and regulations which may be promulgated hereunder. The acquisition, occupancy or rental of any of the Units of the Condominium or the mere act of occupancy of any such Units shall constitute acceptance and ratification of these Bylaws and agreement to comply with all the provisions hereof.

Section 1.5. Composition of Association. The Association shall be composed of all Unit Owners of the Condominium, including Flowers Development, L.L.C. an Oregon limited liability company (the "Declarant") and the Association, itself, to the extent any of these own any Unit or Units of the Condominium.

Section 1.6. Definitions. Except as otherwise provided below, the terms herein shall have the meaning set forth in the Act, as supplemented by the Declaration, and said statute and definitions are incorporated herein by this reference.

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Section 1.7. Incorporation. Upon approval by a majority vote of the Unit Owners, the Association shall be incorporated under the Oregon non-profit corporation law. Upon such event, the Articles of Incorporation shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association.

## ARTICLE II

### ASSOCIATION MEMBERSHIP, VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

Section 2.1. Membership in the Association. Upon recordation of a conveyance or contract to convey a Unit, the grantee or purchaser named in such conveyance or contract shall automatically be a member of the Association and shall remain a member of the Association until such person's ownership ceases for any reason. [Act, sec. 100.405 (2)] Unit Ownership shall be determined, for the purposes of these Bylaws and the administration of the Condominium, based on the records maintained by the Association. The record of ownership shall be established by the Unit Owner's filing with the Association a copy of the deed to or land sale contract for his or her Unit, to which shall be affixed the certificate of the recording officer of the County of Multnomah, Oregon, showing the date and place of recording of such deed or contract. No person shall be recognized as a Unit Owner unless a copy of the deed or contract has been filed with the Association as provided above showing him or her to be the current owner or contract purchaser of a Unit. Notwithstanding the foregoing, the Declarant shall be the owner of all previously unsold Units, although no deed or land sale contract, with respect to such Units, has been filed with the Association.

Section 2.2. Voting. The total voting power of all Unit Owners shall equal the number of Units in the Condominium, and each Unit shall have one vote. A person (including Declarant) who owns more than one Unit shall have the votes appertaining to each Unit owned. The Board shall be entitled to vote as to any Units owned by the Association; provided, however, that the Board shall not be entitled to vote such Units in any election of Directors. The vote for a Unit must be cast as a single vote. Fractional votes shall not be allowed.

Section 2.3. Binding Vote; Percent of Vote. The term "binding vote" or variation thereon shall mean more than fifty percent (50%) of the votes of the Unit Owners, present in person or by proxy, at a meeting at which a quorum is constituted. Such binding vote shall bind all Unit Owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these Bylaws. The term "percent of all votes" or variation thereon shall mean a percent of all the voting rights allocated to the Units by the Declaration.

Section 2.4. Majority Vote. The term "majority vote" or "majority of Unit Owners" shall mean more than fifty percent (50%) of the voting rights allocated to the Unit Owners in accordance with the Declaration and Section 2.2. above.

Section 2.5. Quorum. Except as otherwise provided in these Bylaws, the presence in person, by proxy or by ballot, of a majority of Unit Owners shall constitute a quorum. A subsequent joinder of a Unit Owner in the action taken at a meeting by signing and thereby concurring in the minutes thereof 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. If any meeting of Owners cannot be organized because of a lack of a quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, as provided in Section 4.7 of these Bylaws.

Section 2.6. Proxies. Votes may be cast in person, by proxy or by proxy ballot at a ballot meeting, as described in Section 2.7 below. A proxy given by a Unit Owner to any person who represents such Owner at meetings of the Association shall be in writing and signed by such Owner. Proxies must be filed with the Secretary before or during the appointed meeting. The proxies may require the holder to cast a vote for or against any special proposal set out in the notice calling the meeting. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon the sale of the Unit by its Owner; provided, however, that unless withdrawn, a proxy given to another person to vote at a specific meeting shall also be valid at an adjourned meeting called under the provisions of Section 4.7 of these Bylaws. A Unit Owner may pledge or assign his voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Unit Owner is entitled hereunder 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. Any first Mortgagee may designate a representative to attend all or any meeting of the Association.

Section 2.7. Ballot Meetings. In the sole discretion of the Board, any matter which might come before the Association at a meeting, including an election of directors, may be determined by proxy ballot, rather than at a formal gathering; provided, however, that the turnover meeting, transitional committee meeting and special meetings called by petition of the Unit Owners shall not be conducted as Ballot Meetings. Ballots shall be sent to all Unit Owners in the same manner as notices of meetings, with a specified deadline for return of ballots. Ballots for such meetings must be properly executed and returned in sufficient quantity to constitute a quorum, and determination of the matter presented shall be based upon the required percentage of ballots returned, unless approval of a specified percentage of all voting rights is required by law, the Declaration or these Bylaws. The vote of a ballot meeting shall be determined by the Board within seventy-two (72 ) hours of the deadline for return of ballots. Within ten (10) days after the ballots have been counted, each Unit Owner shall be notified by mail or other delivery of written notice of the results of the ballot meeting or that a quorum of ballots was not returned.

Section 2.8. Authority to Vote. All Unit Owners shall be entitled to vote, including those who have leased their Unit to a third party. An Owner's right to vote may not be revoked. A purchaser under a land sale contract entitled to immediate possession of the Unit vis a vis his or her seller shall be deemed the Owner thereof, unless otherwise provided in such contract.

Section 2.9. Fiduciaries and Joint Owners. An executor, administrator, guardian or trustee may vote, in person, by proxy or ballot, at any meeting of the Association with respect to any Unit owned or held by him or her in such capacity, whether or not the Unit shall have been transferred into his name; provided, that he shall satisfy the secretary that he is the executor, administrator, guardian or trustee, holding the Unit in such capacity. Whenever any Unit is owned by two or more persons jointly according to the records of the Association, the vote 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 such protest, no one co-Owner shall be entitled to vote without the approval of all co-Owners. 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.

### ARTICLE III

#### DECLARANT CONTROL; TRANSITION; TURNOVER; SPECIAL DECLARANT RIGHTS

Section 3.1. Declarant Control of Association; Interim Board and Officers. The period of Declarant control is as provided in Section 3.4 below. During such period of Declarant control, the Declarant may appoint and remove officers and members of Board and exercise powers and responsibilities otherwise assigned by the Declaration, these Bylaws or the Act to the Association, officers and Board, including but not limited to the adoption of rules and regulations, contracting for the purchase of goods and services, buying insurance, and collecting and expending all Assessments and other Association funds, together with the specific powers enumerated in this Article.

Section 3.2. Management and Other Contracts. Declarant shall have the power to contract with an experienced professional managing agent and delegate to the managing agent all of the powers and duties of the Board that the Board is authorized to delegate under Section 5.4. All such management contracts made by Declarant shall be subject to the same requirements as are set forth in Section 5.4 for management contracts made by the Board. Any management, service or employment contract made by Declarant, its managing agent, or the interim board shall be for a duration of less than three (3) years. With regard to a management contract, the contract shall give the Association the right to terminate without cause, without payment of any penalty and on advance notice of no more than 90 days, at any time after the turnover meeting, as defined in the Bylaws Section 3.4 (b) below. [Act, 100.485 (1); FNMA, sec. 606.01]

Section 3.3. Control of Interim Board. Declarant may at such times as it deems appropriate select and from time to time replace the Interim Board which shall consist of three directors, who need not be Unit Owners, who shall have all the powers, duties, and functions of the Board. Declarant may veto or approve a proposed action of the Board or the Association; provided that Declarant's failure to veto or approve such proposed action in writing within thirty (30) days after receipt of written notice of the proposed action shall be deemed approval by the Declarant.

#### Section 3.4. Termination of Declarant Control.

(a) Transitional Committee. Unless the Turnover Meeting has previously been held, Declarant may, but, because the Condominium has fewer than 20 units, shall not be required to, call a meeting of the Unit Owners for the purpose of establishing a Transitional Committee within sixty (60) days of conveyance to persons other than the Declarant of fifty (50%) percent of the total number of Units. [Act, 100.205(1)(a)]. Notice of such meeting shall be given to each Unit Owner at least seven (7) but not more than fifty (50) days prior to the meeting and

shall state the purpose and the time and place where it is to be held. The Transitional Committee shall be advisory only and shall consist of two or more members selected by Unit Owners other than the Declarant and may include not more than one representative of the Declarant. The members shall serve until the Turnover Meeting. The function of the Transitional Committee shall be that of enabling ease of transition from Declarant control to control by the Unit Owners.

The committee shall have access to the information, documents and records which the Declarant is required to turn over to the Association at the Turnover Meeting. [Act, sec. 100.205]

(b) Turnover Meeting. The Turnover Meeting, which shall constitute the initial organization meeting of the Association for the purpose of transferring control of the Association to all Unit Owners, shall be called by the Declarant within seventy (70) days of the earlier of: (i) the date of conveyance to persons other than the Declarant of seventy five percent (75%) of the Units, or (ii) three (3) years from the date the first Unit is conveyed. [Act, sec. 100.200(2)(a) and 210; FNMA, sec. 607] The Turnover Meeting shall be called by the Declarant by notice to all Unit Owners of the time, place and purpose of the meeting, not less than seven (7) nor more than fifty (50) days before the meeting. At the Turnover Meeting, Declarant shall relinquish control of the Association and the Unit Owners shall assume control; the Unit Owners shall elect a Board in accordance with the provisions of Article V of these Bylaws; and the Declarant shall deliver to the Association the items required by the Act. In order to facilitate an orderly transition, during the three (3) months following the Turnover Meeting, the Declarant or an informed representative of Declarant shall be available to meet with the Board on at least three (3) mutually acceptable dates to review the documents delivered to the Association as required by the Act and referred to above. [Act, 100.415 (3); Act, sec. 100.210].

(c) Failure to Call Meetings. If the Declarant fails timely to call either the Transitional Committee meeting or the Turnover Meeting within the time required, the meeting may be called by any Unit Owner or first Mortgagee.

Section 3.5. Effect on Pre-Existing Contracts. All contracts or leases (including any management contract) which are entered into prior to the Turnover Meeting shall be terminable without penalty by the Association or the Board upon not less than thirty (30) days' written notice to the other party given not later than sixty (60) days after the Turnover Meeting; provided, however, any such contracting or leasing party may request the Association to affirm the continuation of any such agreement for the balance of its stated term. Affirmation by the Association after transfer of control shall extinguish all termination rights of the Association under this Section.

#### ARTICLE IV

#### ADMINISTRATION

Section 4.1. Association Responsibilities. The Unit Owners shall constitute the members of the Association, which entity shall have the responsibility of administering the Condominium, approving the annual budget, establishing and collecting monthly assessments, arranging for the operation, management and maintenance of the Condominium, including negotiating and contracting with and supervising any person, persons or business entity with respect to such matters, instituting, defending or intervening in litigation or proceedings in its own name or on

behalf of two or more Unit Owners with respect to any cause of action relating to the Condominium or more than one Unit and taking such other actions and exercising such other powers as are authorized by the Act, as the same may be amended from time to time. [Act, sec. 100.405]

Section 4.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Condominium or such other suitable place convenient to the Unit Owners as may be designated by the Board.

Section 4.3. Informational Meetings. The initial meeting of the Association shall be the Turnover Meeting as provided in Article III above. However, prior to such meeting, the Declarant may call meetings of the Unit Owners, formally or informally, for such purposes as Declarant deems necessary or appropriate.

Section 4.4. Annual Meetings. The first annual meeting of the Association shall be held in the calendar year following the calendar year in which the Turnover Meeting is held and shall be set by action of the Board. The date of this meeting, at the discretion of the Board, may be changed from time to time, but must be held annually. At such meetings, new members of the Board shall be elected by the Owners in accordance with the requirements of Section 5.6 of these Bylaws, to replace those directors whose terms have expired. The Unit Owners may also transact such other business of the Association as may properly come before them.

Section 4.5. Special Meetings. It shall be the duty of the Chair to call a special meeting of the Unit Owners as directed by resolution of the Board or upon a petition signed by at least thirty percent (30%) of the Unit Owners having been presented to the secretary. All meetings called because of a petition of Unit Owners shall be held at a formal gathering and not by ballot, and shall be held within sixty (60) days after receipt of the petition. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of all the Owners of the Units or as otherwise set out in these Bylaws. [Act, sec. 100.415 (4)]

Section 4.6. Notice of Meetings. It shall be the duty of the secretary to mail a notice of each annual, special or meeting by ballot, stating the purpose thereof and the time and place where it is to be held, to each Owner of record at least seven (7) but not more than fifty (50) days prior to such meeting or the date when ballots for a ballot meeting are required to be returned. The mailing shall be to the Owner's address last given the secretary in writing by the Unit Owner. If Unit Ownership is split or the Unit has been sold on a contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given the secretary in writing, then mailing to the condominium Unit shall be sufficient. The mailing or actual delivery of a notice in the manner provided in this section shall be considered notice served. Notice of a meeting may be waived by any Unit Owner before or after the meeting.

Section 4.7. Adjourned Meetings. If any gathering of Unit Owners is not a legal meeting because a quorum has not attended, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called. No notice of an adjourned meeting need be

given other than by announcement at the meeting at which such adjournment takes place. The Board may postpone the date for counting the ballots of a ballot meeting, in one or more postponements, for up to ninety (90) days after the originally scheduled ballot return date if a quorum of ballots has not been returned and/or for matters on which a certain percentage approval is required and that vote has not been received nor have sufficient votes in opposition been received to negate such approval.

Section 4.8. Order of Business. The order of business at all meetings of the Unit Owners shall be as follows, unless the Board sets a different agenda:

- (a) Roll call,
- (b) Proof of notice of meeting or waiver of notice,
- (c) Reading of minutes of the 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.

## ARTICLE V

### BOARD OF DIRECTORS QUALIFICATION, ELECTION, MEETINGS

Section 5.1. Number and Qualification. The affairs of the Association shall be governed by a Board composed of three (3) persons, each of whom must be a Unit Owner or the co-Owner of a Unit. [Act, sec. 100.415 (5)]. An officer or employee of a corporation, a member or manager of a limited liability company, a partner of a partnership, the trustee of a trust, the personal representative of an estate, or an employee of the trust or estate may serve on the Board, if the corporation, company, partnership, trust or estate owns a Unit. Co-Owners of the same Unit may not both serve as directors. The qualifications for directors set forth herein do not apply to interim directors appointed by Declarant.

Section 5.2. Powers and Duties. The Board shall have the powers and duties necessary to carry out the responsibilities of the Association [Act, sec. 100.415 (5)] and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Unit Owners, specifically and without limitation, the Board shall have authority to carry out and be responsible for the following matters:

- (a) Maintenance, upkeep, repair, care and supervision of the general and limited common elements, except to the extent this obligation is imposed on the Unit Owners by these Bylaws [Act, sec. 100.415 (8)] and assigning, supervising assignments or approving any assignment of the use of any common element, general or limited, as may be required by the Declaration;

(b) Determination of the amounts required for operation, maintenance and other affairs of the Association, including establishing and maintaining replacement reserve accounts and other reserves which are required to be maintained by the Act or these Bylaws and such other reserve accounts as are permitted by these Bylaws;

(c) Designation and collection of monthly assessments from the Unit Owners, both pro rata and individual assessments [Act, sec. 100.415 (10)];

(d) Establishing a budget and payment of all common expenses of the Association and institution and maintenance of a voucher system for such payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of Association funds [Act, sec. 100.415 (8)];

(e) Obtaining and maintaining insurance policies and bonds and payment of premiums therefor out of the common expense funds in respect to both the common elements and individual Units as more specifically provided in Article X of these Bylaws [Act, sec. 100.415 (11)];

(f) Employment and dismissal of the personnel necessary for the maintenance, upkeep, repair and operation of the common elements, including but not limited to managing agents, employees, agents and independent contractors. [Act, sec. 100.415 (9)];

(g) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association, and causing the preparation and distribution of annual financial statements and any required tax returns or forms [Act, sec. 100.415 (12)];

(h) Adoption and amendment of administrative rules and regulations governing the details of operation and use of the common elements which shall be consistent with any restrictions set out in the Bylaws or Declaration; provided, however, that any such rules or regulations shall always be subject to rescission or amendment by the Association upon the vote of Unit Owners holding seventy-five percent (75%) of the voting rights allocated for Units [Act, sec. 100.415 (14)];

(i) Causing the Association to comply with ORS 100.480 relating to maintenance of documents delivered to the Association by the Declarant and the maintenance and distribution of financial records, also to maintain copies suitable for duplication of the following: Declaration, Bylaws, Association rules and regulations and any amendments or supplements thereto, the most recent annual financial statement and the current operating budget of the Association;

(j) Instituting, defending, or intervening in litigation or administrative proceedings in the Association's name or on behalf of two or more Unit Owners on matters affecting the Condominium [Act, sec. 100.405(4)(d)];

(k) Making contracts and incurring liabilities [Act, sec. 100.405(4)(e)];

(l) In addition to the authority given in (h) above, regulating the use, maintenance, repair, replacement and modification of common elements [Act, sec 100.405(4)(f)];

(m) Causing additions and improvements to, or alterations of, the common elements; provided however, that this limitation shall not be applicable to repairs or maintenance be made as a part of the common elements [Act, sec. 100.405(4)(g)]; provided, further, that if the estimated cost of any separate addition or improvement to the Condominium exceeds \$50,000 in 1999 Dollars, a majority vote of Unit Owners in favor of the project shall be required and if such estimated cost exceeds \$150,000 in 1999 Dollars, the approval of the Unit Owners holding sixty (60%) percent of the votes in the Association shall be required;

(n) At the expense of the Association, purchasing Units of the Condominium at foreclosure or other judicial sale in the name of the Association, or its designee, on behalf of all the Unit Owners. In any foreclosure instituted by the Board, the Board shall enter a bid at the sale for the amount of the unpaid lien and costs and expenses incurred in such action. No other purchase of a Unit can be undertaken unless the Unit Owners authorize the purchase by majority vote;

(o) Acquiring by purchase, lease, devise, gift or voluntary grant tangible and intangible personal and real property or any interest therein and taking, holding, possessing and disposing of such property or any interest therein, in the name of the Association, for the benefit of the Unit Owners; provided, however, that if the estimated cost of any separate acquisition by the Association exceeds \$50,000 in 1999 Dollars, the approval of a majority of the Unit Owners shall be required; and if such estimated cost exceeds \$150,000 in 1999 Dollars, the approval of the Unit Owners holding sixty (60%) percent of the votes in the Association shall be required. (The beneficial interest in such property shall be owned by the Unit Owners in the same proportion as their respective interests in the common elements and shall thereafter be held, sold, leased, mortgaged or otherwise dealt with as the Board shall determine) [Act, sec. 100.405(4)(h)];

(p) Imposing, collecting and receiving any payments, fees or charges for the use, rental or operation of the common elements, other than the limited common elements, and for services provided to the Unit Owners [Act, sec. 100.405(4)(i)];

(q) Enforcing by legal means or otherwise the provisions of the Declaration, these Bylaws, and the rules and regulations of the Association, including imposing charges for late payments of assessments, attorney fees for collection of assessments, (after notice and opportunity to be heard) levying reasonable fines against Unit Owners and tenants for violations by them or their guests [Act, sec. 100.405(4)(j) and sec. 100.470.], terminating utility services paid for out of assessments of the Association and access to and use or recreational and service facilities available to Unit Owners and (after giving notice and an opportunity to be heard) terminating the rights of any Unit Owners to receive such benefits or services until the correction of any violation has occurred [Act, sec. 100.405(4)(k)];

(r) Imposing reasonable charges for the preparation and recordation or amendments to the Declaration and statements of unpaid assessments [Act, sec. 100.405(4)(l)];

(s) Acquiring and paying for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium. The goods and services shall include (by way of illustration and not limitation): utility services for the common elements; policies of insurance and fidelity bonds; legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the common elements; and all supplies, materials, fixtures, and equipment that are in the Board's judgment necessary or desirable for the operation of the Condominium and enjoyment of it by the Unit Owners;

(t) Expending such funds and taking such action as the Board may from time to time deem necessary to preserve the property, settle claims, or otherwise act in what it considers to be the best interests of the Condominium or the Association;

(u) Granting permits, licenses and easements, leases or concessions over, under or through the general common elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium and petitioning for or consent to vacation of streets and alleys, subject to the restrictions set forth in the Bylaws or Declaration;

(v) Selling, leasing, mortgaging, voting the votes appurtenant to, or otherwise dealing with Units of the Condominium acquired by the Association or its designee on behalf of all Unit Owners; and

(w) Opening bank accounts on behalf of the Association and designating the signatories required therefor.

Section 5.3. [Intentionally omitted. (Reserved for possible future amendment and to maintain standard section numbering.)]

Section 5.4. Management Agent. The Board may contract with or employ a professional managing agent, to be compensated in an amount established by the Board, to assist the Board in the management and operation of the Condominium and may delegate such of the Board's powers and duties to the management agent as the Board deems to be appropriate, except as limited herein [Act, sec 100.405(4)(c)]. If the managing agent does more than merely manage the affairs of the Association, that is manages real property belonging to (say) individual Unit Owners, the managing agent would be required under current Oregon law to be licensed by the Real Estate Agency. Only the Board, and not the managing agent, can approve an annual budget or a supplemental budget, and only the Board can impose a special assessment on a Unit or authorize foreclosure of an assessment lien. Except as provided in Section 3.2 above with regard to professional management contracts entered into prior to the Turnover Meeting by the Declarant, any contract with a managing agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, either (1) for cause, on thirty (30) days' written notice, or (2) without cause, on not less than ninety (90) days' written notice, or such lesser period provided for without penalty in the contract. [FNMA, sec. 301.01(J) and 606.01] The managing agent shall have the right to contract with any Unit Owner, individually or collectively with other Unit Owners, for the management or lease of a particular Unit or Units.



Section 5.5. Interim Directors. Upon the recording of the Declaration, the Declarant shall appoint an Interim Board of three (3) directors, who shall serve until replaced by Declarant or their successors have been elected by the Unit Owners at the Turnover Meeting as provided in Section 3.4 (b) above.

Section 5.6. Election and Term of Office. At the Turnover Meeting, the interim directors will resign and three successors shall be elected as provided herein. The term of office of one (1) director will be fixed for a term of three (3) years, of another for a term of two (2) years, and of the last for a term of one (1) year. Should more directors be added, the same sequential election terms shall apply as nearly as is practicable. At the expiration of the initial term of office of each respective director, a successor shall be elected to a term of three (3) years. The directors shall hold office until their successors have been elected and hold their first meeting. At the Turnover Meeting or otherwise, in either case upon agreement by a majority vote of the Unit Owners, the Board may be elected by a single ballot with each Unit Owner permitted to vote for three (3) nominees, with the nominee receiving the highest number of votes serving for the three (3) year term, the nominee receiving the second highest number of votes serving for the two (2) year term, and the nominee receiving the fewest number of votes serving for the one (1) year term. The Association may increase or decrease the number of Directors and length of terms for which each is elected upon amendment of this Section 5.6. Should more directors be added, the same sequential election terms shall apply as nearly as is practicable.

Section 5.7. Vacancies. Vacancies on the Board caused by any reason, other than the removal of a director by a vote of the Association, shall be filled for the balance of the term of each directorship by the majority vote of the remaining directors, event though they may constitute less than a quorum, or by a sole remaining director. Vacancies caused by the removal of a director by the vote of the Association shall be filled by majority vote of the Unit Owners at a specially called meeting. Each person so elected shall serve as a director until a successor is elected upon expiration of the term for which such person was elected. Vacancies in the Interim Board shall be filled by Declarant.

Section 5.8. Removal of Directors. At any legal annual or special meeting, other than a meeting by ballot, any one or more of the directors may be removed with or without cause, by a majority vote of the Unit Owners, and a successor may be then and there elected to fill the vacancy thus created. Any director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting. Any director who fails to attend three (3) successive meetings of the Board which have been properly called, or who has failed to attend more than one-third (1/3) of the Board meetings during a twelve (12) month period which have been properly called, may be removed by a majority of the remaining directors. [Act, sec. 100.415(5)].

Section 5.9. Open Meeting. All meetings of the Board shall be open to Unit Owners. [Act, sec 100.420(1)] However, no Unit Owner shall have a right to participate in a Board meetings unless such member is also a member of the Board. The Chair shall have authority to exclude any Unit Owner who disrupts the proceedings at a meeting of the Board.

Section 5.10. Organizational Meeting. The first meeting of a newly-elected Board shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly-elected directors in order to legally hold such meeting, provided a majority of the newly-elected directors are present.

Section 5.11. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. At least ten (10) days notice of regular meetings of the Board shall be given by the chair to each director, either personally or by mail, telephone, telegraph or other similarly reliable method, which notice shall state the time, place (as provided above) and purpose of the meeting. [Act, sec. 100.415(6)]

Section 5.12. Special Meetings. Special meetings of the Board may be called by the chair or secretary or on the written request of at least two (2) directors. Special meetings of the Board may be called on three (3) days' notice to each director, given personally or by mail, telephone, e-mail or facsimile, which notice shall state the time, place (as provided above) and purpose of the meeting. [Act, sec. 100.415(6)]

Section 5.13. Waiver of Notice to Directors. Before, at or after any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all 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.

Section 5.14. Board of Directors' Quorum. At all meetings of the Board, a majority of the existing directors shall constitute a quorum for the transaction of business, and the acts authorized by the majority of the directors shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 5.15. Notice to Association Members of Board of Directors Meetings. For other than emergency meetings, notice of Board meetings shall be posted at a place or places on the Condominium property at least three (3) days prior to the meeting or notice shall otherwise be provided to each Unit Owner reasonably calculated to inform Unit Owners of such meetings. [Act, sec. 100.420(3)(a)] The posting of such notices shall be made at a reasonable location which has been generally publicized to the Unit Owners.

Section 5.16. Telephonic Meetings; Emergency Meetings. In emergency situations, meetings of the Board may be held telephonically by means of a "conference call" in which each director participating may speak with any of the other participating directors. The directors shall keep telephone numbers on file with the chair to be used for telephonic meetings. No notice to either directors or Association members shall be required for a telephonic meeting of the Board to be held for any emergency action; provided, however, no such telephonic meeting shall occur unless at least two thirds of the Board participate and then only after a reasonable attempt has

been made to contact each director at the telephone number(s) maintained on file with the Board for such purpose. [Act, sec. 100.420(3)].

Section 5.17. Compensation of Directors. No director shall be compensated in any manner, except for his or her reasonable out-of-pocket expenses incurred in attending meetings or otherwise performing his or her tasks as assigned by the Board, unless such compensation is approved by majority vote of the Unit Owners [Act, sec. 100.415(5)].

## ARTICLE VI

### OFFICERS

Section 6.1. Designation. The principal officers of the Association shall be a Chair, who shall be a member of the Board, a Secretary and a Treasurer, all of whom shall be elected by the Board. The directors may appoint any other officers as in their judgment may be necessary. Any person may hold more than one office. The Secretary and Treasurer need not be Unit Owners or Board members.

Section 6.2. Election of Officers. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter, and shall hold office at the pleasure of the Board. [Act, sec. 100.415(7)] If any office shall become vacant, the Board shall elect a successor to fill the unexpired term at any regular meeting of the Board, or at any special meeting of the Board called for that purpose.

Section 6.3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his or her successor elected at any regular or special meeting of the Board called for such purpose.

Section 6.4. Chair. The Chair shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. He or she shall have all of the general powers and duties which are usually vested in the office of president or 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 he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6.5. Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he or she shall have charge of such books and papers as the Board may direct; and he or she shall, in general, perform all the duties incident to the office of Secretary and as may be required by the directors.

Section 6.6. Treasurer. The Treasurer shall have responsibility for Association funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board. He or she shall perform all other duties incident to the office of Treasurer and as may be required by the directors.

Section 6.7. Directors as Officers. Any Director may be an officer of the Association.

Section 6.8. Compensation of Officers. No officer shall receive any compensation for the Association for acting as an officer, unless such compensation is authorized by majority vote of the Unit Owners.

## ARTICLE VII

### EXPENSES AND ASSESSMENTS

Section 7.1. Assessments, In General. All Owners are obligated to pay assessments imposed by the Association to meet all the Condominium's common expenses, which shall include but not be limited to the maintenance, upkeep, and repair of the common elements and premiums for insurance required or permitted under Article X of these Bylaws, and for such other reasons and purposes as provided in the Bylaws. As provided in Section 8.1 of the Declaration, each Unit and Unit Owner will be liable for the common expenses equal to the proportion of the undivided interest in the Common Elements allocated to such Unit. [Act, sec. 100.530; FNMA, sec. 608.02] The term "assessment," as used in the Declaration and Bylaws, means any charge imposed or levied by the Association on or against a Unit Owner or Unit pursuant to the Declaration, Bylaws, or the Act. The annual assessment shall be made due and payable monthly [FNMA, sec. 608.03]. Subject to the Declarant's rights under Section 7.4 below, the annual assessment shall commence at the time of the first conveyance by the Declarant to a Unit Owner. Prior to such time, the Declarant shall pay all operating expenses of the Condominium. All of the reserve accounts set up pursuant to these Bylaws shall be funded by allocation and payment from the monthly assessment of Unit Owners. The assessment of all Unit Owners who may be benefited by expenditure of reserve funds may be increased as necessary, so that the reserve fund in question can be maintained in an amount sufficient to meet the needs for which such fund was established.

Except as otherwise provided in the Declaration or these Bylaws, each Unit Owner will be liable for the common expenses in proportion to the allocation of undivided interest of such Owner's Unit in the common elements, as set forth in Section 7 of the Declaration. [Act, sec. 100.530(1); FNMA, sec. 608.02]

Section 7.2. Expense Assessments. The annual assessment of Units shall include the following expense items, which shall be common expenses:

- (a) Expenses of administration;
- (b) Expenses of maintenance, repair or replacement of the common elements;
- (c) Any deficit in common expenses for any prior period;
- (d) Utilities for the common elements and other utilities with a common meter or commonly billed, such as garbage, water and sewer;

(e) The cost of any professional management if required by Mortgagees or desired by the Board;

(f) Legal, accounting and other professional fees;

(g) Cost of insurance or bonds obtained in accordance with these Bylaws;

(h) Any other items properly chargeable as an expense of the Association or properly assessed against a Unit Owner or Owners as provided herein; and

(i) Any other items agreed upon as common expenses by all Unit Owners.

Section 7.3. Reserve Assessments. The annual assessment of Units shall also include the following reserve items, which shall also be common expenses:

(a) Reserve Account for Replacing Common Elements. The initial budget determined by Declarant shall establish in the name of the Association a reserve account for the purpose of effecting replacements of structural elements, mechanical equipment and other common elements all or part of which will normally require replacement in more than three (3) and less than thirty (30) years. [Act, sec 100.175(1); FNMA, sec. 608.06] Payment into this account shall be deemed a contribution to capital improvement as and when made. The reserve account shall be funded by assessments against the Units. The replacement reserve account shall be funded by assessment against the same Units that are assessed for the maintenance of the items for which the reserve account is established. Accordingly, the reserve account for replacement of those general and limited common elements, the maintenance of which is provided by assessment against all Owners shall be created by assessment against all Owners. The assessment will accrue from the time of the conveyance of the first Unit. [Act, sec. 100.175(2)] The amount assessed shall take into account the estimated remaining useful of each covered improvement and its current replacement cost. [Act, sec. 100.175(3)] The amount of the reserve assessment shall be adjusted at regular intervals to recognize changes in remaining useful lives and current replacement costs. [Act, sec. 100.175(4)] The reserve account is to be utilized only for replacement of common elements and is to be kept separate from assessments for maintenance; provided, however, that after the Turnover Meeting the Board may borrow funds from the reserve account to meet high seasonable demands on the regular operating funds or to meet other temporary expenses, which borrowings will later be repaid from special assessments or maintenance fees [Act. sec. 100.175(5)].

(b) Working Capital Fund. A working capital reserve fund in the amount of two months of (that is one sixth of the annual) estimated common expense assessments based on substantial or full occupancy of the Units shall be established by the Declarant and held by the Association to meet unforeseen expenditures or to purchase any additional equipment or services. [FNMA, sec. 606.02]. Each Unit's share of the working capital fund shall be collected either at the time the first sale of the Unit is closed or at the Turnover Meeting, whichever first occurs. Amounts paid into this fund shall not be considered advance payments of regular assessments. The fund shall be transferred to the Association for deposit to a segregated fund at the time of the Turnover Meeting. The Declarant shall be prohibited from using the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make

up any budget deficits while Declarant is in control of the Association. When a Unit is first sold, the Declarant may reimburse itself for funds it paid the Association for the unsold Unit's share of the working capital fund by using funds collected at closing of the Unit. [FNMA, sec. 606.02]

(c) General Operating Reserve. In the discretion of the Board, it may establish a general operating reserve account by allocation and payment thereto monthly of an amount determined by the Board.

(d) Reserve for Capital Improvements. In the case of any duly authorized capital improvement to the common elements, the Board may establish a separate assessment for the same and maintain the proceeds of such assessment in a separate reserve account.

(e) Other Special Reserves. Such other special reserve funds as may be set up by the Board by special assessments of the Unit Owners who benefit thereby as may be required by the Declaration or otherwise determined by the Association to be appropriate, including a reserve fund for any lease payments.

The reserve funds shall be invested in a prudent fashion. [Act, sec. 100.175(6)] Assessments paid into the reserve accounts are the property of the Association and are not refundable to sellers of Units; provided, however, nothing herein shall prevent sellers of Units from treating their outstanding allocable share of reserve accounts as a separate or reimbursable items in a Unit Sales Agreement. [Act, sec. 100.175(8)] No Unit Owner shall have any individual rights in any of these reserves, although it is understood that the value of their respective Units may increase in proportion to each Unit's right to receive repair, maintenance and replacement therefrom.

Section 7.4. Initial Assessment. The initial assessment to Unit Owners, other than the Declarant, shall be determined by the Declarant, but in no event will be made later than sixty (60) days after conveyance of the first Unit. [FNMA, sec. 608.02] The assessment shall thereafter be subject to review by the Board. Except as otherwise provided herein, the assessment for all Units shall be payable from the date the Declaration is recorded.

(a) Declarant's Obligations Regarding Unsold Units. From the date of recording of the Declaration, the Declarant shall (a) pay assessments due for operating expenses on all unsold Units of a dedicated stage of the Condominium; and (b) pay assessments due for reserves on all unsold Units of a dedicated stage of the Condominium, or, at Declarant's option, pay or require the Unit Owner to pay all accrued assessments against the Unit at the time of the initial sale of the Unit to the Unit Owner. [Act, sec. 100.530(3); FNMA, sec 608.02] The Declarant shall be entitled to defer payment of the accrued assessment for replacement reserves for a Unit until the time of conveyance of the Unit; provided, however, that the payment deferral by Declarant shall be limited to a period of three (3) years from the date the Declaration is recorded. [Act, sec. 100.175(2); sec. 100.530(3)] The Association shall not assess Units owned by the Declarant for additional capital improvements without the written consent of the Declarant as long as the Declarant owns more than two (2) Units or five (5%) percent of the Units submitted to the provisions of the Act, whichever is greater. [Act, sec. 100.530 (4)]

(b) Declarant's Right to Defer All Assessments. Except for the replacement reserve as required by ORS 100.175 and Section 7.3(a) above, and until the Turnover Meeting, Declarant may elect to defer commencement of all or part of common expense (as opposed to replacement reserve) assessments as to all Units in the Condominium. If Declarant so elects, Declarant shall pay as they accrue and be responsible for all or part of the common expenses attributable to the Condominium until assessments commence for all common expenses. [Act, sec. 100.530(5)] Declarant shall give not less than ten (10) days written notice to all affected Unit Owners prior to the commencement of common expense assessments if such a deferral occurs.

(c) Temporary Reduction of Assessments. If the Association expenses are temporarily less than projected by the Declarant because some or most of the Units are not yet sold or occupied, the Declarant shall have the authority to reduce temporarily the assessment of unsold Units or all Units, in his reasonable discretion, to reflect the lower expenses of the Condominium.

Section 7.5. Special Assessments. The Board shall have the power to levy special assessments against a Unit Owner or all Unit Owners in the following manner for the following purposes:

(a) To correct a deficit in the operating budget, by vote of a majority of the Board;

(b) To collect amounts due to the Association from a Unit Owner for breach of the Owner's obligations under the Declaration, these Bylaws, or the Association's rules and regulations, by vote of a majority of the Board;

(c) To make capital additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to Units in the Condominium; provided, however, that such a special assessment shall not apply to the Declarant as provided in Section 7.4 (a) above; and

(d) For such other purposes as the Board in its reasonable discretion may deem prudent, by vote of not less than a majority of the votes present at any legal meeting of the Unit Owners.

Section 7.6. Determination of Fiscal Year; Tax Returns; Budget.

(a) The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board.

(b) The Board, in its reasonable discretion, shall determine the manner in which all necessary income (and other) tax returns are filed and shall select the certified public accountant to prepare such tax returns.

(c) The initial budget and estimated assessment shall be determined by the Declarant. The budget and assessment shall thereafter be subject to review by the Board. The Board from time to time and at least annually, sixty (60) days before the beginning of each fiscal year, shall adopt a budget, estimating the expenses to be incurred in the coming year, and determine the annual assessment and any special assessments to be paid during such year. Account shall be

taken of any expected income and any surplus available from the prior year's operations. Such budget shall also include the working capital and replacement reserves as are required under Section 7.3 above, as well as such amounts as the Board considers necessary to provide operating reserve accounts, contingency and other reserve accounts. At least thirty (30) days before the beginning of each fiscal year, the Board shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the common expenses and any special assessment payable by each Unit Owner.

(d) The failure of the Board timely to prepare and/or to present a budget to the Unit Owners shall not be cause for any Owner to fail or refuse to pay assessments. Assessments shall continue, based upon the last adopted or accepted budget, until a new budget is created and announced. Retroactive increases and/or special assessments may be made by the Board to make up for any deficiency.

(e) In the event the Board fails to timely adopt a budget for a new fiscal year, Unit Owners holding a majority of the votes, at any general or specially called meeting, may adopt such a budget, announce it to the Unit Owners and immediately commence assessments based on the newly adopted budget. Additionally, at any general or specially called meeting, Unit Owners holding a majority of the votes of the entire Association may amend any budget adopted by the Board, subject to the requirements of the Act, the Declaration and these Bylaws. Thereafter, Assessments to Unit Owners shall be based on the budget as so amended until a new budget is adopted in accordance with this Section 7.6.

(f) If a budget is prepared, but any sums estimated or budgeted for any purpose prove inadequate for any reason (including a Unit Owner's failure to pay assessments for any reason), the Board may at any time levy a further assessment.

(g) The Board shall notify each Unit Owner in writing of the amount of the monthly assessments to be paid for his or her Unit. On or before the first day of each calendar month, each Unit Owner shall pay or cause to be paid to the treasurer of the Association the assessment against the Unit for that month. Any assessment not paid by the first day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Section 7.7 below.

**Section 7.7. Default.** Failure by a Unit Owner to pay any assessment of the Association shall be a default by such Owner of his or her obligations pursuant to these Bylaws and the Act and, in addition to the Association's other remedies provided in the Declaration and these Bylaws, the Association, at the option of the Board, shall be entitled to the following:

(a) **Acceleration.** To declare the balance of such Unit Owner's entire annual or special assessment, whether or not being paid in installments, to be immediately due and payable in full;

(b) **Default Interest.** To impose monthly compounding interest at the rate of Eighteen Percent (18%) per annum on the delinquent assessment from the due date until paid;



(c) Late Charge. To impose, in addition to the interest which may be charged on delinquent assessments, a late charge in respect to any assessment not paid within ten (10) days from the due date. Such late charge may not exceed the sum of ten percent (10%) of the delinquent assessment. By acquiring his or her Unit, the Unit Owner acknowledges that his or her failure timely to pay his or her assessment will impose a substantial administrative and financial burden on the Association, the exact amount of which would be difficult to determine and therefore agrees that the above late charge is a reasonable estimate of such burden;

(d) Lien; Rent Pending Foreclosure; Receivership. To impose a lien which may be enforced upon compliance with the provisions of ORS 100.450, as the same may be amended. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Unit Owner for the use of his or her Unit or shall be entitled to the appointment of a receiver pursuant to ORS 100.460. The Board, acting on behalf of the Unit Owners, shall be entitled to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same, subject to the restrictions of these Bylaws.

(e) Priority of Assessment Liens. Consistent with ORS 100.450 (1), the Association's lien for delinquent Assessments shall be prior to all other liens or encumbrances upon the Unit, except: (a) tax and assessment liens, and (b) a Mortgage which was recorded before the delinquent assessment was due; provided, however, that the Mortgage shall not be prior to the Assessment lien in the circumstances currently set forth at ORS 100.450 (7), essentially (i) if the Association has given the Mortgagee ninety (90) days prior written notice of the delinquency and (ii) the Mortgagee has failed to initiate judicial or non-judicial foreclosure proceedings, or accept a deed in lieu of foreclosure, in the circumstances set forth in current ORS 100.465 prior to the expiration of the 90 day period [FNMA, sec. 608.03].

(f) Transferee's Liability for Unpaid Share of Common Expenses. Further, a lien for common expense assessment shall not be affected by the sale or transfer of the Unit, unless a foreclosure of a first Mortgage is involved, in which event the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments. [FNMA, sec. 608.03] Such unpaid assessments shall be a common expense of all the Unit Owners including such purchaser, his successors and assigns. 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 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 a prospective purchaser, the Board shall make and deliver a statement of the unpaid assessments against the prospective grantor of the Unit, and the grantee in that case shall not be liable for, nor shall the Unit when conveyed to the grantee be subject to, a lien filed thereafter for any unpaid assessments against the grantor in excess of the amount therein set forth.

Section 7.8. Statement of Common Expenses and Assessments. The Board shall promptly provide any Unit Owner who makes a written request with a written statement of his or her unpaid assessments.

## ARTICLE VIII

### ASSESSMENT COLLECTION; ENFORCEMENT; ATTORNEYS FEES

Section 8.1. Compliance with Declaration, Bylaws and Rules. Each Unit Owner shall comply with the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto, as well as with such other covenants, conditions and restrictions contained in the deed to the Unit. Failure to comply therewith shall be a ground for an action maintainable by the Association or by an aggrieved Unit Owner. [FNMA, sec. 608.08]

Section 8.2. Authority to Enforce and Collect. The Board, on behalf of the Association, shall take prompt action against any violator to enforce the provisions of the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto, including prompt action to collect any unpaid assessments. In doing so, the Board may exercise one or more of the remedies, separately or concurrently, specified in this Article, as well as any other remedies which may be available at law or in equity.

Section 8.3. Abatement and Enjoining of Violations. In the event of the violation of the Declaration, Bylaws or any Association rules and regulations adopted pursuant thereto, the Board shall have the right to:

(a) Enter the Unit or limited common element in which or as to which such violation exists and summarily abate and remove, at the expense of the Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the said documents (except that judicial proceedings must be instituted before items of construction can be altered or demolished), and the Board and its agents shall not thereby be deemed guilty of any manner of trespass; and/or

(b) Enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

Section 8.4. Fines. In addition to the late charge for delinquent assessments provided at Bylaws Section 7.7(c) above, the Board may, if it deems appropriate, impose attorneys fees for collection of assessments and enforcement of violations and, after giving notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Association rules and regulations.

Section 8.5. Action to Obtain and Recover a Money Judgment. The Board, on behalf of the Association, may bring an action to obtain a money judgment against a Unit Owner for damages and/or for unpaid assessments. An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same referred to in Bylaws Section 7.7(d).

Section 8.6. Termination of Common Area Privileges; Utility Services. Failure by a Unit Owner, including the Owner's family, invitees, or tenants, to comply with the rules and regulations of these Bylaws or subsequently promulgated by the Board or the Association shall be cause for which the Board may deny or restrict such Owner's (including family's, invitees' and

tenants') right to use any common element facility with respect to which such Owner otherwise had a right of use. Further, the Board may adopt rules regarding the termination of utility services paid for out of the assessments of the Association and of access to and use of recreational or service facilities available to Unit Owners and, after giving notice and an opportunity to be heard, terminate the rights of any Owners to receive such benefits or services until correction of any violation covered by such rule has occurred.

Section 8.7. Enforcement by Aggrieved Owner. Any aggrieved Unit Owner shall have a right of action against Unit Owner(s) who fail to comply with the provisions of the Declaration, Bylaws, rules and regulations of the Board or the decisions made by the Association and also against the Association for failure to enforce such provisions. [Act, sec. 100.545; FNMA sec. 608.08]

Section 8.8. Attorney's Fees. If a suit or legal action is brought by the Association to foreclose its lien, collect delinquent assessments, or to enforce compliance with the terms and provisions of the Act, the Declaration, these Bylaws, all amendments or supplements thereto, or rules and regulations adopted by the Board or Association, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, court costs therein and in any appeal therefrom and in asserting rights as a creditor in a bankruptcy proceeding. All fines, attorneys' fees and costs chargeable against a Unit Owner shall be the personal obligation of the Unit Owner (or the tenant if the Unit is rented) and the Association shall have a lien against the Unit of such Owner (or tenant) for the amount of such fines, attorneys' fees and costs which may be collected and foreclosed by the Association in the same manner as assessments are collected and foreclosed under Bylaws Section 7.7.

## ARTICLE IX

### MAINTENANCE AND USE OF CONDOMINIUM PROPERTY

#### Section 9.1. Maintenance and Repair.

(a) Each Unit Owner shall, at the Unit Owner's sole expense, keep the interior of the Unit and its equipment, appliances, and appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition, and repair, and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of his or her Unit. Each Owner shall be responsible for the maintenance, repair, or replacement of any plumbing pipes and fixtures, water heaters, fans, heating equipment, electrical wiring and fixtures, or appliances which are in the Unit or portions thereof that serve that Unit only, and shall replace any glass in the windows and in the exterior doors of the Unit that becomes cracked or broken. Each Owner will be responsible for the cleanliness, orderliness and sanitary condition of any limited common element patios, decks, garages or storage spaces, and other limited common elements that are appurtenant to the Unit [Act, sec. 100.535; FNMA, sec. 604].

(b) Each Unit Owner must perform promptly all maintenance and repair work within his own Unit, which work if omitted would affect the common elements of the Condominium or a part thereof belonging to other Unit Owners, and shall be responsible for the damages and liabilities that his or her failure to do so may cause.

(c) A Unit Owner shall reimburse the Association for any expenditures incurred by the Association in repairing or replacing any common elements and/or common facility damaged through the Unit Owner's act or neglect, not otherwise covered by insurance policies carried by the Association for the Unit Owner's and Association's benefit.

(d) All other maintenance, repair and replacement to the general and limited common elements shall be made by the Association as a common expense.

**Section 9.2. Use and Occupancy Restrictions; Internal Changes; Alterations.**

(a) Restrictions on Lease or Rental Of Units. In addition to the requirements of Declaration section 10.2, any lease or rental agreement with regard to the rental of a Unit must specifically provide that its terms shall be subject in all respects to the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association, and that any failure by the tenant strictly to comply with the terms of such documents, rules and regulations shall be a default under the lease or rental agreement and that the Association, with or without the consent of the Unit Owner landlord, shall be entitled to enforce such default directly against the tenant. Copies of all leases and rental agreements shall be delivered to the Association immediately after execution. The lease or rental agreement shall provide standard covenants, exculpations and indemnities in favor of the landlord, be in a standard form, such as that of the Multifamily Housing Council, Stevens Ness Law Publishing or another recognized author of residential landlord tenant forms in Oregon and shall expressly require the tenant to comply with all applicable requirements of the Declaration, Bylaws and Association rules and regulations. If any tenant or occupant of a Unit violates or permits the violation by his guests and invitees of any laws or provisions of the Declaration, the Bylaws or of the rules and regulations of the Association, and the Board determines that such violations have been flagrant or repeated, the Board may give notice to the tenant or occupant of the Unit and the Unit Owner thereof to forthwith cease such violations; and if the violation is thereafter repeated, the Board shall have the authority, on behalf and at the expense of the Unit Owner, to evict the tenant or occupant if the Unit Owner fails promptly to do so after notice from the Board. The Board shall have no liability to an Unit Owner or tenant for any eviction made in good faith. The Unit Owner may be assessed individually for and the Association shall have a lien against the Owner's Unit for common expenses incurred through such tenant's fault or direction, for fines, charges and expenses incurred in enforcing the Declaration, Bylaws and Association rules and regulations with respect to such tenant, and for any costs incurred by it in connection with such eviction, including reasonable attorneys' fees, all of which may be collected and foreclosed by the Association in the same manner as assessments are collected and foreclosed.

(b) Rental and Transfer of Parking Stalls. The rental of a limited common element parking space, if any, separate from the rental of a Unit shall be allowed subject to applicable zoning restrictions for unit occupancy and the same standards as apply to the lease or rental of Units as set forth in (a) above; provided, however, that any parking space, garage or carport lease or rental shall be, consistent with Section 9.5 (j), restricted to another Unit Owner or tenant of a Unit Owner, that is shall not be allowed with a third party living outside the Condominium; shall be subject to termination by the Unit Owner upon thirty (30) days notice; and provided, further, that the rental or lease term shall automatically terminate without notice on the date the Unit

Owner disposes of his or her interest in the Unit to which the rented or leased space is appurtenant (whether such disposition is by deed, contract or otherwise).

(c) Restriction on Alteration to Unit.

(i) No Unit Owner shall make any repair, improvement, modification, alteration to or perform any work or allow a tenant or contractor to perform any work on his or her Unit or on any mechanical or structural installation located therein which: (A) would impair the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium, (B) would jeopardize the soundness or safety of the Condominium, (C) would reduce the value of the Condominium, (D) would impair any easement or hereditament or (E) would increase the common expenses of the Association, all unless the consent of all other Unit Owners affected is first obtained in writing. [Act, sec. 100.535 (2)].

(ii) Prior to undertaking any repairs or modifications to the structural or mechanical elements of or any installation in his or her Unit, the Unit Owner shall first notify the Association in writing, specifying the proposed work, through the managing agent, if any, or through the Chair of the Board, if no managing agent is employed. The Association shall either approve or disapprove of said proposed work (and if disapproving give specific reasons for the same) within thirty (30) days, and failure so to do within said period time shall be deemed an approval of the proposed work by the Association. The Board may require the Unit Owner, at his or her own expense, to submit an opinion of a licensed 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.

(d) Permitted Unit Alterations. Subject to the limitation in Section 9.2 (c) above, however, a Unit Owner may:

(i) Make any improvements or alternations to his or her Unit not restricted by paragraph 9.2 (c) (i) above; and

(ii) Subject to the restrictions set forth in Section 17 of the Declaration and ORS 100.130, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, a Unit Owner may submit a written request to the Board 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 creation of apertures shall be approved or disapproved according to the procedures provided in paragraph 9.2(c)(ii) above.

Section 9.3. Alteration of Common Element; Use of the Common Elements. Nothing shall be altered or constructed in or removed from any common element or facility except upon the prior written consent of the Board. No Unit Owner shall place or cause to be placed in the lobbies, entryways, patios, decks, ramps, walkways, vestibules, stairways and other common elements of the Condominium of a similar nature, any furniture, planter boxes, play structures, basketball hoops, bicycles, packages or objects of any kind, and in particular shall not hinder or encroach upon the lawful rights of other Unit Owners, without the prior written consent of the

Board. Such common elements shall be used for no purpose other than that for which they are intended. [Act, sec 100.540 (1)]

Section 9.4. Exterior Appearance of Building(s). In order to preserve a uniform exterior appearance of the buildings, the Board shall provide for the painting or staining of the buildings and prescribe the type and color of paint or stain. No Unit Owner may modify or decorate the exterior of any building, or any screens, windows, doors, awnings, or other portions of any Unit visible from outside the Unit, or cause anything to be hung, displayed, or placed on the exterior walls, doors, windows, walkways, ceilings or walkways or roof of the building(s) or any other common element, or otherwise change the appearance of any portion of the common elements, except with the prior written consent of the Board or in accordance with rules or regulations of the Board. The Board may, in its sole discretion, require that each Unit Owner shall provide window coverings at all windows which shall be lined with white materials, sufficiently opaque so as not to disclose the color of the interior portion of such window coverings.

Section 9.5. Rules of Conduct. The following rules of conduct shall apply to all Unit Owners, residents, lessees or tenants and other persons using the Condominium in any manner:

(a) Restriction on Exterior Installations. Without the prior written consent of the Board, no installation shall be made of: (i) any wiring for electrical, television or telephone installation, exterior antennae, machines or air conditioning Units or similar devices on the exterior of the Condominium building(s) or causing them to protrude through the walls or the roof of the Condominium, (ii) any window bars or guards, awnings, shades, clothes lines or similar devices, and (iii) any radio or television antennae or satellite dish or other appliances.

(b) Pets. An Owner may keep a pet in his or her Unit without the prior consent of the Board, so long as the pet is domesticated and not more than 30 pounds in weight. An Owner may keep a domesticated pet which is over 30 pounds in weight only with the prior written consent of the Board. Any Unit Owner who maintains any pet upon any portion of the Condominium shall be deemed to have indemnified and agreed to hold the Association, Board and other Unit Owners harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium. All pets shall be registered with the Board and shall otherwise be licensed and vaccinated as required by law. **THE OWNER SHALL FURTHER ABIDE BY ALL GOVERNMENTAL SANITARY AND LEASH LAWS AND REGULATIONS, OTHER LOCAL AND STATE LAWS RELATING TO PETS, AND ANY RULES OR REGULATIONS OF THE ASSOCIATION CREATED BY THE BOARD. THE BOARD SHALL HAVE THE RIGHT TO ORDER ANY PERSON WHOSE PET IS DEEMED A NUISANCE BY THE BOARD TO REMOVE SUCH PET FROM THE CONDOMINIUM PREMISES.**

(c) Nuisances; Garbage. No noxious or offensive activity, nor any nuisances will be allowed upon the Condominium property, nor any other use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Condominium property by its residents. Residents shall exercise extreme care to avoid creating disturbances, making noises or using musical instruments, radios, televisions and amplifiers in a manner that may disturb other residents. All parts of the Condominium property will be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate, nor any

fire hazard allowed to exist. All such garbage, recycling and trash shall be placed inside approved disposal containers in designated common areas. No Unit Owner will permit any use of his Unit or make any use of the common elements that will increase the cost of insurance upon the Condominium property.

(d) Rug Cleaning, Laundry Lines. No garments, rugs and similar items shall be hung from the windows, from exterior laundry lines or from any of the facades, decks or terraces of the Condominium, nor shall any Owner hang or shake dust rags, mops and similar items from the windows or porches or terraces, or clean such items by beating them on or in an exterior part or common area of the Condominium.

(e) Improper, Offensive or Unlawful Use. No improper, offensive or unlawful use will be made of the Condominium property nor any part of it; all valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction over the Condominium or its residents will be observed. The responsibility for meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium property will be carried out and paid for in the same manner as the responsibility for the maintenance and repair of the property concerned.

(f) Maintaining Unit Temperature. In order to protect the water distribution system in the Condominium in freezing weather, no Unit Owner shall permit the temperature in his or her Unit to be below minimum acceptable levels at any time, which minimum acceptable temperature levels may be specified from time to time by the Board.

(g) Effect on Insurance. Nothing shall be done or kept in any Unit or in any common elements, including a garage, if any, that will increase the rate of liability or casualty (fire and other property) insurance on the Condominium without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in any common area that will result in the cancellation of insurance on any part of the Property.

(h) Signs. No sign, advertisement or poster of any kind shall be displayed to the public view on or from any Unit, general common element or limited common element without the prior consent of the Board; provided, that the Board shall designate a reasonable area or areas for display of "For Sale" signs by Unit Owners. Notwithstanding the foregoing, Declarant may post such signs on the Property as it deems necessary or appropriate for the sale of Units in the Condominium as long as Declarant has a Unit for sale, provided that such signs comply with state law and local ordinances.

(i) No Age Limitations. Without the consent of all Unit Owners, neither the Association nor the Board shall impose any limitation on the minimum age of occupants of Units, in particular no restriction limiting occupancy of Units to senior citizens (e.g. over 55 years of age) or prohibiting occupancy of Units by either minors or small children; provided, however, that the Board and/or Association may impose reasonable limits on the number of individuals occupying a Unit and the conduct of residents while on the Condominium premises, including but not limited to the conduct of children.

(j) Use of Parking Spaces. Parking spaces (aka parking stalls) and any storage spaces shall be used only by Unit Owners or their Unit's tenants. Parking spaces may be used for the parking of operable and well-maintained passenger motor vehicles (including automobiles, sport utility vehicles and light pickup trucks) and may not be used for parking of damaged or inoperable passenger vehicles, for parking of any trucks (other than light pickup trucks), any trailers, or any recreational vehicles, or for any other purposes except to the extent expressly allowed by the Board or by its rules and regulations. The Board may direct that any vehicle or other thing improperly parked or kept in a parking stall be removed, and if it is not removed the Board may cause it to be removed at the risk and cost of the Owner thereof.

(k) Vehicular Traffic. Vehicular traffic in the parking areas and driveways on the Condominium property shall be limited to five (5) miles an hour as a safety precaution. This limit shall apply to bicycles, motor scooters, motorcycles, as well as automobiles and trucks.

(l) No Commercial Activities. 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, 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 maintaining his or her professional library, keeping his or her personal business records or professional records or accounts, handling his personal business or professional phone calls, sending and receiving facsimiles or computer e-mail, or occasionally conferring with business or professional associates, clients or customers, in his or her Unit.

(m) No Criminal Activity. No person shall carry on any criminal activity in the Condominium.

(n) Hardwood Floor Coverage. Since the hardwood floors in the Units may transfer noise to adjacent units, Unit Owners and their tenants shall be required to cover at least sixty percent (60%) of all their hardwood floors with area rugs or carpets of normal or greater thickness and sound-dampening capacity.

(o) Additional Rules. Rules and regulations, not inconsistent with these Bylaws, the Declaration and the Act, and concerning the use of the Condominium property, including both common elements and Units, may be made and amended from time to time by majority vote of the Unit Owners or the Board. Copies of such rules and regulations will be furnished by the Secretary promptly to all Unit Owners and residents of the Condominium, and shall be binding from the date of delivery.

## ARTICLE X

### INSURANCE

The Board shall obtain and maintain at all times insurance of the type and kind and in the amounts hereinafter provided, including insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other condominiums



similar in location, construction and design, which insurance shall be governed by the provisions in this Article [FNMA, secs. 608.07 and 701-704 and Act, sec. 100.435].

Section 10.1. Types of Insurance Policies. For the benefit of the Association and the Unit Owners, the Board shall obtain and maintain at all times, and shall pay for out of the Common Expense funds, the following insurance, provided, however, that the same shall be obtained and maintained only to the extent available at reasonable cost, unless required by FNMA or Fifty One (51%) percent of the Eligible Holders:

(a) Property/Hazard/Casualty Insurance.

(i) Required Coverages. The Association shall maintain a policy or policies of property (also known as hazard or casualty) insurance protecting against perils including, but not limited to, fire and all other hazards that are normally covered by a standard "extended coverage" endorsement, and all other perils customarily covered for similar types of condominium projects, including those covered by the standard "all risk" endorsement. If the policy does not include an "all risk" endorsement, then the policy should include the "broad form" covered causes of loss, including vandalism and malicious mischief. The Association shall maintain a "master" or "blanket" type of policy, which policy shall cover all general and limited common elements that are normally included in coverage, including but not limited to the Condominium's buildings, fixtures, building service equipment, and common personal property and supplies belonging to the Association, as well as fixtures, equipment and other personal property inside individuals Units if financed by the Unit's Mortgage. For the purposes of this provision, the term "building" shall include installations or additions, comprising a part of a building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual Units, initially installed or any replacement thereof in accordance with the original Condominium plans and specifications, or installed by or at the expense of any Unit Owner. [FNMA, sec. 701.02; Act, sec. 100.435 (1)(a)] The Association shall not be responsible for any loss or damage to personal property of any Unit Owner, whether stored on the common elements or in the Owner's Unit, nor shall the Association maintain any insurance coverage for such loss.

(ii) Amount of Insurance. Property insurance shall cover One Hundred Percent (100%) of the insurable replacement cost of the Condominium improvements, including the individual Units, but excluding foundations, and other items that are usually excluded from insurance coverage, such coverage to be accomplished by a Guaranteed Replacement Cost Endorsement, a Replacement Cost Endorsement (with an Agreed Amount Endorsement if the policy includes a co-insurance clause), or the equivalent. Unless a higher maximum amount is required by the Act, the maximum deductible amount shall be the lesser of \$5,000 or One Half Percent (0.5%) of the policy's face amount. Funds to cover these deductible amounts shall be included in the Operating Reserve account.

(iii) Special Endorsements. The Property Policy shall contain the following endorsements or their equivalent:

(A) Inflation Guard Endorsement;

(B) Building Ordinance or Law Endorsement, protecting against loss or damage, increase cost of repairs or reconstruction, or additional demolition or removal costs, as a result of the enforcement of any building, zoning or land-use laws;

(C) A Special Condominium Endorsement, or the equivalent, providing that: any Insurance Trust Agreement will be recognized, the right of subrogation against Unit Owners will be waived, the insurance will not be prejudiced by any acts or omissions of the individual Unit Owners which acts or omissions are not under the control of the Association, and the policy will be primary, even if the Unit Owner has other insurance that covers the same loss.

(iv) Named Insured. The Association should be the named insured. The "loss payable" clause should show the Association or an insurance trustee as a trustee for each Unit Owner and the holder of each Unit's Mortgage. The insurance policy should also contain the standard mortgage clause, that is a separate loss payable endorsement in favor of the Mortgagee or Mortgagees, of each Unit, and if there are FNMA Mortgages against Units, it must name FNMA or the loan servicing entities for FNMA loans as a mortgagee on the policy. [FNMA, sec. 701.05]

(b) Flood Insurance. If any part of the Condominium improvements are in a Special Flood Hazard Area on a Flood Insurance Rate Map, the Association must maintain a "master" or "blanket" policy of flood insurance, covering the common element buildings and any other common property. The coverage should be at least equal to the lesser of One Hundred (100%) of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program. The maximum deductible should be the lesser of \$5,000.00 or One Half Percent (0.5%) of the policy's face amount. Funds to cover this deductible should be included in the Association Operating Reserve account.

(c) Liability Insurance. A policy or policies of commercial general liability insurance insuring the Association, its Board, the Unit Owners individually, and the management agent, if any, against any liability to the public or the Unit Owners and their invitees or tenants, incident to the Ownership, supervision, control or use of the Condominium, including all common areas and elements, public ways and any other areas that are within the supervision of the Association. It shall provide coverage for bodily injury and property damage that results from the operation, maintenance, or use of the Condominium's common areas and elements. Limits of liability under such insurance shall be not less than \$1,000,000 per single occurrence for bodily injuries and property damage liability. Such limit and coverage shall be reviewed at least annually by the Board, which may increase the limit and/or coverage in its discretion. Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsements providing that the rights of named insurers under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured. There may be excluded from the policy or policies coverage of a Unit Owner, other than coverage as a member of the Association or Board, for liability arising out of acts or omissions of that Unit Owner and liability incident to the Ownership or use of the part of the Condominium as to which that Unit Owner has the exclusive use or occupancy. [Act, 100.435(1)(b); FNMA, sec. 703] The policy shall either

provide for severability of interest or contain an endorsement to preclude denial of claim because of negligence of Association or other Unit Owner.

(d) Fidelity Insurance. If the Condominium will consist of twenty (20) or more Units, a blanket policy or policies of fidelity insurance in favor of the Association, covering anyone who either handles (or is responsible for) funds that the Association holds or administers, whether or not the individual receives compensation for his or her services. Such policy or policies must name the Association as the insured; premiums must be paid at a common expense.

Any management agent which handles funds for the Association, shall be covered by its own fidelity insurance policy, providing the same coverage as the policy required of the Association hereunder. Any fidelity insurance policy should cover the maximum of funds which will be in the custody of the Association or management agent at any time or a lesser amount if the Association and any management agent adhere to the financial controls set forth below, but in any event the coverage must be at least equal to the sum of three (3) months of assessments on all Units in the Condominium. Acceptable financial controls which would allow the Association to have coverage limits less than the maximum of funds would take one or more of the following forms:

(i) The Association or management agent maintains separate bank accounts for the working account and the reserve account, each with appropriate access control, and the depository bank sends copies of the monthly bank statements directly to the Association;

(ii) The management agent, if retained, maintains separate records and bank accounts for each Association (or cooperative corporation) which uses its services and the management agent does not have the authority to draw checks on, or transfer funds from, the Association's reserve account; or

(iii) Two members of the Board must sign any checks written on the reserve account.

(e) Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(f) Errors and Omissions Insurance. In the discretion of the Board, it may secure and maintain directors and officers liability insurance for the directors and officers of the Association; the cost of said insurance shall be a common expense.

Section 10.2. Insurance Companies Authorized. All policies shall be written by a company licensed to do business in Oregon and holding a "Commissioner's rating" of "A+" and a size rating of "AAA," or better, by Best's Insurance Reports or, if the rating system of Best's changes or Best's no longer publishes its ratings, equivalent ratings by Best's or another recognized insurance rating service, or as may be otherwise acceptable to all Eligible Holders and the Board.

Section 10.3. Authority to Adjust Losses. All losses under policies hereinafter in force regarding the Condominium shall be settled exclusively with the Board or its authorized representative; provided, however, that where a Mortgagee has been designated as a loss payee

by a Unit Owner, such Mortgagee shall be entitled to settle losses as to the mortgaged Unit, provided that the loss which occurs is severable. Releases and proofs of loss shall be executed by at least two directors. Proceeds of the policies shall be paid to the Association as trustee for the Unit Owner, or, upon demand of a Mortgagee, to an insurance trustee acceptable to the Association and the Mortgagees of Units.

Section 10.4. Value of Owner Improvements. Each Unit Owner must inform the Board of the value of improvements made to his or her Unit of a value or cost in excess of One Thousand Dollars (\$1,000), so that the Board may make any desired adjustments in insurance coverage. Nothing in this paragraph shall permit a Unit Owner to make improvements without first obtaining the approval of the Board pursuant to Bylaws, Section 9.2 (c).

Section 10.5. Provisions in Insurance Policies. The Board shall make every reasonable effort to secure insurance policies that will provide for the following:

(a) A waiver of subrogation by the insurer as to any claims against the Board, the management agent, the Unit Owners and their respective servants, agents and guests;

(b) A provision that the master policy on the Condominium cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owners;

(c) A provision that the master policy on the Condominium cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board or the management agent without prior demand in writing that the Board or management agent cure the defect;

(d) A provision that any "no other insurance" clause in the master policy exclude individual Unit Owners' policies from consideration and not otherwise prevent such individual policies from providing coverage for damage to Units or common elements;

(e) A rider on the master policy in the nature of "Use and Occupancy" insurance which will provide relief from monthly assessments while a Unit is uninhabitable by the payment of the Condominium expenses thereof and any other fixed costs, including, but without being limited to, taxes, rent, insurance, and mortgage payments; and

(f) A rider requiring the insurer to notify in writing the Association and each Eligible Holder named in the mortgage clause (or each loan servicer which services a FNMA-owned or secured Mortgage against a Unit of the Condominium) at least ten (10) days before it cancels or substantially changes the coverage for any reason.

Section 10.6. Periodic Review of Insurance Policies. At least annually, the Board shall review all insurance carried by the Association, which review shall include an appraisal of all improvements made to the Condominium by and a consultation with a representative of the insurance carrier writing the policy or policies specified in Bylaws Section 10.1.

Section 10.7. Unit Owner's Reimbursement. A Unit Owner shall promptly reimburse the Association for any expenditures incurred in repairing or replacing any portions of the common

elements or Units that are damaged or lost through the Unit Owner's fault or at his direction where such damage or loss is not covered by insurance policies covered by the Association; if such damage or loss is covered by said policies, the Unit Owner will promptly pay all amounts that would otherwise be paid by the Association pursuant to the deductible clause of said policies. All such amounts to be reimbursed or paid by a Unit Owner shall be deemed an individual assessment on that Unit Owner.

Section 10.8. Reconstruction Costs. If the Association is required or elects to reconstruct any of the common elements or Units which have been damaged or destroyed, all affected Unit Owners (i.e. Owners whose Units or limited common elements have been damaged or destroyed) shall contribute to the Association all amounts received by them from property (hazard) insurance policies to help pay for the repairs. To the extent that such insurance proceeds are unavailable or unpaid when needed, the Association shall assess any Owner the amount of the Association's deductible under the Associations policy to pay the cost of repairing or reconstructing such Owner's Unit or limited common elements. Such assessment shall be both a personal obligation of such Owner and a lien against such Owner's Unit in the same manner as any other Association assessment.

Section 10.9. Insurance Deductibles; Owner and Tenant Insurance.

(a) Except to the extent required by FNMA or similar Eligible Holder or mandated by these Bylaws, the Board shall have the discretion to determine the amount of the deductible for property loss insurance policies, as well as other insurance policies required to be procured by the Association under this Article X. In determining the deductible, the Board, among other factors, shall take into consideration the availability and cost of the deductibles, and loss experience of the Association. In this regard, as in other Board responsibilities, the Board members shall exercise there reasonable business judgment.

(b) The Association shall have no responsibility to procure or assist in procuring property loss insurance for any Owner or tenant. Owners shall be responsible for insuring their own Units and appurtenant common elements for the deductible amount under the Association's policies and for insuring their own personal property. The Board shall notify all Owners of the amount of the deductible under the Association policies.

(c) Each Unit Owner shall be responsible for obtaining at his or her own expense, insurance covering his or her property not insured under the Condominium's property loss policy and against his liability not covered under the Condominium's liability policy; provided, however, that no Unit Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way so as to decrease the amount which the Board, on behalf of the Association, may realize under any insurance policy which the Board may have in force at any particular time.

ARTICLE XI

DAMAGE AND DESTRUCTION

Section 11.1. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty or any other damage and destruction, the insurance proceeds of the master property loss policy, if

sufficient to reconstruct the buildings damaged or destroyed, shall be applied to such reconstruction.

**Section 11.2. Insurance Proceeds Insufficient to Cover Loss.** If the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to, or destruction of, such buildings shall be promptly repaired and restored by the management agent or the Board: (a) using the proceeds of insurance, if any, on such buildings for that purpose and (b) assessing all the Unit Owners, who shall be liable to assessment for any deficiency in funds after insurance proceeds for such reconstruction, such deficiency to take into consideration as the Unit Owner's contribution any individual policy insurance proceeds provided by such Unit Owner. Notwithstanding the above, if three-fourths (3/4ths) or more in value of all the improvements constituting the Condominium are destroyed or substantially damaged and if the Owners of at least sixty percent (60%) of the Units agree that the Condominium shall not be repaired, reconstructed or rebuilt, and if at least fifty-one percent (51%) of the Eligible Holders on Units in the Condominium consent, then the Association, by and through the Board, shall remove the Property from the provisions of the Act. In such event, Association shall comply with the requirements of ORS 110.610 which are in effect on the date the Declaration is recorded and the following shall apply:

(a) The former Condominium property shall be deemed to be owned in common by all the Unit Owners [Act, sec. 100.610 (1)];

(b) The respective interest of each Unit Owner in the Property and thereby in any distribution of funds in connection with the removal of the Property from the Act shall be based on the relative value of each Unit and in accordance with the fractional Ownership of each Unit in the Common Elements, in particular, by dividing the fair market value of that Unit Owner's Unit and its common element interest by the total fair market values of all Units and their common element interests. The fair market value of each Unit and common element interest appertaining to such Unit shall be determined by (i) the agreement of all Unit Owners; or failing the same by (ii) an independent appraiser selected by the Board, which appraiser's decision shall be distributed to the Unit Owners and shall become final unless within fifteen (15) days after the distribution, the Board receives written objection from Unit Owners owning 25% or more of the votes. In such event, a new appraiser shall be selected by the presiding judge for the circuit court for Multnomah County. Such new appraiser's decision shall be final. In the event any part of the property has been damaged or destroyed, the appraiser may use any available data and information pertaining to the Condominium including, but not limited to, building plans, prior appraisals, and information on file with governmental authorities. [Act, sec. 100.610 (1); FNMA, sec. 605]

(c) Liens affecting any of the Units shall be liens, in accordance with the then existing priorities, against the undivided interest of the Unit Owner in the property owned in common [Act, sec. 100.610 (4)];

(d) The former Condominium property shall be subject to an action for partition at the suit of any Unit Owner. If a decree of partition orders the sale of the former Condominium property, the net proceeds of sale, together with the net proceeds of the policies of insurance on the property, if any, shall be considered as one fund and shall be divided among the Unit Owners

(and their Mortgages as their interests may appear) in proportion to their respective undivided interests as determined pursuant to ORS 100.600 through 610, after first paying, out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each Unit Owner. [Act, sec. 100.615]

(e) All costs and expenses incurred under this Section 11.2 shall be common expenses; and,

(f) The removal of the property, or any portion thereof, from the provisions of the Act shall comply with ORS 100.605 and other applicable statutes.

Section 11.3. Architectural Changes After Damage or Destruction. Reconstruction of the damaged or destroyed building(s) as used in this Article means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before, substantially in accordance with the original plans and specifications, unless architectural changes are necessary or appropriate given the severity of the damage and are approved by at least sixty-seven percent (67%) of the Unit Owners, by at least fifty-one percent (51%) of the Eligible Holders on Units in the Condominium, and by the Owners and Mortgagees of all Units directly affected by the architectural changes, in which event Condominium documents shall be amended so as to facilitate the said architectural changes. Any such amendment of such Condominium documents shall be valid only upon: (1) compliance with all applicable provisions of the Act; (2) approval by the Oregon Real Estate Commissioner; (3) recording thereof with the recording officer of Multnomah County; and (4) recording with that recording officer of the approval thereof of each Mortgagee and each other lienholder of record having a lien against any part of the project, or building, affected by the amendment. Such reconstruction shall be accomplished under the direction of the management agent or the Board. [FNMA, sec. 601.03, 605]

Section 11.4. Reallocation of Percentage Interest. In the event of a partial destruction of the Condominium buildings or Units therein, the Unit Owners may not reallocate percentage (that is fractional) interest in the Common Elements without the prior approval of at least sixty-seven percent (67%) of the Unit Owners and at least fifty-one percent (51%) of the Eligible Holders on Units in the Condominium. Any such reallocation shall also comply with the Act and the provisions of the Declaration and these Bylaws. [FNMA, sec. 601.03]

Section 11.5 Appointment as Attorney-in-Fact. Each Unit Owner hereby appoints the Board, acting by and through its Chair, to act as its attorney-in-fact in all proceedings arising from damage, destruction, or liquidation of all or any part of the Condominium, or the termination of the same, and designates the same to represent the Unit Owner in any resulting negotiations, settlements or agreement. The proceeds of any settlement shall be distributed to the Association for the benefit of the Unit Owners. [FNMA, sec. 605]

## ARTICLE XII

### CONDEMNATION

The Board shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain and to sue or defend any litigation involving such bodies or persons with respect to the common elements of the Condominium, and shall assist any Unit Owner whose Unit or a part thereof is the subject of any condemnation or eminent domain proceeding; provided, however, nothing in this or any document or agreement relating to the Condominium shall be construed to give a Unit Owner or any party priority over the rights of the Mortgagees of any Condominium Units in the case of a distribution to the Unit Owner of any such condemnation awards for losses to or a taking of a Unit or the common elements. In the event of a taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or a trustee to act on behalf of all Unit Owners, for the use and benefit of the Unit Owners and their Mortgagees as their interest may appear. The Board shall distribute the proceeds of any such award or settlement among the Unit Owners based on the relative value of each Unit in accordance with the percentage Ownership in the common elements as described in Section 7 of the Declaration. Removal of the property, or any portion thereof, from the provisions of the Act shall comply with ORS 100.605 and other applicable statutes. [FNMA, sec. 605; Act, sec. 100.610]

## ARTICLE XIII

### AMENDMENTS TO BYLAWS

These Bylaws may be amended by Unit Owners holding a majority of the total voting rights allocated to the Units in a duly-constituted meeting or by ballot called for such purpose. Any amendments adopted hereby shall be reduced to writing, certified by the Chair and Secretary of the Association to be the amendment so adopted by the Association, and such amendment so certified shall be recorded in the Deed Records of Multnomah County, Oregon. [Act, sec. 100.410 (2)]. Notwithstanding the above, (1) any amendment of these Bylaws reducing or eliminating the provisions that expressly benefit Mortgagees, mortgage holders, mortgage guarantors or mortgage insurers shall be approved by at least a fifty-one percent (51%) of the Eligible Holders on Units in the Condominium [FNMA, sec. 601.03]; (2) any amendment of these Bylaws relating to age restrictions on the occupants of Units, pet restrictions, limitations on the number of persons who may occupy Units and limitations on the rental or leasing of Units shall be approved by at least seventy-five percent (75%) of the Unit Owners and at least fifty-one percent (51%) of the Eligible Holders on Units in the Condominium; (3) Declarant's written consent to any amendment shall be required until such time as seventy five percent (75%) of the Units have been conveyed to persons other than the Declarant; (4) any amendment of these Bylaws limiting or diminishing any Special Declarant Rights shall be approved only with the express written consent of the Declarant until such time as Declarant waives in writing this right of consent; and, finally, (5) ANY AMENDMENTS TO THESE BYLAWS MADE WITHIN FIVE (5) YEARS OF THE RECORDING DATE HEREOF MUST BE APPROVED BY THE OREGON REAL ESTATE COMMISSIONER PRIOR TO RECORDING. [Act, sec. 100.410 (3), (4), and (5)].



## ARTICLE XIV

### RECORDS AND AUDITS

Section 14.1. Declarant Records; General Records. The Board and the managing agent or manager, if any, shall retain the documents, information and records delivered to the Association by the Declarant pursuant to ORS 100.210. [Act, sec. 100.480 (1)] Further, the Board shall keep detailed records of the actions of the Board and the managing agent or manager, minutes of the meetings of the Board and minutes of the meetings of the Association, as well as current copies of the Declaration, Bylaws, and rules and regulations of the Condominium. [FNMA, sec. 601.01] The Board shall maintain a list of Owners entitled to vote at meetings of the Association and a list of all Mortgagees of Units.

Section 14.2. Records of Receipts and Expenditures. The Board or its designee shall keep financial records sufficient for proper accounting purposes, in particular detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. [Act, sec. 100.480 (2)]

Section 14.3. 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 Unit Owner or others, the amount of each assessment against the Unit Owner(s), the dates and amounts in which the Assessment comes due, the amounts paid upon the account and the balance due on the Assessments.

Section 14.4. Payment of Vouchers. The Treasurer shall pay all vouchers up to \$1,000 signed by the Chair, managing agent, manager or other person authorized by the Board. Any voucher in excess of \$1,000 shall require the signature of the Chair; provided, however, that any check drawn on a reserve account shall require the signature of two members of the Board. [FNMA, sec. 704]

Section 14.5. Financial Statement and Audits. The Board shall prepare or cause to be prepared an annual (audited, if the Condominium consists of 50 or more Units, the Condominium has been established for a full fiscal year and if requested by an Eligible Holder in writing) financial statement, consisting of a balance sheet and income and expense statement setting forth the financial condition of the Association as at the end of each fiscal year. The financial statement shall be prepared according to generally accepted accounting procedures. It shall be distributed to all Unit Owners and to all Mortgagees of Units within ninety (90) days after the end of each fiscal year. [Act, sec. 100.480 (3); FNMA, sec. 601.02] At any time, any Unit Owner or Mortgagee may, at his, her or its own expense, cause an audit or inspection to be made of the books and records of the Association.

Section 14.6. Notice of Sale, Mortgage, Rental or Lease. Immediately upon the sale, mortgage, rental or lease of any Unit, the Unit Owner shall inform the Secretary, managing agent or manager of the name and address of such vendee, Mortgagee, lessee, or tenant; provided, however, that this provision is not meant to limit any requirement of prior approval of a lease or rental otherwise imposed in the Declaration or these Bylaws.

Section 14.7. Annual Report. The Board shall cause an Annual Report as described in ORS 100.260 (2), including any amendments, to be filed with the Oregon Real Estate Agency, pursuant to the provisions of ORS 100.250.

Section 14.8. Inspection Right. The documents, information and records described in Sections 14.1, 14.2 and 14.5 and all other records of the Association shall be made reasonably available for examination by any Unit Owner and any Mortgagees, as well as by any prospective purchaser of any Unit, at convenient hours during weekdays, except holidays. Upon written request of a Unit Owner or Mortgagee, the Association shall make such records available for duplication. [Act, sec. 100.480 (4) and (5)] The Association may charge a reasonable fee for furnishing copies of such records to a Unit Owner, Mortgagee or prospective Unit purchaser. [Act, sec 100.480 (6)]

#### ARTICLE XV

##### SAVINGS CLAUSE

These Bylaws are intended to comply with the provisions of the Act and the requirements of FNMA, which are incorporated herein, and to supplement the provisions of the Declaration. If any of the provisions of these Bylaws conflict with the provisions of the Act or the requirements of FNMA, the Act's provisions and, if not inconsistent with the requirements of the Act, FNMA's requirement shall control. If any of the provisions hereof conflict with the Declaration, the provisions in the Declaration shall control.

#### ARTICLE XVI

##### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 16.1. Subject to the limitations applicable to the indemnification of the officers and directors of corporations under ORS 60.387, et seq., the Association shall indemnify any director or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a director or officer of the Association against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding, so long as the individual in question acted in good faith and in a manner he or she reasonably believed to be in, or at least not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this section may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right

of the Association to recoup the entire payment should it be proven at a later time that the indemnified person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director or officer shall have a right of contribution over and against all other directors and officers, agents and members of the Association who participated with or benefited from the acts which created said liability. [Act, sec. 100.405 (4)(m)]

Section 16.2. As provided above in Article X on Insurance, the Association shall have the authority, but not the obligation, to maintain directors' and officers' liability insurance. [Act, sec.100.405 (4)(m)]

#### ARTICLE XVI

#### MISCELLANEOUS

Section 17.1. Right to Notice and Opportunity to be Heard. Whenever the Declaration or these Bylaws require that an action of the Board be taken after "notice and opportunity to be heard" or similar language, the following procedure shall be observed: the Board shall give written notice of the proposed action to all Unit Owners, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five (5) days from the date notice is delivered pursuant to this section. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 17.2. Notices. All notices given under the provisions of the Declaration or these Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered three (3) business days after being deposited in the United States Mail, First Class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit, if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to Declarant until the Transition Date and thereafter shall be given to the Chair or Secretary of the Association. All notices to the Association or to the Board shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

Section 17.3. 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.

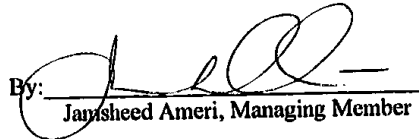
Section 17.4. Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of

these Bylaws. As used herein, 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 used herein, as well as bracketed references to the Act and FNMA regulations, are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

It is hereby certified that these Bylaws have been adopted by Flowers Development LLC, Declarant of SUTTON PLACE CONDOMINIUMS, and will be recorded in the Deed Records of Multnomah County, together with the Condominium Declaration for the Condominium, after the Declaration and Bylaws are approved by the Assessor of the County.


The Declarant has caused these Bylaws to be executed this 20<sup>th</sup> day JANUARY, 1998.  
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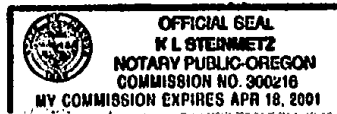
FLOWERS DEVELOPMENT, LLC,  
an Oregon limited liability company

By:   
Jamsheed Ameri, Managing Member

STATE OF OREGON )  
County of MULTNOMAH ) : ss.

This instrument was acknowledged before me on 20<sup>th</sup> JANUARY, 1998, by Jamsheed Ameri, the Managing Member of Flowers Development, LLC, an Oregon limited liability company.

  
Notary Public for Oregon  
My Commission expires 4.18.2001



After Recording Return to:  
Walter McMonies, Jr.  
FOSTER PEPPER & SHEFELMAN LLC  
101 S.W. Main Street, 15<sup>th</sup> Floor  
Portland, Oregon 97204

Recorded in the County of Multnomah, Oregon  
C. Swick, Deputy Clerk



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E41 22 0.00 110.00 0.00 3.00 0.00

DECLARATION SUBMITTING  
SUTTON PLACE CONDOMINIUMS  
TO CONDOMINIUM OWNERSHIP

This DECLARATION, pursuant to the provisions of the Oregon Condominium Act, is made and executed this 20 day of JANUARY, 1999, by Flowers Development, LLC, an Oregon limited liability company.

Declarant proposes to create a condominium to be known as Sutton Place Condominiums, which will be located in Multnomah County, Oregon. The purpose of this Declaration is to submit Sutton Place Condominiums to the condominium form of ownership and use in the manner provided by the Act.

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

Section 1. DEFINITIONS. As used in this Declaration and in the Bylaws, the following terms shall have the following meanings:

1.1. "Act" shall mean the Oregon Condominium Act, Oregon Revised Statutes 100.005 et. seq., and amendments thereto.

1.2. "Association" shall mean the Association of Unit Owners of Sutton Place Condominiums established pursuant to Section 12 of this Declaration.

1.3. "Board" shall mean the board of directors selected pursuant to the provisions of this Declaration and the Bylaws to govern the affairs of the Association.

1.4. "Bylaws" shall mean the Bylaws of the Association of Unit Owners of Sutton Place Condominiums adopted pursuant to Section 12.2 below, as the same may be amended from time to time.

1.5. "Condominium" shall mean all of that property, including land, buildings, improvements and structures thereon, easements, and rights, which are submitted to the provisions of the Act, as described in Section 2 of this Declaration.

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- 1.6. "Declarant" shall mean Flowers Development, L.L.C., an Oregon limited liability company, its successors and assigns.
- 1.7. "Declaration" shall mean this Declaration, as it may hereafter be amended.
- 1.8. "Eligible Holder" or "Eligible Mortgagee" shall mean a holder of a first mortgage on a Unit which has requested notices to certain matters from the Association in accordance with Section 13.1 below, but shall not include a contract vendor. [FNMA sec. 610]
- 1.9. "Eligible Insurer" or "Eligible Guarantor" shall mean an insurer or guarantor of a first mortgage on a Unit that has requested notice of certain matters from the Association in accordance with Section 13.1 below.
- 1.10. "Common Elements" shall mean the General Common Elements and the Limited Common Elements of the Condominium, as the same are described in this Declaration.
- 1.11. "General Common Elements" shall mean the General Common Elements of the Condominium, as the same are described in this Declaration.
- 1.12. "Limited Common Elements" shall mean the Limited Common Elements of the Condominium, as the same are described in this Declaration.
- 1.13. "Mortgage" and "Mortgagee" shall mean, respectively, a recorded mortgage, trust deed, or contract of sale which creates a lien against a Unit, and the holder, beneficiary or vendor under such a mortgage, trust deed or contract of sale.
- 1.14. "FNMA" shall mean Federal National Mortgage Association. [FNMA section references are to relevant sections in the FNMA Selling Guide, circa April 1, 1996.]
- 1.15. "1999 Dollars" shall mean that amount in then current U.S. Dollars in Portland, Oregon which is equivalent in purchasing power to the stated number of U.S. Dollars in Portland Oregon on February 1, 1999, such amount to be determined by reference to the change since February 1, 1999 of the Consumer Price Index as published by the U.S. Dept. of Commerce, Bureau of Labor Statistics for All Urban Consumers in Portland, Oregon, or failing the continued publishing of such index, the most similar inflation index as determined in the reasonable discretion of the Board.
- 1.16. "Plat" shall mean the plat of Sutton Place Condominiums recorded simultaneously with this Declaration.
- 1.17. "Unit Owner" shall mean, except to the extent this Declaration or the Bylaws provide otherwise, the person owning fee simple interest in a Unit or the holder of a vendee's interest in a Unit under a recorded land sales contract.
- 1.18. "Incorporation by Reference." Except as otherwise provided in this Declaration, the terms used in this Declaration and the Bylaws shall have the meaning set forth in ORS

100.005, a part of the Act, and that statute and the definitions therein are incorporated into this Declaration.

Section 2. DESCRIPTION OF PROPERTY SUBMITTED. The property submitted to the Act by this Declaration is held by the Declarant and each Unit is conveyed by the Declarant, in fee simple estate. It is located in the County of Multnomah, State of Oregon and is more particularly described on **Exhibit A**. The property submitted hereunder includes the land so described, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto. [Act, sec. 100.105 (1) (a); FNMA, sec. 601]

Section 3. NAME OF CONDOMINIUM. The name by which the property submitted hereunder shall be known is "Sutton Place Condominiums." [Act, sec. 100.105 (1)(b) and (5)]

Section 4. GENERAL DESCRIPTION OF BUILDINGS, UNITS.

4.1. General Description of Buildings. The Condominium includes one (1) building designated the Building . The Building consists of three residential stories of wood frame construction, over a concrete basement garage, with a concrete slab and foundation, wood siding and a flat composition roof.

4.2. General Description of Units. There are 12 residential units in the Condominium, designated Nos.101 through 104; 201 through 204; and 301 through 304. The Units range in size from as low as 796 square feet to as much as 915 square feet, consisting of one story, with a kitchen, living room, a dining room, one (1) bedroom, and one (1) full bathroom. The dimensions, designation, and location of each Unit are shown on the Plat.

4.3. Boundaries of Units. Each Unit shall be bounded by the interior unfinished surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim. Further, each Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, if any, and any other materials constituting any part of the finished interior surfaces so described. All other portions of the walls, floors or ceilings shall be a part of the Common Elements. In addition, each Unit shall include the following:

(a) All spaces, non-bearing interior partitions, windows, window frames, any skylights and any skylight frames, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit; and

(b) All outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, any air conditioning and waste disposal within the boundaries of the Unit, but not including any part of the lines or ducts themselves; and

(c) Any heating and air conditioning fixtures and pumps in or connected with the Unit.

Section 5. COMMON ELEMENTS.

5.1. General Common Elements. The General Common Elements consist of the following, to the extent they exist on the property, and except as portions thereof are expressly designated in this Declaration as part of a Unit or Limited Common Element:

(a) The land, any walkways, driveways, grounds, landscaped areas, exterior fixtures, and fences;

(b) The foundation, pad, columns, crawlspaces, joists, beams, supports, bearing walls, perimeter walls, structural walls, roof, entrances, exits, doorsteps, and stoops, which are not part of a Unit;

(c) Installations of central services, such as power, light, gas, hot and cold water, any central heating, air conditioning, waste disposal, and incineration, all up to the outlets within any Units;

(d) Tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(e) Unassigned parking spaces in the parking areas, if any, that is those parking spaces not reserved for the exclusive use of the individual Unit Owners or their tenants as set forth below in Section 6.1(c), are for the common use of the Unit Owners, their tenants, guests, and invitees under regulations adopted by the Association. [FNMA, sec. 604]

(f) The patio off the common area on the first residential floor and the two balconies, one each off the common areas on the second and third residential floors.

(g) All other elements of any building necessary or convenient to its existence, maintenance and safety, or normally in common use. [Act, sec. 100.005 (16)]

5.2. Maintenance, Repair and Replacement; Liability for Common Expenses. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the General 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 a Unit Owner, his or her invitee, tenant, guest or servant shall be repaired by the Association at such Unit Owner's sole cost and expense. Common expenses shall be assessed and apportioned among the Unit Owners as set forth in Section 8.1 below. [FNMA, sec. 604]

5.3. Income from General Common Elements. Any income derived from the common elements shall be income of the Association. The Board may, in its discretion, use such income to help meet the expense of maintaining the Common Elements or for such other purpose as may benefit the Association and the Unit Owners in a substantially equal manner.



5.4. Relocation of Unit Boundaries and Common Elements. The boundaries between adjoining Units, including any intervening Common Elements, may be reallocated or eliminated by an amendment to the Declaration with the approval of the Unit Owners and all Mortgagees of the affected Units. The Owners of the affected Units shall submit to the Board a proposed amendment which shall identify the Units involved, state any reallocation of Common Element interest, voting rights, common expense liability and right to common profits and contain words of conveyance. The Board shall approve the amendment unless it determines within forty-five (45) days that the reallocations are unreasonable or the relocation or elimination will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The Board shall have the rights and follow the procedures currently set forth in the Act at ORS 100.130 (2) through (6).

5.5. Access. Each Unit has direct access to the Common Elements adjacent to the entrance of the Unit and thence across the Common Elements to the public streets and sidewalks. This right of ingress and egress to and from each Unit shall be unrestricted, and shall be perpetual and appurtenant to the Unit. [FNMA, sec. 609.01]

#### Section 6. LIMITED COMMON ELEMENTS.

6.1 Description. The following shall constitute Limited Common Elements, the use of which shall be restricted to the Unit(s) to which they pertain:

(a) The parking spaces (aka parking stalls) designated PS1 through PS12, as set forth in **Exhibit C** and the Plat. At all times, one such parking space shall be reserved for the exclusive use of the Unit Owner(s) or tenants of Units 101 through 104, 201 through 204 and 301 through 304.

(b) The storage spaces designated S1 through S12, as set forth in **Exhibit C** and the Plat. At all times, one such storage space shall be reserved for the exclusive use of the Unit Owner(s) or tenants of the Units 101 through 104, 201 through 204, and 301 through 304.

6.2. Appurtenant to Units. Conveyance of a Unit includes the exclusive rights to the use of the Limited Common Elements appurtenant to that Unit.

6.3. Maintenance, Repair and Replacement of Limited Common Elements. Maintenance of Limited Common Elements shall be a common expense, and the performance of such work shall be the responsibility of the Association; provided however, that cleanliness and orderliness of Limited Common Elements shall be the responsibility of the Unit Owners to whom such Limited Common Elements pertain. Unit Owners may not modify, paint, or otherwise decorate, or in any way alter, their respective Limited Common Elements without prior written approval of the Board. Further, no Limited Common Elements shall be used so as to damage the General Common Elements or affect the views from any Unit or the appearance of the Condominium.

**Section 7. ALLOCATION OF INTERESTS IN COMMON ELEMENTS.**

Each Unit shall be entitled to and allocated an equal undivided interest in the Common Elements. [Act, sec. 100.515 (1); FNMA, sec. 603.02] The method used to establish the allocation is a fraction, based on an equal sharing on interest among all the units. This interest shall equal a fraction, wherein the numerator will be one (1) and the denominator will be the total number of Units, namely twelve (12), that is  $1/12^{\text{th}}$ , as set forth in Exhibit B. The combined interest of the Unit Owners in the Common Elements shall be at all times complete and undivided, and shall not be subject to any lease between the Unit Owners or the Association and any other party. The Declarant shall retain no ownership interest in the Common Elements apart from any interest held as a Unit Owner. The allocation reflects each Unit's equal right to use and enjoy the Common Elements. Each Unit's undivided interest shall be inseparable and deemed to be conveyed or encumbered with conveyance, encumbrance, judicial sale or other transfer, voluntary or involuntary, of said Unit, even though the description in the instrument of conveyance or encumbrance may refer only to title to the Unit. [FNMA 609.01]

**Section 8. COMMON PROFITS AND EXPENSES; VOTING.**

8.1. Common Profits and Expenses. Except as otherwise provided in this Declaration, the common profits of the Condominium will be distributed among, and the common expenses shall be charged to, the Unit Owners according to the allocation of undivided interest of each Unit in the Common Elements in Section 7 above. In other words, each Unit and the Unit Owner thereof will be liable for the common expenses equal to the proportion of the undivided interest in the Common Elements allocated to such Unit. [Act, sec. 100.530; FNMA, sec. 608.02.] Except upon termination of the Condominium or as otherwise provided in this Declaration and the Bylaws with respect to damage, destruction or condemnation, any such common profits shall be used solely for the purpose of maintaining, repairing or replacing Common Elements or for other expenses or reserves of the Association. Notwithstanding the above, Unit Owners may be assessed individual amounts individually for common expenses incurred through such Unit Owner's fault or direction or as otherwise provided in the Bylaws. Any income derived from the Common Elements shall be income of the Association. The Board may, in its discretion, use such income to help meet the expense of maintaining the Common Elements or for such other purpose as may benefit the Association and the Unit Owners in a substantially equal manner.

8.2. Covenant to Pay Assessments; Liability for Common Expense. Each Unit Owner hereby covenants to pay to the Association annual assessments for common expenses as more fully provided in the Bylaws. No Unit Owner by the Owner's own action may claim exemption for his or her assessed contribution towards common expenses by waiver by the Unit owner of the use or enjoyment of the Common Elements or abandonment by the Unit Owner of his or her Unit. [Act, sec 100.530 (2)] As more fully set forth in Section 8.4 of the Bylaws, the Association shall have a right to impose fines on Unit Owners and their tenants for failure to pay assessments or comply with the requirements of this Declaration, the Bylaws, or rules and regulations of the Association. As more fully set forth in Section 7.7 of the Bylaws, upon levying the assessments (including applicable late fees, interest, costs and attorney fees for

collection) the Association shall have a lien on the Unit and its apportioned undivided interest in the Common Elements, as authorized by ORS 100.450(1). [FNMA, sec. 608.04]

8.3. Allocation of Voting Rights. The total number of votes in the Association is equal to the total number of Units in the Condominium, and each Unit shall have one (1) vote. A Unit Owner (including Declarant) who owns more than one Unit shall have the votes appertaining to each Unit owned. The vote of a Unit must be cast as a single vote. Fractional votes shall not be allowed. [Act, sec. 100.525; FNMA, sec. 608.01] No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded. The method of voting shall be specified in the Bylaws.

Section 9. PLAN OF DEVELOPMENT. The entire Property and Building is being dedicated to the condominium form of ownership at the time of filing of this Declaration and no additional property or stages can or will be annexed later by the Declarant. This is not intended to prevent the Association from adding additional property or Units.

Section 10. USE OF PROPERTY; MAINTENANCE OF UNITS; RESTRICTIONS ON USE; OTHER RIGHTS.

10.1. Residential Use. The buildings and the Units are intended for and restricted to use as single family residences only, on an ownership, rental, or lease basis, and for social, recreational, and other reasonable activities incident to such use, and for the purposes of operating the Association and managing the Condominium if required. The Common Elements shall be used for the furnishing of services and facilities for the benefit of the Unit Owners. Additional restrictions and regulations are set forth in the Bylaws and rules or regulations adopted pursuant to the provisions of the Bylaws.

10.2. Leases. Unit Owners shall have the right to rent or lease their Units for a minimum term of thirty (30) days. No lease or rental of a Unit may be of less than the entire Unit; provided, however, that a Unit Owner may enter into a roommate rental (sublease) situation on a month-to-month or longer basis, whereunder joint use of the Unit is shared by another person or persons and the Unit Owner or Owners. All leases and rental agreements shall be in writing and shall be subject to the restrictions and provisions of this Declaration, the Bylaws, and rules and regulations of the Association. [FNMA, sec. 609.03]

10.3. Rules and Regulations Promulgated by the Association. The Board shall have the authority from time to time to promulgate such rules and regulations consistent with the Act, this Declaration and the Bylaws as the Board may deem in the best interest of the Association. No person shall use a Unit or the Common Elements or any part thereof in any manner contrary to or inconsistent with such rules and regulations. See Declaration Section 8.2 allowing the imposition of fines for violations.

10.4. No Restriction on Unit Sales. The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf.

[FNMA, sec. 609.02]

Section 11. EASEMENTS; RIGHT OF ENTRY; AUTHORITY TO GRANT EASEMENTS, RIGHTS-OF-WAY, LICENSES AND OTHER SIMILAR INTERESTS.

11.1. In General. Each Unit has an easement in and through each other Unit and the Common Elements for all support elements and utility, including utility meters, wiring, heat, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each Unit and all Common Elements are specifically subject to easements as required for the electrical wiring and plumbing for each Unit. Except in the case of an emergency, access to easement areas shall be upon prior written request of at least seventy-two (72) hours and at a time and date reasonably convenient to the Unit Owner(s) affected. Any damage to the servient tenement shall be repaired at the cost of the holder of the dominant tenement. 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.

11.2. 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 as long as the physical boundaries of the Units are in substantial accord with the description of those boundaries that appears in the Declaration. There shall be valid easements for maintenance of the encroaching Units and Common Elements so long as the encroachments shall exist, and the rights and obligations of Unit Owners shall not be altered in any way by the encroachment. This provision does not relieve a Unit Owner of liability in the case of willful misconduct of the Unit owner, or relieve Declarant or any contractor, subcontractor or materialman from any liability as a result of failure to adhere to the Plat. The encroachments described in this section shall not be construed to be encumbrances affecting the marketability of title to any Unit. In the event that Condominium structures are partially or totally destroyed, and then rebuilt, the owners of the affected Units agree that minor encroachment of parts of the Common Elements due to such rebuilding shall be allowed and an easement shall exist for such purposes. [Act, sec 100.520; FNMA, sec 604.02]

11.3. Granting of Easements by Association. The Association shall have the authority to grant, execute, acknowledge, deliver and record on behalf of the Association leases in excess of two (2) years duration, easements, rights-of-way, permits, licenses, and other similar interests over or affecting the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium, as well as to consent to the vacation of roadways within and adjacent to the Condominium. The granting of any such interest shall first be approved by at least seventy-five percent (75%) of the Unit Owners. [Act, sec. 100.405 (5) and (6), FNMA 608.05]

11.4. Right of Entry. The Board, managing agent, manager or a contractor or other person authorized by the Board shall have the right to enter any Unit or Limited Common

Element appurtenant thereto to effect repairs, improvements, replacements, maintenance or sanitation work reasonably necessary to the Condominium property, to perform necessary work that the Unit Owner has failed to perform to the Unit, to inspect to verify that the Unit Owner is complying with restrictions and requirements of the Declaration, Bylaws or rules and regulations of the Board, or to prevent damage to the Common Elements or to another Unit. [Act, sec. 100.540 (3)] Except in cases of emergency that preclude advance notice, the Board shall cause the Unit occupant to be given seventy-two (72) hours notice in advance of such entry. Such entry shall be made with as little inconvenience to the owners and occupants of the Unit as practicable. The cost of repairing any damage inflicted on any Unit through which access is taken pursuant to this Section 11 shall be paid by the Association, if it is responsible for such damage. [FNMA, sec. 608.05] Each Unit Owner shall, upon request, leave a key to his Unit with the Board or managing agent to be used in the situations described herein. If, in the process of such repair and maintenance by the Association, it is necessary to alter or damage any Unit or Common Elements, such alterations or damages will be permitted without compensation to the affected Unit Owner, provided the Unit and/or Common Elements are promptly restored to substantially their prior condition by the Association.

11.5. Dedications by Declarant. Anything in this Declaration to the contrary notwithstanding, until the Turnover Meeting described in Section 3.4(b) of the Bylaws, the Declarant shall have the right to execute, deliver and record on behalf of the Association and the Unit Owners such documents as may be required in order to grant easements, rights-of-way and licenses over the Common Elements for the installation, maintenance and repair of public utilities serving the Condominium or adjacent property. The Declarant shall also have the right to execute, deliver and record other documents as may be required to convey, dedicate, or to grant such easements, rights of way or licenses over Common Elements, as may be required by any government or governmental agency in order to complete development of the Condominium.

11.6. 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 but not limited to the right to use the Units owned by Declarant as model Units and the right to use a Unit as a manager's and/or sales office, and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Act or reserved in this Declaration or the Bylaws.

## Section 12. ASSOCIATION OF UNIT OWNERS.

12.1. Organization of Association. Upon the execution and recording of this Declaration, the Association 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 Association shall be organized as an Oregon non-profit corporation by simultaneous filing of articles of incorporation with the Secretary of State. The name of the Association shall be "Association of Unit Owners of Sutton Place Condominiums."

12.2. Adoption of Bylaws; Amendment; Rules and Regulations. On behalf of the

Association, the Declarant hereby adopts the Bylaws being recorded simultaneously herewith to govern the administration of the Condominium. The Bylaws shall be effective upon the execution and recording of this Declaration, including the Bylaws. The Association may amend the Bylaws, and may adopt and thereafter amend detailed rules and regulations necessary or convenient from time to time to insure compliance with this Declaration, the Bylaws, and the Act to promote the safe and comfortable use and enjoyment of the Condominium. The rules and regulations of the Association shall be binding upon all Unit Owners and occupants and all other persons claiming any interest in the Condominium. [Act, sec. 100.405 (4) (a)]

12.3. Membership; Board of Directors. Each Unit Owner shall be a member of the Association, and membership therein shall be limited to Unit Owners only. The affairs of the Association shall be governed by the Board as provided in the Bylaws.

12.4. Powers and Duties. The Association and the Board shall have the powers and duties granted to them by this Declaration, the Bylaws, and the Act, in particular ORS 100.405 (4). In addition, the Association shall have the authority to exercise any other powers conferred by this Declaration or the Bylaws, all other powers that may be exercised in Oregon by a condominium unit owner's association, and any other powers determined by the Association to be necessary and proper for the governance and operation of the Association.

12.5. Declarant Control of the Association. The Declarant hereby reserves control over the administration of the Association and, in particular, the right to appoint an interim Board for the Association to manage the Condominium until the Turnover Meeting. The three (3) members of the interim Board shall also serve as the interim Chair, Secretary and Treasurer. Declarant hereby reserves the right to maintain administrative control over the Association until the earlier of: (a) three (3) years from the date the first Unit is conveyed or (b) the date of conveyance to persons other than the Declarant of seventy five percent (75%) of the Units. [Act, sec. 100.200 (2); FNMA, sec. 607] The Declarant may voluntarily relinquish all or any part of the said control. [Act, sec. 100.220 (3)]. Accordingly, upon recording of this Declaration and the Bylaws, the interim Board shall serve until the Turnover Meeting is held as provided in the Bylaws. In addition, the Declarant shall have the right to consent to any amendment to the Declaration of the Bylaws as respectively, provided at Declaration Section 15.3 and Bylaws Article 13.

12.6. Management Agreements, Contracts and Leases. The Board, including the interim Board, shall have the right to contract with a professional manager or management firm to manage the affairs of the Association. However, if entered into prior to the Turnover Meeting, no management agreement, service contract or employment contract which is directly made by or on behalf of the Association, the Board, or the Unit Owners as a group shall be in excess of three (3) years in duration and shall provide that it may be terminated without cause and without penalty by the Association or the Board upon not less than thirty (30) days written notice to the other party given not later than sixty (60) days after the Turnover Meeting.

12.7. Adoption of Budget, Assessments. Subject to the restrictions of this Declaration, the Association may adopt and amend budgets for revenues, expenditures and reserves and impose, levy and collect assessments for common expenses and charges for late

payments of assessments from Unit Owners in accordance with the Act and this Declaration. [Act, sec. 100.405 (4) (b)]

Section 13. MORTGAGEES. In the event of a conflict between this Section 13 and other provisions of this Declaration, the provisions of this Section 13 shall prevail.

13.1. Notice of Action. A holder, insurer or guarantor of a Mortgage who submits a written request to the Association stating 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 shall be entitled to timely written notice of following:

(a) Any condemnation or any casualty loss which affects either a material portion of the Condominium or any Unit securing the Mortgage it holds, insures or guarantees [FNMA, sec. 610];

(b) Any delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds, insures, or guarantees a Mortgage, which Assessment or charge remains uncured for a period of sixty (60) days [FNMA, sec. 610];

(c) Any lapse, cancellation or material modification or any insurance policy or fidelity bond maintained by the Association [FNMA, sec. 610]; and

(d) Any proposed action that requires the consent of a specified portion of Eligible Holders pursuant to this Declaration [FNMA, sec. 610].

13.2. Mortgages Exempt from Certain Restrictions. The Association shall have no "right of first refusal" or similar restriction with respect to the lease, sale or transfer of a Unit in connection with a Mortgage foreclosure (or the acceptance of a deed-in-lieu of foreclosure) or with respect to any sale or transfer by the Mortgage holder or other party who acquired the Unit in connection with the foreclosure or the giving of a deed-in-lieu of foreclosure. [FNMA, sec. 609.02]

13.3. Subordination of Association Lien to Mortgage; Discharge of Lien Upon Foreclosure. The lien of the Association against a Unit shall be subordinate to any Mortgage of record on the Unit if the Mortgage was recorded before the delinquent assessment (which is the basis of the lien) was due. [Act, sec. 100.450; FNMA, sec. 608.03] A lien for a common expense assessment will not be affected by the sale or transfer of the Unit, unless a foreclosure or deed-in-lieu of foreclosure of a first Mortgage is involved, in which case the foreclosure will extinguish the lien of any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying future assessments. [FNMA, sec 608.03] Such unpaid assessments shall be a common expense of all the Unit Owners including the purchaser, his successors and assigns.

13.4. Consent of Mortgagees Required to Terminate Condominium. Any action to terminate the legal status of the Condominium after substantial destruction or condemnation of the Condominium property occurs shall require the approval both of Unit Owners who represent

at least sixty-seven percent (67%) of the total votes in the Association and also the approval of Eligible Holders who represent at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages held by Eligible Holders. Any action to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium property shall require the approval of Eligible Holders that represent at least sixty seven percent (67%) of the total votes of the Units that are subject to Mortgages held by Eligible Holders. [FNMA, sec. 601.03(B)] Additionally, any such terminations shall be carried out by the Unit Owners pursuant to provisions of the Declaration, the Bylaws and the Act, and only after vote of the Owners as provided therein. [Act, sec. 100.605]

13.5. Consent to Amendment of Documents. Except as otherwise provided in the Act, the approval of Eligible Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Holders shall be required for any amendments of a material nature to the Declaration or Bylaws. Any amendment which adds to or changes any provision establishing, providing for, governing or regulating any of the following would be considered as material:

- (a) Voting rights;
- (b) Increases in assessments that raise the previously assessed amount by more than twenty five percent (25%), assessment liens or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair and replacement of the Common Elements;
- (d) Responsibility for maintenance and repairs of the several portions of the Condominium;
- (e) Reallocation of interests in the Common Elements, or rights to their use;
- (f) Redefinition of any Unit boundaries;
- (g) Convertibility of Units into Common Elements or of Common Elements into Units;
- (h) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium, except as provided in Section 17 below relating to the relocation of boundaries;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;



(l) A decision by the Association to establish self-management if professional management had been required previously by this Declaration or the Bylaws or by an Eligible Holder;

(m) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws; and

(n) Any provisions which are for the express benefit of Mortgagees, Mortgage insurers or guarantors. [FNMA, sec. 601.03 (A)].

The provisions of this subsection are intended only to be a limitation on the right of the Unit Owners, the Board and the Association to amend the Declaration and Bylaws, and are not intended to give the Eligible Holders any specific rights to effect any amendments. Any such amendments to the Declaration or Bylaws shall be made only upon full compliance with the provisions of the Declaration and Bylaws and the Act relating to the procedure and percentage of votes required for such amendment. An addition or amendment to the Declaration or Bylaws shall not be considered material so as to require the consent or approval of Mortgagees, if it is for the purpose of correcting technical errors or if it is for clarification only.

13.6. Additional Approvals. In addition to any other approvals required by the Act, this Declaration or the Bylaws, unless the prior written approval of fifty-one percent (51%) of the Eligible Holders has been obtained, the Association shall not:

(a) Change the pro rata interest or obligations of any Unit for (i) purposes of levying assessments or charges or allocating distribution of proceeds or condemnation awards, and (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(b) Partition or subdivide any Unit;

(c) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements, provided that the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Condominium shall not be deemed a transfer hereunder; and

(d) Use hazard (property or casualty) 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 the Act in the case of substantial loss or the Units or Common Elements.

13.7. Deemed Approval by Mortgagees. Any Mortgagee, including an Eligible Holder, who receives a written request to approve additions or amendments to the Declaration or Bylaws, or to a termination of the Condominium, or to any other action to be taken by the Board and/or Association, shall be deemed to have given such approval unless a negative response is delivered or posted to the requesting party by such Eligible Holder within thirty (30) days after such request is received; provided the notice or request was delivered by certified or registered mail, with a "return receipt" requested. [FNMA, sec. 603.03 (B)]

13.8. Right to Receive Written Notice of Meetings. Upon written request, the Association shall give any Mortgagee or holder of a first Mortgage written notice of all meetings of the Association, and such holders and Mortgagees shall be permitted to designate a representative to attend all such meetings.

13.9. Right to Examine Books and Records. All Mortgagees (including insurers and guarantors of Mortgages) shall have a right to examine the books and records (including the Declaration, Bylaws, rules and regulations and financial statements) of the Association on written request. Such books and records shall be available for duplication at reasonable times. A Mortgagee shall be entitled to have an audited financial statement prepared at its own expense if such statement is not otherwise available; the Association, the Board and its officers shall cooperate to facilitate the necessary auditing and review process.

#### Section 14. SERVICE OF PROCESS.

The designated agent to receive service of process in cases provided in ORS 100.550(1), that is in cases brought by and against Unit Owners, shall be the person named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with ORS 100.250 (1)(a). If the Association is organized as a non-profit corporation, the same individual shall be designated as the registered agent provided for under ORS 65.111 shall be the designated agent.

#### Section 15. AMENDMENT.

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

15.2. Owner and Mortgagee Approval. Except as may otherwise be provided in this Declaration or the Act, this Declaration may be amended from time to time by consent or approval of the Unit Owners holding seventy-five percent (75%) or more of the voting rights as otherwise set forth in this Declaration and by Eligible Holders to the extent required by Section 13.5 above, in particular, no amendment of a material nature to this Declaration shall be made except upon the approval of Eligible Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Holders, as provided in Section 13.5 above. [Act, Sec. 100.135] No amendment may change the allocation of undivided interest in the Common Elements, method of determining liability for common expenses, right to common profits, or voting rights of any Unit unless such amendment has been approved by the Unit Owners of the affected Units and the holders of Mortgages on such Unit.

15.3. Declarant Approval. Declarant's prior written consent to any amendment of the Declaration shall be required for any amendment so long as Declarant owns any Unit in the Condominium; provided, however, that no such consent shall be required after conveyance to

owners, other than the Declarant, of seventy-five percent (75%) or more of the Units, or five (5) years after conveyance of the first Unit in the Condominium, whichever is earlier; provided, further, that even after such time, no amendment may limit or reduce any special Declarant rights whether reserved in this Declaration or otherwise provided in the Act.

15.4. Recordation. The amendment shall be effective upon recordation of the Declaration as amended or of the amendment thereto, certified by the Chair and Secretary of the Association as having been adopted in accordance with the Declaration and the Act, and, if required by the Act, approved by the Real Estate Commissioner and recorded in the Deed Records of Multnomah County.

Section 16. DIVISION OR CONVERSION OF UNITS. No Unit of the Condominium may be divided, partitioned or subdivided into two or more Units or other sub-parcels or divisions of any nature. [See Act, sec. 100.625]

Section 17. RELOCATION OF BOUNDARIES.

17.1. The boundaries between adjoining Units, including intervening Common Elements, may be relocated or eliminated by an amendment to this Declaration with the approval of the Unit Owners and all Mortgagees of the affected Units. The owners of the affected Units shall submit to the Board a proposed amendment which shall identify the Units involved, state any reallocations of common element interest, voting rights, common expense liability and right to common profits and contain words of conveyance. The Board shall approve the change unless it determines within forty five (45) days that the reallocations are unreasonable or that the relocation or elimination will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The Board or any agent appointed by the Board may supervise the work necessary to effect the boundary relocation or elimination. Any expenses incurred under this subsection shall be charged to the Unit Owners requesting the boundary relocation or elimination. The amendment effecting the relocation or elimination shall be executed by the owners and mortgagees or trust deed beneficiaries of the affected Units, certified by the Chairman and Secretary of the Association and approved and recorded in accordance with the Act, section 100.135 (1)(b) or successor provision. Such amendment must also be approved by the Real Estate Agency as required by the Act, sections 100.135 and 100.110.

17.2. The Board may require the affected Unit Owners to submit an opinion of a registered architect or professional engineer to the effect that the proposed change will not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. The Board or any agent it appoints may supervise the work necessary to effect the boundary relocation or elimination.

17.3. The change shall be effective upon recording in the appropriate records of Multnomah County, Oregon, of amendments to this Declaration setting forth the change and any floor plans necessary to show the altered boundaries, executed by the Unit Owners and the Mortgagees of the affected Units and certified to by the Chair and Secretary of the Association, together with any governmental approvals required by law. All costs in connection with such

amendments and the work required to effect such changes shall be paid by the applicants. [Act, sec. 100.130]

Section 18. DECLARANT'S SPECIAL RIGHTS. Notwithstanding any provision to the contrary in this Declaration or the Bylaws, the Declarant shall have the following special rights:

18.1. Declarant's Right to Sales/Model Units. Notwithstanding the provisions of Section 10.1 above, for a period of up to five (5) years following the date of the initial conveyance of a Unit other than to Declarant, Declarant shall have the right to use and modify up to two (2) of the Units it owns as sales and management offices and/or models for sales of Units. The Declarant, its employees, sales agents and prospective purchasers and their agents shall have the right to park automobiles in the limited common element parking spaces of the Units in question and in the common element parking spaces and to use and occupy the sales office and models during reasonable hours (e.g., 8 a.m. to 10 p.m.) any day or evening of the week, including weekends and holidays.

18.2. Common Element Maintenance by the Association. The Association shall maintain all Common Elements in a clean and attractive manner. Should the Association fail to do so, the Declarant may perform such maintenance at the expense of the Association.

18.3. Development Easement. The Declarant and its agents shall have an easement over, upon and through the Common Elements as may be reasonably necessary for the purpose of completing any portions of the Condominium, discharging any obligation of the Declarant, carrying out sales and rentals of Units and advertisements thereof, including posting "For Sale" and "For Lease" signs, or exercising any special Declarant right, whether arising under the Act, or reserved in this Declaration or the Bylaws. [Act, sec. 100.170] In particular, the Declarant, its agents and employees, shall have an easement on and over the Common Elements for the completion or repair of any portion of the Condominium, including the furnishing and decoration of any Unit, sales office or model Unit, and the right to store materials on or in the Common Elements parking areas in reasonable places and for reasonable lengths of time. [FNMA sec. 606].

18.4. Amendment to Declaration and Bylaws. Consistent with Section 15.3 of this Declaration, no amendment to this Declaration or the Bylaws shall be effective without the written consent of the Declarant until such time as seventy-five percent (75%) of the Units have been conveyed to persons other than Declarant or five (5) years after the conveyance of the first Unit in the Condominiums, whichever is earlier. No amendment may limit or diminish any right of Declarant reserved under this Declaration, the Act, or any other special Declarant right without the written consent of Declarant until such time as Declarant waives in writing this right of consent.

18.5. Other Declarant Rights. The rights reserved to the Declarant in this Section 18 shall in no way limit other special Declarant rights the Declarant may have, whether pursuant to the Act or otherwise. Upon the expiration of any or all special Declarant rights, the Declarant will have the same rights as any other Unit Owner in the Condominium in respect to any such

ownership.

18.7. Assignment of Declarant's Rights. Subject to the restrictions of the Act, in particular current ORS 100.220 and 225, the Declarant shall have the right to assign any and all of its rights, including without limitation special Declarant rights as set forth in Section 18, or to share such rights with one or more other persons exclusively, simultaneously, or consecutively. [Act, sec. 100.220 and 225].

18.8. Expiration of Declarant's Special Rights. Unless otherwise provided, the Declarant's special rights reserved in this Section 18 shall expire upon the conveyance by the Declarant of the last Unit owned by the Declarant or five (5) years after conveyance of the first Unit in the Condominium, whichever is earlier.

#### Section 19. GENERAL PROVISIONS.

19.1. Interpretation. The rights and obligations of all members of the Association and any person dealing with the Association or any of its members in respect to matters pertaining to the Declaration and the Bylaws shall be interpreted and governed by the laws of the State of Oregon.

19.2. Severability. Each provision of this Declaration and the Bylaws is independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Declaration or the Bylaws.

19.3. Waiver of Rights. The failure of the Association, Board, an officer or a Unit Owner to enforce any right, provision, covenant or condition of the Declaration and Bylaws shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

19.4. Legal Proceedings. Failure to comply with any of the terms of the Declaration, the Bylaws and any rules or regulations adopted thereunder shall be grounds for relief which may include, without intending to limit the same, an action to recover money due, damages or a suit for injunctive relief, to foreclose a lien, or any combination thereof. Relief may be sought by the Association, Board, an officer, a professional manager or management firm, or, if appropriate, by an aggrieved Unit Owner.

19.5. Costs and Attorney Fees. In any proceeding arising because of alleged default by a Unit Owner to comply with the terms and provisions of this Declaration (as may be amended or supplemented), the Bylaws (as may be amended), rules and regulations of the Association or any provisions of the Act, the prevailing party shall be entitled to recover the cost of the proceedings and such reasonable attorney fees as may be determined by the trial court in any trial or by the appellate court in any appeal thereof, including fees as may be determined by a bankruptcy court for asserting rights as a creditor in bankruptcy.

19.6. Compliance. Each Unit Owner shall comply with the Declaration, and the Bylaws and with the administrative rules and regulations adopted thereunder, and with all other



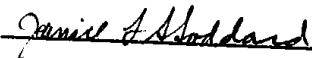
The foregoing Declaration is approved pursuant to ORS 100.110 this 29<sup>th</sup> day of January, 1999, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within two (2) years from this date.

SCOTT W. TAYLOR  
Real Estate Commissioner

By:   
Marge Robinson

The foregoing Declaration is approved pursuant to ORS 100.110 this 12<sup>th</sup> day of March, 1999.

MULTNOMAH COUNTY ASSESSOR

By: 

**EXHIBIT A**  
**Legal Description**

The premises are in Multnomah County and are described as follows:

Sutton Place Condominiums, a replat of Lot 8, Block 171, Couch's Addition, a plat of record, situated in the Southeast ¼ of Section 33, T. 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon. The Initial Point is a 5/8 inch diameter iron rod at the southwest corner of said Lot 8; the lands being committed to said condominium are described as follows: Beginning at said Initial Point; thence, along the west line of said Lot 8, NORTH, 50.00 feet to the northwest corner of said Lot 8; thence, along the north line of said Lot 8 and also along the south right of way line of N.W. Everett St., EAST, 100.00 feet to the northeast corner of said Lot 8; thence, along the east line of said Lot 8 and also along the west right of way line of N.W. 18<sup>th</sup> Ave., SOUTH, 50.00 feet to the southeast corner of said Lot 8; thence along the south line of said Lot 8, WEST, 100.00 feet to the Initial Point.



**EXHIBIT B**  
**Table of Allocated Interests**  
**Sutton Place Condominiums**

<u>Units/Fractional Interest</u>		<u>Units/Fractional Interest</u>	
101	1/12	203	1/12
102	1/12	204	1/12
103	1/12	301	1/12
104	1/12	302	1/12
201	1/12	303	1/12
202	1/12	304	1/12

**EXHIBIT C**  
**Parking Spaces/ Storage Spaces**

<u>Unit/Parking Space/ Storage Space</u>			<u>Unit/Parking Space/Storage Space</u>		
101	PS 4	S 1	202	PS 6	S 7
102	PS 9	S 2	204	PS 11	S 8
103	PS 10	S 3	301	PS 2	S 9
104	PS 3	S 4	302	PS 1	S10
201	PS 8	S 5	303	PS 5	S11
202	PS 7	S 6	304	PS 12	S12