

VIEWPOINT TOWNHOUSE CONDOMINIUMS

A REPLAT OF LOTS 6, 7 & 8, BLOCK 8, "TERWILLIGER HOMESTEAD"

SITUATED IN THE N. W. 1/4 SECTION 15, T. 1 S., R. 1 E., W. 4.
CITY OF PORTLAND - MULTNOMAH COUNTY, OREGON

BY: CHASE, JONES & ASSOCIATES, INC.
716 S. E. 117th AVE.
PORTLAND, OREGON 97214
PHONE: 503-258-8844

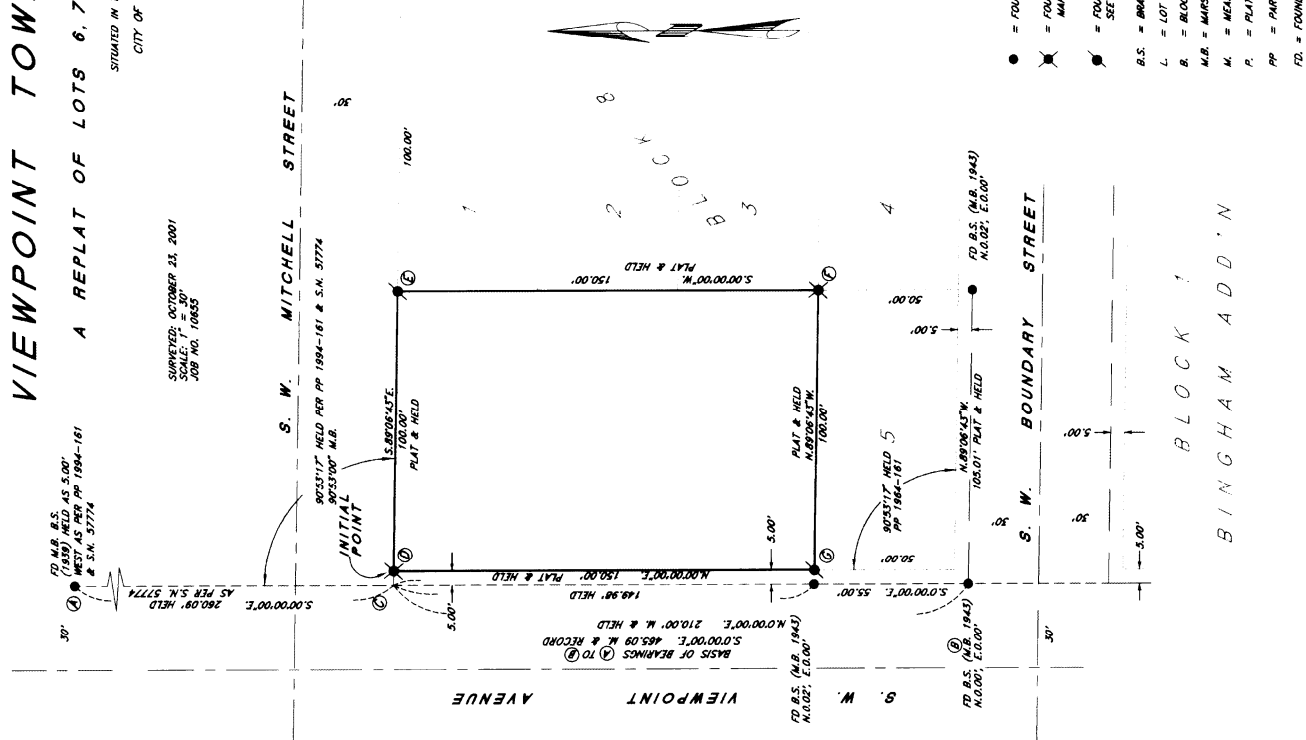
SURVEYED: OCTOBER 23, 2001
SCALE: 1" = 30'
JOB NO. 10665

SHEET INDEX

SHEET 1.....BOUNDARY SURVEY
SHEET 2.....BUILDING LOCATION
SHEET 3.....BUILDING "A" FLOOR PLANS & ELEVATION VIEWS
SHEET 4.....BUILDING "B" FLOOR PLANS & ELEVATION VIEWS
SHEET 5.....SIGNATURES, CERTIFICATES, APPROVALS & DECLARATION

NARRATIVE

- 1) THE PURPOSE OF THIS SURVEY IS TO PROVIDE A CONDOMINIUM PLAT OF LOTS 6, 7 & 8, BLOCK 8, TERWILLIGER HOMESTEAD AS PER THE CLIENT'S REQUEST.
- 2) I RECOVERED MONUMENT ① AND HELD S. 0.00000"E. AS PER S.N. 57774 AS MY BASIS OF BEARING FOR THIS SURVEY.
- 3) FROM ①, A POINT ON LINE BETWEEN ② AND ③, I HELD DISTANCE AND BEARING AS PER S.N. 57774 AND CHECKED MONUMENTS ④, ⑤, ⑥ AND ⑦ SET IN SAID SURVEY.
- 4) I CHECKED ALL OTHER MONUMENTS AS SHOWN.



LEGEND

- = FOUND M.B. BRASS SCREW (YEAR AS NOTED).
- ✱ = FOUND 3/8"x50" IRON ROD WITH YELLOW PLASTIC CAP MARKED "CHASE, JONES & ASSOC." SEE S.N. 57774.
- ⊙ = FOUND BRASS SCREW WITH 3/4" BRASS WASHER MARKED "LS 1996" SEE S.N. 57774.
- B.S. = BRASS SCREW
- L. = LOT
- B. = BLOCK
- M.B. = MARSHALL BROTHERS
- M. = MEASURED
- P. = PLAT
- PP. = PARTITION PLAT NO.
- FD. = FOUND

REFERENCE SURVEYS

PARTITION PLAT NO. 1994-161
PLAT OF "TERWILLIGER HOMESTEAD"
MARSHALL BROTHERS 1839 AND 1943 SURVEYS.
S.N. 57774

BASIS OF BEARING

I HELD ① - ⑦ AS MY BASIS OF BEARING AS PER PARTITION PLAT NO. 1994-161 AS SHOWN (S.000000"E.)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Randy W. Engley

OREGON
JAN. 23, 1990
RANDY W. ENGELGOU
2423
EXPIRES: 12/31/01

THIS TRACING IS AN EXACT COPY OF THE ORIGINAL.

75.28

STREET

MITCHELL

S. W.

S. 89°06'43"E.
100.00'

8.00'

VIEWPOINT TOWNHOUSE CONDOMINIUMS

A REPLAT OF LOTS 6, 7 & 8, BLOCK 8, "TERWILLIGER HOMESTEAD"

SITUATED IN THE N. W. 1/4 SECTION 15, T. 1 S., R. 1 E., M. 4
CITY OF PORTLAND - MULTNOMAH COUNTY, OREGON

SUBMITTED: OCTOBER 23, 2001
DATE OF REVISION: 10/23/01
JOB NO. 10653

BY: CHASE, JONES & ASSOCIATES, INC.
1100 NE WASHINGTON ST.
PORTLAND, OREGON 97214
PHONE: 503-238-8644

NOTE

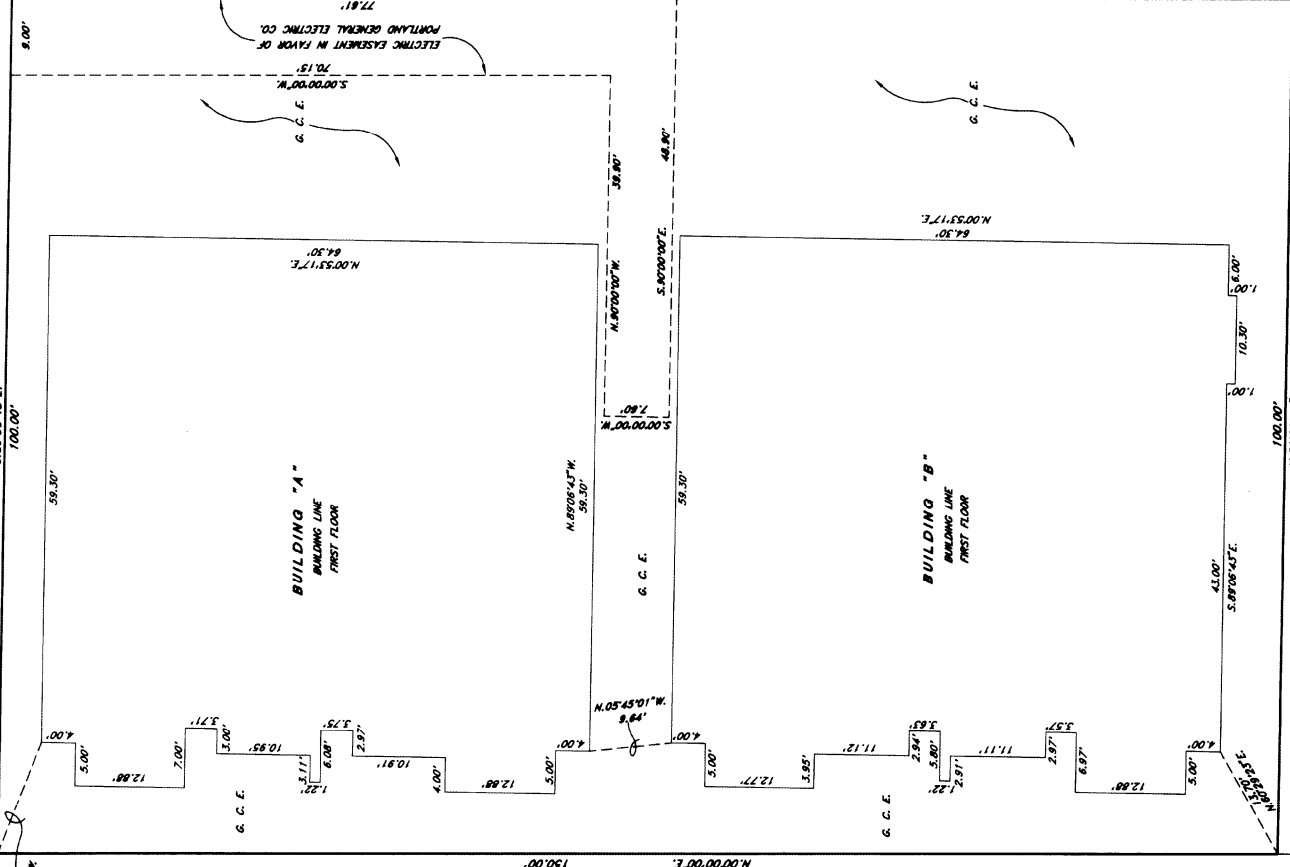
1. ALL BUILDING LINES ARE PARALLEL AND PERPENDICULAR.
2. G.C.E. = GENERAL COMMON ELEMENT.



THIS PLOTTING IS AN EXACT
COPY OF THE ORIGINAL.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Randy W. Engelgau
OREGON
JAN. 27, 1980
RANDY W. ENGELGAU
2423
EXPIRES: 12/31/01

BUILDING LAYOUT
SHEET 2 OF 5



VIEWPOINT AVENUE
S. W.
150.00' N. 00°00'00"E.
150.00' S. 07°00'00"W.
100.00' N. 89°06'43"E.
100.00' S. 89°06'43"E.
100.00' N. 89°06'43"E.
100.00' S. 89°06'43"E.

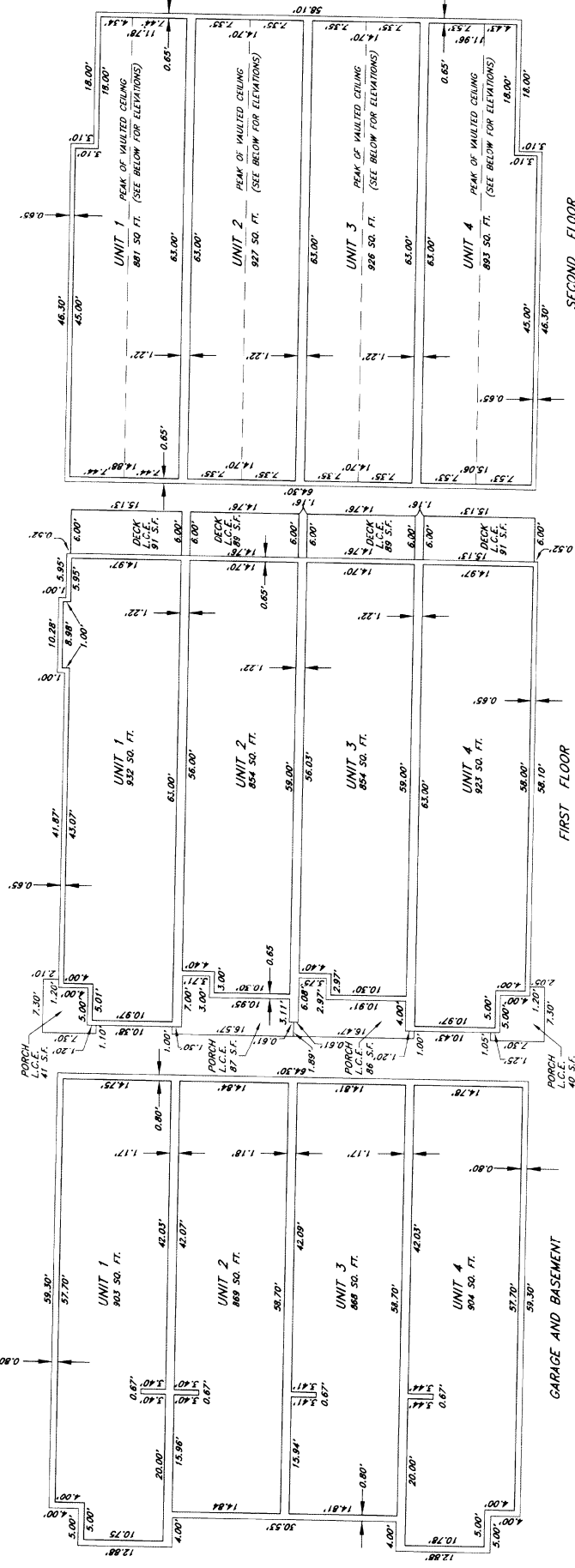
VIEWPOINT TOWNHOUSE CONDOMINIUMS

A REPLAT OF LOTS 6, 7 & 8, BLOCK 8, "TERWILLIGER HOMESTEAD"

SITUATED IN THE N. W. 1/4 SECTION 15, T. 1 S., R. 1 E., W. 4.
CITY OF PORTLAND - MULTNOMAH COUNTY, OREGON

SURVEY: OCTOBER 25, 2001
SCALE: 1" = 10'
JOB NO. 10655

BY: CHASE, JONES & ASSOCIATES, INC.
PORTLAND, OREGON 97214
PHONE: 503-228-8844



SQUARE FOOTAGE TOTAL

- UNIT 1 = 2716 SQ. FT.
- UNIT 2 = 2650 SQ. FT.
- UNIT 3 = 2648 SQ. FT.
- UNIT 4 = 2720 SQ. FT.

NOTE

1. ALL BUILDING LINES ARE PARALLEL AND PERPENDICULAR
2. L.C.E. = LIMITED COMMON ELEMENT
3. BENCH MARK: CITY OF PORTLAND B.M. NO. 4559 LOCATED ON N. CURB LINE OF S.E. MITCHELL ST. EXTENDED, S.W. MACADAM AVE. & S.W. MITCHELL ST. ELEVATION = 57.74'
4. SQ. FT. = SQUARE FEET



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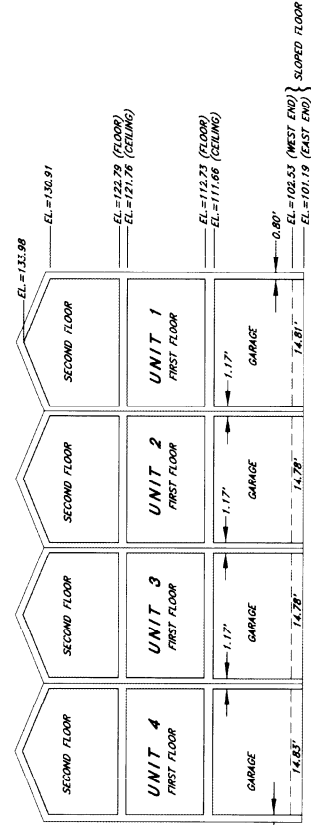
REGISTERED PROFESSIONAL LAND SURVEYOR

Randy W. Engleau

EXPIRES: 12/31/01

JAN 23, 1990
RANDY W. ENGLEAU
2493

BUILDING "A"
FLOOR PLANS
AND
ELEVATION VIEW
SHEET 3 OF 5



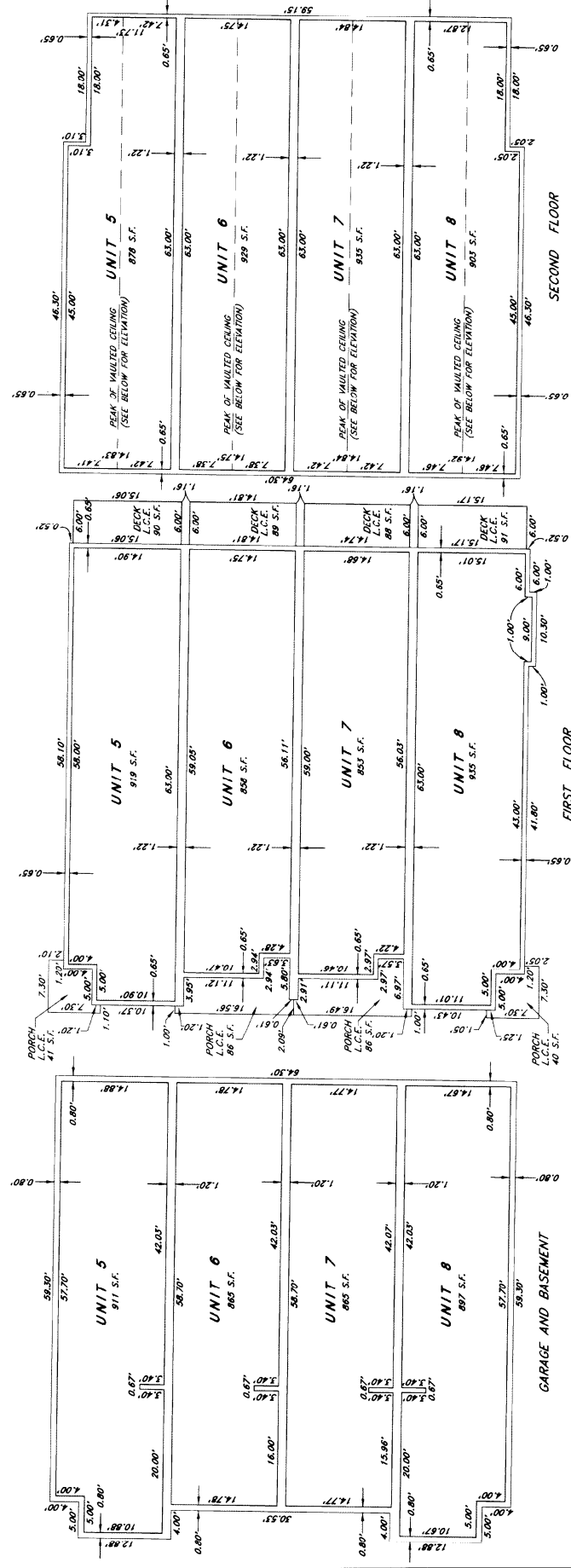
VIEWPOINT TOWNHOUSE CONDOMINIUMS

A REPLAT OF LOTS 6, 7 & 8, BLOCK 8, "TERWILLIGER HOMESTEAD"

SITUATED IN THE N. W. 1/4 SECTION 15, T. 1 S., R. 1 E., W. 4.
CITY OF PORTLAND - MULTNOMAH COUNTY, OREGON

SUBMITTED: OCTOBER 25, 2001
SCALE: 1" = 10'
JOB NO. 10885

BY: CHASE, JONES & ASSOCIATES, INC.
716 S. E. 11TH AV.
PORTLAND, OREGON 97214
PHONE: 503-253-3844

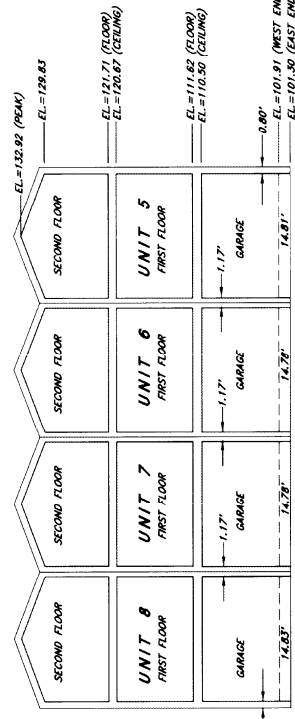


SQUARE FOOTAGE TOTAL

- UNIT 5 = 2708 SQ. FT.
- UNIT 6 = 2652 SQ. FT.
- UNIT 7 = 2653 SQ. FT.
- UNIT 8 = 2725 SQ. FT.



THIS DRAWING IS AN EXACT COPY OF THE ORIGINAL.
REGISTERED PROFESSIONAL LAND SURVEYOR
Randy W. Engelman
OREGON LAND SURVEYOR
RANNEY W. ENGELBAU
2423
EXPIRES: 12/31/01



BUILDING "B" FLOOR PLANS AND ELEVATION VIEW SHEET 4 OF 5

ELEVATION VIEW (LOOKING WEST)

- NOTE**
1. ALL BUILDING LINES ARE PARALLEL AND PERPENDICULAR.
 2. L.C.E. = LIMITED COMMON ELEMENT.
 3. BEYOND MARK: CITY OF PORTLAND P.M. NO. 4259 LOCATED AT CURB LINE OF S.E. MITCHELL ST. EXTENDED. S.W. MACADAM AVE. & S.W. MITCHELL ST. ELEVATION = 57.74.
 4. 50. FT. = SQUARE FEET

VIEWPOINT TOWNHOUSE CONDOMINIUMS

BOOK 1253 PAGE 15

A REPLAT OF LOTS 6, 7 & 8, BLOCK 8, "TERWILLIGER HOMESTEAD"

SITUATED IN THE N. W. 1/4 SECTION 15, T. 1 S., R. 1 E., W. 4
CITY OF PORTLAND - MULTNOMAH COUNTY, OREGON

SURVEYED: OCTOBER 23, 2001
JOB NO. 10855

BY: CHASE, JONES & ASSOCIATES, INC.
1000 NE 10TH AVENUE
PORTLAND, OREGON 97214
PHONE: 503-228-8844

DECLARATION

STATE OF OREGON }
COUNTY OF MULTNOMAH } S.S.
I, RANDY W. ENGELGAU, AS OWNER OF THE LANDS DESCRIBED
IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, DO HEREBY DECLARE THE
LANDS DESCRIBED TO BE UNIMPROVED, UNINCORPORATED, UNPLATTED,
UNRECORDED AND CORRECT PLAT TERRACE, AND HEREBY SUBMIT SAID PROPERTY
WITH RESTRICTIONS TO THE OPERATION AND PROVISIONS OF THE OREGON
CONDOMINIUM ACT, AS APPLICABLE TO SAID PROPERTY, AND TO THE
PLAT AND SUBJECT TO THE PROVISIONS OF OREGON REVISION RELATIONS
ACT, AS APPLICABLE TO SAID PROPERTY, AND TO THE ELECTRICAL BASEMENT
AS SHOWN TO PORTLAND GENERAL ELECTRIC COMPANY FORMER.
VIEWPOINT TERRACE LLC, AN OREGON LIMITED LIABILITY COMPANY,
MULTNOMAH COUNTY, OREGON

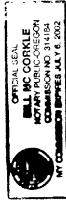
[Signature]
WALTER TENGSTADT, MEMBER OF MK DEVELOPMENT, LLC, MEMBER OF
VIEWPOINT TERRACE, LLC.

ACKNOWLEDGEMENT

STATE OF OREGON } S.S.
COUNTY OF MULTNOMAH }

ON THIS 26th DAY OF OCTOBER, 2001, THIS INSTRUMENT WAS
SIGNED BY RANDY W. ENGELGAU, AS MEMBER OF VIEWPOINT TERRACE, LLC,
AN OREGON LIMITED LIABILITY COMPANY, AS MEMBER OF VIEWPOINT TERRACE, LLC,
AN OREGON LIMITED LIABILITY COMPANY.

[Signature]
NOTARY PUBLIC FOR THE STATE OF OREGON
MY COMMISSION EXPIRES 2-6-2002



SURVEYOR'S CERTIFICATE

I, RANDY W. ENGELGAU, CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER
MONUMENTS THE LANDS REPRESENTED ON THE ATTACHED CONDOMINIUM PLAT, BEING LOTS 6,
7 & 8, S. 1/4 E. 1/4 S. 15, T. 1 S., R. 1 E., W. 4, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, SAID LANDS
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, SAID POINT BEING MARKED BY A ROUND 5" X 8" IRON ROD WITH
YELLOW PLASTIC CAP STAMPED "CHASE, JONES & ASSOC.", SAID POINT ALSO BEING THE
N.W. CORNER OF SAID LOT 8; THENCE S. 89°04'32" E., ON THE NORTH LINE OF SAID LOT 8,
150.00 FEET TO THE POINT OF BEGINNING; THENCE S. 89°04'32" E., ON THE NORTH LINE OF SAID LOT 8,
TO THE SOUTHWEST CORNER OF SAID LOT 8; THENCE S. 0°00'00" W. ON THE EAST LINE OF SAID LOT 8,
150.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6; THENCE N. 89°04'32" W., ALONG THE SOUTH LINE OF SAID LOT 6
TO THE SOUTHWEST CORNER OF SAID LOT 6; THENCE S. 89°04'32" E., ON THE WEST LINE OF SAID LOT 6,
150.00 FEET TO THE POINT OF BEGINNING; THENCE N. 0°00'00" E., ON THE WEST LINE OF SAID LOTS 6-8 AND THE EAST
RIGHT-OF-WAY LINE OF S.W. VIEWPOINT AVENUE, 150.00 FEET TO THE INITIAL POINT.

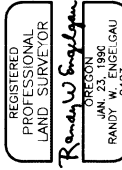
CONTAINING AN AREA OF 15,000 SQUARE FEET OR 0.34 ACRES MORE OR LESS.

COMPLETION CERTIFICATE

I, RANDY W. ENGELGAU, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO
HEREBY CERTIFY THAT THE PLAT OF "VIEWPOINT TOWNHOUSE CONDOMINIUMS"
FULLY AND CORRECTLY REPRESENTS THE TRUE AND ACCURATE POSITION OF THE LOTS, AND OF
THE PLAT BOUNDARIES, AND THAT ALL NECESSARY CONSTRUCTION OF LOTS AND BOUNDARIES, AS
DEPICTED ON SUCH PLAT, HAS BEEN COMPLETED.

DATED THIS 23rd DAY OF OCTOBER, 2001

THIS TRACING IS AN EXACT
COPY OF THE ORIGINAL



[Signature]
RANDY W. ENGELGAU - No. 2423

APPROVALS

APPROVED THIS 26th DAY OF OCTOBER, 2001
[Signature]
COUNTY SURVEYOR
MULTNOMAH COUNTY, OREGON

ALL TAXES, FEES, ASSESSMENTS, OR OTHER
CHARGES AS PROVIDED BY O.R.S. 100.110 HAVE BEEN
PAID AS OF October 26, 2001
DIRECTOR,
DIVISION OF ASSESSMENT & TAXATION
MULTNOMAH COUNTY, OREGON

BY: *[Signature]*
STATE OF OREGON } S.S.
COUNTY OF MULTNOMAH }

I DO HEREBY CERTIFY THAT THE ATTACHED CONDOMINIUM
PLAT WAS RECEIVED FOR RECORD AND RECORDED
October 26, 2001 AT 4:14 P.M.

IN BOOK 1253 ON PAGES 11-15
COUNTY RECORDING OFFICE
BY: *[Signature]*
DOCUMENT NO. 2001-171371

AFTER RECORDING, RETURN TO:

Viewpoint Terrace LLC
c/o M K Development
6501 SW Macadam, 2d Floor
Portland, OR 97201

PREPARED BY:

Howard M. Feuerstein
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk

Total : 284.00

2001-171372 10/26/2001 04:14:57pm AT

E41	54	REC	SUR	DOR	OLI:
		270.00	3.00	10.00	1.00

**DECLARATION SUBMITTING
VIEWPOINT TOWNHOUSE CONDOMINIUMS
TO CONDOMINIUM OWNERSHIP**

VIEWPOINT TERRACE, LLC,
an Oregon limited liability company

DECLARANT

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Exhibit B Unit Square Footage and Undivided Interests

Exhibit C Bylaws

**DECLARATION SUBMITTING
VIEWPOINT TOWNHOUSE CONDOMINIUMS
TO CONDOMINIUM OWNERSHIP**

THIS DECLARATION, pursuant to the provisions of the Oregon Condominium Act, is made and executed this 18th day of October, 2001, **VIEWPOINT TERRACE, LLC**, an Oregon limited liability company ("**Declarant**").

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

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

ARTICLE 1.

DEFINITIONS

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

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

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

1.3 "**Condominium**" means all of that property submitted to the condominium form of ownership by this Declaration.

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

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

1.6 "**Eligible Mortgage Insurer or Guarantor**" means an insurer or governmental guarantor of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below.

1.7 "**Eligible Mortgage Holder**" means a holder of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below, but shall not include a contract vendor.

1.8 "**Mortgage**" and "**Mortgagee**" mean, respectively, a recorded mortgage, trust deed or contract of sale which creates a lien against a unit, and the holder, beneficiary or vendor of such a mortgage, trust deed or contract of sale.

1.9 "**Plat**" means the plat of Viewpoint Townhouse Condominiums recorded simultaneously with the recording of this Declaration.

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

ARTICLE 2.

SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE

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

ARTICLE 3.

NAME OF CONDOMINIUM

The name by which the Condominium shall be known is "**Viewpoint Townhouse Condominiums**."

ARTICLE 4.

UNITS

4.1 **General Description of Buildings**. The Condominium contains two buildings, each of which is two stories plus a ground floor garage level. The buildings are of wood frame construction with synthetic cement fiber siding and composition roofs.

4.2 **General Description, Location and Designation of Units.** The Condominium consists of eight units. The designation, location, description of boundaries and area in square feet of each unit, including garage, are shown on the Plat and the attached **Exhibit B**.

4.3 **Boundaries of Units.** Each unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim. The unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces, except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the Condominium. All other portions of the walls, floors or ceilings shall be a part of the common elements. In addition, each unit shall include the following: (a) All spaces, nonbearing interior partitions, windows, window frames, exterior doors, door frames and all other fixtures and improvements within the boundaries of the unit, including without limitation, garages; and (b) All outlets of utility and communications service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal, security, cable television and telephone, within the boundaries of the unit, but shall not include any part of such lines or ducts themselves.

ARTICLE 5.

GENERAL COMMON ELEMENTS

The general common elements consist of the following:

- 5.1 The land, pathways, driveways, fences and grounds.
- 5.2 Pipes, ducts, flues, chutes, conduits, wires and other utility and communications installations to their outlets.
- 5.3 Roofs, foundations, bearing and shear walls, perimeter walls, beams, columns and girders to the interior surfaces thereof.
- 5.4 Stairways, landings, entrances and exits which are not part of a unit.
- 5.5 All other elements of the buildings and the Condominium necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated in this Declaration as part of a unit or a limited common element.

ARTICLE 6.

LIMITED COMMON ELEMENTS

The following shall constitute limited common elements, the use of which shall be restricted to the units to which they pertain: All porches and decks, each of which shall pertain to the unit which it adjoins as shown on the Plat.

ARTICLE 7.

ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS

Each unit will be entitled to an equal one-eighth undivided ownership interest in the common elements. Each unit's interest in the common elements shall be inseparable from the unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the common elements shall be void unless the unit to which that interest is allocated is also transferred.

ARTICLE 8.

COMMON PROFITS AND EXPENSES; VOTING

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

8.2 **Allocation of Voting Rights.** Each unit owner shall be entitled to one vote in the affairs of the Association and for the purposes of this Declaration for each unit owned by such owner. The method of voting shall be as specified in the Bylaws.

ARTICLE 9.

SERVICE OF PROCESS

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

ARTICLE 10.

USE OF PROPERTY

Each unit is to be used for residential purposes as described in the Bylaws. Additional limitations on use are contained in the Bylaws and the rules and regulations adopted pursuant to the Bylaws. Each unit owner shall be bound by each of such documents.

ARTICLE 11.

MAINTENANCE OF COMMON ELEMENTS

11.1 **Responsibility for Maintenance.** The necessary work to maintain, repair or replace the common elements shall be the responsibility of the board of directors of the Association and shall be carried out as provided in the Bylaws.

11.2 **Mortgagee's Rights upon Failure to Maintain.** If the mortgagee of any unit determines that the board of directors is not providing an adequate maintenance, repair and replacement program for the common elements, such mortgagee, at its option, may give a notice to the board of directors by delivering same to the registered agent, setting forth the particular defect which it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within 90 days subsequent to receipt of such notice, then the mortgagee, upon written notice to the registered agent that it is exercising its proxy rights, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each unit on which it holds a mortgage on all business coming before such meeting. Such proxy rights shall continue until the defects listed on the notice are corrected.

11.3 **Rights of City Upon Failure to Maintain.** The provisions of this Declaration and of the Bylaws regarding the maintenance, repair and replacement of the common elements shall be deemed to be for the benefit of the City of Portland, as well as the unit owners, and the City may enforce such provisions by appropriate proceedings at law or in equity. Without limitation to the foregoing, the City may deliver a written notice to the board of directors by delivering the same to the registered agent, setting forth the particular defect which it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within 30 days after receipt of the notice, or, if such correction cannot reasonably be completed within such time, the Association fails within such time to commence and pursue the correction with reasonable diligence, then the City may take necessary curative action. In such event, the cost of correction by the City shall constitute a lien against each unit and its interest in the common elements based upon such unit's share of the common expenses as provided in this Declaration.

ARTICLE 12.

EASEMENTS

12.1 **In General.** Each unit has an easement in and through each other unit and the common elements for all support elements and utility, wiring, heat, 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 the common elements are specifically subject to easements as required for the electrical wiring and plumbing for each unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common elements reserved by law. Each unit owner has an unrestricted right of ingress and egress to his or her unit. This right is perpetual and passes with the ownership of the unit.

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

12.3 **Granting of Easements by Association.** Pursuant to ORS 100.405(5), the Association, upon prior approval of 75 percent of the voting power of the unit owners, may grant, execute, acknowledge, deliver and record on behalf of the unit owners leases, easements, rights-of-way, licenses, and similar interests in excess of two years affecting the common elements and consent to vacation of roadways within and adjacent to the Condominium. Any such instrument shall be executed by the chairperson and secretary of the Association. No such interest may be granted with regard to a limited common element unless the owners and mortgagees of the units having the right to use such limited common element consent to and join in the instrument granting the interest.

12.4 **Right of Entry.** The board of directors of the Association, managing agent, manager or any other person authorized by the board of directors shall have the right to enter any unit and limited common element in the case of an emergency originating in or threatening such unit or other condominium property, whether or not the owner is present at the time. Such persons shall also have the right to enter any unit and limited common element for the

purpose of performing installations, alterations or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in this Declaration and the Bylaws, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner.

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

ARTICLE 13.

APPROVAL BY MORTGAGEES

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

(a) Any condemnation or casualty loss which affects a material portion of the Condominium or affects the unit securing its mortgage.

(b) Any 60-day delinquency in the payment of assessments or charges owed by an owner of any unit on which it holds the mortgage.

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

(d) Any proposed action which would require consent of a specified percentage of eligible mortgage holders as required by this article.

13.2 **Termination and Amendment to Documents.**

(a) The approval of eligible holders holding mortgages on units which have at least 67 percent of the voting rights of units subject to eligible holder mortgages shall be required to terminate the legal status of the project as a condominium for reasons other than substantial destruction or condemnation of the property.

(b) Except when a greater percent is required by the Declaration or Bylaws, or a greater or lesser percent is required by the Oregon Condominium Act, the consent of the owners of units holding at least 67 percent of the voting rights and the approval of eligible holders holding mortgages on units which have at least 51 percent of the voting rights of the units subject to eligible holder mortgages shall be required for any amendments of a material nature to the Declaration or Bylaws. Any amendment to the Declaration or Bylaws which changes any of the following shall constitute a material change:

- (1) Voting rights;
- (2) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of such liens;
- (3) Reduction in reserves for maintenance, repair and replacement of the common elements;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interests in the general or limited common elements, or rights to their use;
- (6) The boundaries of any unit;
- (7) Convertibility of units into common elements or of common elements into units;
- (8) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (9) Hazard or fidelity insurance requirements;
- (10) Imposition of any restrictions on the leasing of units;
- (11) Imposition of any restriction on the right of a unit owner to sell or transfer his or her unit;
- (12) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than specified in this Declaration or the Bylaws;
- (13) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or

(14) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

(c) An addition or amendment to the Declaration or Bylaws shall not be considered material for purposes of Section 13.2(b) if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who receives a written request to approve any termination, additions or amendments and who does not deliver or post to the requesting party a negative response within 30 days shall after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, be deemed to have approved such request.

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

(a) Abandonment or termination of the Condominium regime.

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

(c) The partition or subdivision of any unit.

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

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

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

ARTICLE 14.

ASSOCIATION OF UNIT OWNERS

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

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

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

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

ARTICLE 15.

AMENDMENT

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

15.2 **Approval Required.** Except as may otherwise be provided in this Declaration or by the Oregon Condominium Act, this Declaration may be amended if such amendment is approved by unit owners holding 75 percent of the voting rights of the Condominium and by mortgagees to the extent required by ARTICLE 13. Declarant's prior written consent shall also be required so long as Declarant owns 25 percent or more of the units in the

Condominium, but no such consent shall be required after three years from the date of conveyance of the first unit to a person other than Declarant. Except as otherwise permitted by the Oregon Condominium Act, no amendment may change the size, location, allocation of undivided interest in the common elements, 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 owners and mortgagees of the affected unit. Any amendment which would limit or diminish any special Declarant rights established in this Declaration or the Bylaws shall require the written consent of Declarant.

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

ARTICLE 16.

SEVERABILITY

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

ARTICLE 17.

APPLICABILITY

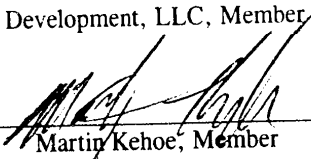
Each unit owner, including Declarant as to any unsold unit, shall be subject to all of the rights and duties assigned to unit owners under the terms of the Declaration and Bylaws.

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

VIEWPOINT TERRACE, LLC, an Oregon limited liability company

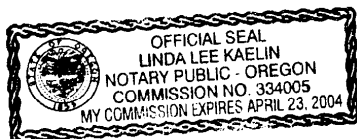
By: MK Development, LLC, Member

By


Martin Kehoe, Member

STATE OF OREGON)
) ss.
County of)

The foregoing instrument was acknowledged before me this 18th day of October, 2001, by Martin Kehoe, Member of MK Development, LLC, an Oregon limited liability company, Member of Viewpoint Terrace, LLC, an Oregon limited liability company, on its behalf.



Linda Lee Kaelin
Notary Public for Oregon
My commission expires: April 23, 2004
Commission No.: 334005

The foregoing Declaration is approved this 26th day of October, 2001.

ASSESSOR AND TAX COLLECTOR
FOR MULTNOMAH COUNTY

By [Signature]

The foregoing Declaration is approved pursuant to ORS 100.110 this 24th day of October, 2001 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 [Signature]
Brian DeMarco

EXHIBIT A

Legal Description

A tract of land situated in the NW ¼ of Section 15, T1S, R1E, W.M., City of Portland, Multnomah County, Oregon, said lands being more particularly described as follows:

Beginning at the N.W. corner of Lot 8, Block 8, "Terwilliger Homestead," thence S89°06'43"E, on the north line of said Lot 8, also being the south right of way line of S.W. Mitchell Street, 100.00 feet; thence S00°00'00"W. on the east line of Lots 6-8, said Block 8, 150.00 feet to the southeast corner of Lot 6; thence N89°06'43"W, 100.00 feet to the southwest corner of said Lot 6, said point also being on the east right of way line of S.W. Viewpoint Avenue; thence N00°00'00"E, on the west line of Lots 6-8. Said Block 8, and the east right of way line of S.W. Viewpoint Avenue, 150.00 feet to the point of beginning.

EXHIBIT B

Unit Square Footages and Undivided Interests

<u>Unit</u>	<u>Square Footage</u>	<u>Undivided Interest</u>
1	2721	1/8 th
2	2650	1/8 th
3	2648	1/8 th
4	2722	1/8 th
5	2710	1/8 th
6	2655	1/8 th
7	2655	1/8 th
8	2737	1/8 th



EXHIBIT C

BYLAWS

OF

VIEWPOINT TOWNHOUSE CONDOMINIUMS ASSOCIATION

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BYLAWS OF
VIEWPOINT TOWNHOUSE CONDOMINIUMS ASSOCIATION

ARTICLE 1.

PLAN OF CONDOMINIUM OWNERSHIP

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

1.2 **Principal Office.** The principal office of the Association shall be located at 6501 SW Macadam Avenue, 2nd Floor, Portland, Oregon 97201, or such other address as may be designated by the board of directors from time to time.

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

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

1.5 **Composition of Association.** The Association shall be composed of all the unit owners of the Condominium, including Viewpoint Terrace, LLC, an Oregon limited liability company, and its successors and assigns (the "**Declarant**"), and the Association, itself, to the extent any of these own any unit or units of the Condominium.

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

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

ARTICLE 2.

MEETINGS OF ASSOCIATION

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

2.2 **Organizational and Turnover Meeting.** Within three years after the date of conveyance of the first unit to a person other than the Declarant, or within ninety (90) days after Declarant has sold and conveyed seventy-five percent (75%) or more of the units in the Condominium, whichever is earlier, the Declarant shall call the first meeting of the unit owners to organize the Association and to elect directors. Notice of such meeting shall be given to all owners as provided in Section 2.5. If Declarant fails to call the meeting, the meeting may be called and notice given by any unit owner or mortgagee of a unit. The expense of giving notice shall be paid or reimbursed by the Association. At the meeting, Declarant shall deliver to the Association such information and documents as may be required by the Oregon Condominium Act. Nothing in this section shall be construed as preventing the Declarant from calling the organizational and turnover meeting prior to such date, or from calling informal, informational meetings of the unit owners.

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

2.4 **Special Meetings.** Special meetings of the Association may be called by the chairperson or by a majority of the board of directors, and must be called by such officers upon receipt of a written request from at least thirty percent (30%) of the unit owners stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.5 **Notice of Meetings.** Notice of the annual meeting and all other meetings of the Association stating the time and place and the objects for which the meeting is being called shall be given by the chairperson or secretary. Such notice shall be in writing and mailed not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting to each unit owner at his address as it appears on the books of the Association and to any first mortgagee requesting such notice. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived by any unit owner before or after meetings. When a meeting is adjourned for less than 30 days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

2.6 **Voting.** Each unit owner shall have one vote for each unit of the Condominium owned by such unit owner. The Declarant shall be entitled to vote as the unit owner of any then existing units retained by the Declarant, and the board of directors shall be entitled to vote on behalf of any unit which has been acquired by or on behalf of the Association; provided, however, that the board of directors shall not be entitled to vote such units in any election of directors.

2.7 **Absentee Ballots and Proxies.** A vote may be cast in person, by absentee ballot or by proxy. 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, and shall be filed with the secretary, at any time prior to the meeting. An owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term. Every proxy shall automatically cease upon sale of the unit by its owner. A unit owner may pledge or assign such owner's 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 under these Bylaws and to exercise the unit owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the board of directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

2.8 **Fiduciaries and Joint Owners.** An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that such person shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee, holding such unit in such capacity. Whenever any unit is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such unit may be exercised by any one of the owners then present, in the absence of protest by a co-owner. In the event of 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.

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

2.10 **Quorum of Unit Owners.** At any meeting of the Association, members holding twenty percent (20%) of the voting rights, present in person or by proxy, shall constitute a quorum. The subsequent joinder of a unit owner in the action taken at a meeting by signing and concurring in the minutes of the meeting shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a unit owner or owners. If any meeting of

members cannot be organized because of a lack of 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.

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

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

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

2.13 **Ballot Meetings.** At the discretion of the board of directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member that is entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of unit owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected. If approval of a proposed action otherwise would require a meeting at which a specified percentage of unit owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required

percentage has not been met. Votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered. All solicitations for votes by written ballot shall state the number of responses needed to meet any applicable quorum requirement and the total percentage of votes needed for approval. All such solicitations for votes shall specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of (a) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, or (b) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (c) a date certain on which all ballots must be returned to be counted. A written ballot may not be revoked.

ARTICLE 3.

BOARD OF DIRECTORS

3.1 **Number and Qualification.** The affairs of the Association shall be governed by a board of directors composed of one (1) interim director or three (3) regular directors, as provided in Sections 3.2 and 3.3 of this Article. All directors, other than interim directors appointed by Declarant, shall be owners or co-owners of units of the Condominium. For purposes of this section, the officers and any duly appointed employees of any corporate owner, the members of any limited liability company and the partners of any partnership shall be considered co-owners of any units owned by such corporation, limited liability company or partnership.

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

3.3 **Election and Term of Office.** At the first organizational and turnover meeting called by Declarant pursuant to Section 2.2 of these Bylaws, the interim director shall resign and three (3) successors shall be elected, one to serve until the next annual meeting and two to serve until the second annual meeting after their election. The candidates receiving the greatest number of votes shall be elected to the two-year terms. Thereafter, at the expiration of the initial term of office of each respective director, his or her successor shall be elected to serve for a term of two years, so that the term of not less than one-third of the directors shall expire annually. Directors shall hold office until their respective successors have been elected by the unit owners. Election shall be by plurality.

3.4 **Vacancies.** Vacancies in the board of directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, or by a sole remaining director. Each person so elected shall be a director until a successor is elected to fill the unexpired

term at the next annual meeting of the Association or the next special meeting of the Association called for that purpose. Vacancies in interim directors shall be filled by Declarant.

3.5 **Removal of Directors.** At any regular or special meeting of the Association duly called, any one or more of the directors, other than interim directors, may be removed with or without cause by a majority vote of the unit owners present in person or by proxy, and a successor shall be elected at that meeting to fill the vacancy thus created. The notice of any such meeting shall state that such removal is to be considered, and any director whose removal has been proposed shall be given an opportunity to be heard at that meeting.

3.6 **Powers and Duties.** The board of directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the board of directors by the unit owners. The powers and duties to be exercised by the board of directors shall include, but shall not be limited to the following:

(a) Operation, care, upkeep, maintenance, repair and replacement of the general and limited common elements and Association property.

(b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Preparation and adoption of budgets, preparation, review and update of reserve studies and assessment and collection of the common expenses, all in accordance with the provisions of these Bylaws.

(d) Employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep and repair of the common elements.

(e) 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; provided, however, the board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific matter unless the unit owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association and the board of directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of the Declaration. To the extent required by ORS 100.490, the board shall notify the owners prior to instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the board shall periodically report to the unit owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as

requiring the board to disclose any privileged communication between the Association and its counsel.

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

(g) Preparation and distribution of annual financial statements in accordance with these Bylaws and annual preparation and filing of all required income tax returns or forms for the Association.

(h) Purchasing units of the Condominium at foreclosure or other judicial sales in the name of the Association, or its designee, on behalf of all the unit owners as provided in these Bylaws.

(i) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with units of the Condominium acquired by the Association or its designee on behalf of all the unit owners.

(j) Obtaining insurance or bonds pursuant to the provisions of these Bylaws and at least annually review the insurance coverage of the Association.

(k) Making additions and improvements to, or alterations of, the common elements; provided, however, that no such project may be undertaken by the board if the total cost will exceed the amount of \$20,000 unless the unit owners have enacted a resolution authorizing the project by a majority vote of the members. This limitation shall not be applicable to maintenance, repairs or replacement undertaken pursuant to paragraph (a) above. The limitation set forth in this paragraph shall increase by \$1,000 on each anniversary of the recording of the Declaration.

(l) Modify, close, remove, eliminate or discontinue the use of a general common element facility or improvement or portion of the common element landscaping, except that modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of the unit owners voting on such matter at a meeting or ballot meeting held in accordance with these Bylaws.

(m) Designating one or more committees which, to the extent provided in the resolution designating the committee, shall have the powers of the board of directors in the management of the affairs of the Association. At least one member of each committee shall be a member of the board of directors.

(n) Enforcement by legal means of the provisions of the Oregon Condominium Act, the Declaration, these Bylaws and any rules and regulations adopted hereunder.

(o) The filing of an Annual Report and any amendment in accordance with ORS 100.250.

3.7 **Managing Agent or Manager.** On behalf of the Association, the board of directors may employ or contract for a managing agent or a manager at a compensation to be established by the board of directors. Any such management agreement shall be terminable by the Association upon not more than 90 days' written notice thereof. The board of directors may delegate to the managing agent or manager such duties and powers as the board of directors may authorize. In the absence of such appointment, the board of directors shall act as manager.

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

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

3.10 **Regular and Special Meetings.** Regular meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the board of directors may be called by the chairperson and must be called by the secretary at the written request of at least two directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting, and shall state the time, place and purpose of such meeting.

3.11 **Open Meetings.** All meetings of the board of directors shall be open to unit owners except that, in the discretion of the board, the following matters may be considered in executive session: (a) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (b) personnel matters, including salary negotiations and employee discipline; and (c) the negotiation of contracts with third parties. Such meetings may be conducted by telephonic communication, except that if a majority of the units are principal residences of the occupants, then: (a) for other than emergency meetings, notice of each board of directors' meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method

otherwise reasonably calculated to inform the unit owners of such meeting; and (b) only emergency meetings of the board of directors may be conducted by telephonic communication.

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

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

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

3.15 **Liability and Indemnification of Directors and Officers.** A member of the board of directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional acts. In the event any member of the board of directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

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

ARTICLE 4.

OFFICERS

4.1 **Designation.** The principal officers of the Association shall be the chairperson, the secretary and the treasurer, all of whom shall be elected by the board of directors. The directors

may appoint a vice chairperson, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary. The chairperson shall be a member of the board of directors, but the other officers need not be directors or unit owners.

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

4.3 **Removal of Officers.** Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and a successor may be elected at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

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

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

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

4.7 **Execution of Instruments.** All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the board of directors and, in the absence of any

general or special resolution applicable to any such instrument, then such instrument shall be signed by the chairperson. All checks shall be signed by the treasurer, or in the absence or disability of the treasurer, by the chairperson or any duly elected assistant treasurer.

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

ARTICLE 5.

BUDGET, EXPENSES AND ASSESSMENTS

5.1 **Budget.** The board of directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the common expenses expected to be incurred, less any previous overassessment and plus any underassessment, and assess the common expenses to each unit owner in the proportion set forth in the Declaration. The budget shall provide for a reserve fund in accordance with Section 5.5 below. Within thirty (30) days after adopting the annual budget, the board of directors shall provide a summary of the budget to all owners. If the board of directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

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

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

5.3 **Assessment of Common Expenses.**

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

(b) **Initial working capital fund.** Declarant shall establish an initial working capital fund in an amount at least equal to two (2) months of estimated regular association assessments for each unit. At the time of closing of the initial sale of each unit, the purchaser shall make an initial contribution to the working capital of the Association equal to two months' regular association assessments for the unit. At the time of the organizational and turnover meeting, the Declarant shall pay such contribution for all unsold units, but may obtain reimbursement for such sums from the purchaser upon the sale of each such unit. Such initial contribution shall be in addition to the regular monthly common expense assessment and shall not be considered as an advance payment of regular assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund at the time of the organizational and turnover meeting. Declarant may not use the working capital fund to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association.

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

(d) **Commencement of assessment for replacement reserves.** Regular monthly assessments for replacement reserves as described in Section 5.5 shall commence upon the closing of the sale of the first unit in the Condominium, except that Declarant may elect to defer payment of such assessments to the Association for each unit owned by Declarant until the closing of the sale of such unit, not to exceed three (3) years from the

date the Declaration was recorded. The books and records of the Association shall reflect the amount owing from Declarant for all reserve assessments.

5.4 Special or Extraordinary Assessments.

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

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

5.5 Replacement Reserves.

(a) **Establishment of Account.** The Declarant shall establish a reserve account for replacement of those common elements all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years, and for exterior painting if the common elements include exterior painted surfaces. The reserve account need not include those items that could reasonably be funded from operating assessments.

(b) **Funding of Account.** The reserve account shall be funded by assessments against the individual unit assessed for maintenance of the items for which the reserve account is being established, which sums shall be included in the regular monthly assessment for the unit, except as otherwise provided in Section 5.3(b). The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The reserve account shall be established in the name of the Association.

(c) **Reserve Studies.** The amount of the reserve payments shall be adjusted at least annually to recognize changes in current replacement costs over time. The board of directors annually shall conduct a reserve study, or review and update an existing study, of the common elements to determine the reserve account requirements. A reserve account

shall be established for those items of the common elements all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, for exterior painting if the common elements include exterior painted surfaces, and for the maintenance, repair or replacement of other items the board of directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (i) Identification of all items for which reserves are to be established;
- (ii) The estimated remaining useful life of each item as of the date of the reserve study;
- (iii) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Funds.** The reserve account shall be used only for maintenance, repair and replacement of common elements for which the reserves have been established and shall be kept separate from other funds. After the organizational and turnover meeting described in Section 2.2, however, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. After such meeting the Association may, on an annual basis, elect not to fund the reserve account described in Section 5.5(a) of this section by unanimous vote of the owners.

(e) **Sale of Units.** Nothing in this section shall prohibit prudent investment of the reserve account. Assessments paid into the reserve account are the property of the Association and are not refundable to sellers of units. Sellers of the units, however, may treat their outstanding share of the reserve account as a separate item in any sales agreement.

5.6 **Default in Payment of Assessments.** In the event of default by any unit owner in paying any assessments to the Association, including assessed common expenses and any other charge imposed or levied by the Association pursuant to the provisions of the Declaration, these Bylaws or the Oregon Condominium Act, such unit owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on such assessment from the due date thereof, or at such greater rate as may be established by the board of directors from time to time, not to exceed the maximum lawful rate, if any. In addition, the defaulting unit owner shall pay a late charge for any assessment not paid within ten (10) days of its due date in the amount of five percent (5%) of the

delinquent payment, or such other reasonable late charge as may be established by the board of directors from time to time, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom) and a reasonable administrative fee as established by the board of directors. If the assessment is not paid within thirty (30) days of its due date, the board of directors may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable. The board of directors shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorneys' fees, by an action brought against such unit owner or by foreclosure of the lien upon the unit granted by the Oregon Condominium Act. The board of directors shall notify the holder of any first mortgage upon a unit and any eligible mortgage insurer or guarantor thereof of any default not cured within sixty (60) days of the date of default.

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

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

5.9 **Priority of Lien; First Mortgages.** Any lien of the Association against a unit for assessments shall be subordinate to tax and assessment liens and any prior mortgage of record. Where the purchaser or mortgagee of a unit obtains title to the unit as a result of foreclosure of a first mortgage, such purchaser or mortgagee, its successors and assigns, shall not be liable for any of the assessments chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser or mortgagee. Such unpaid share of assessments shall be a common expense and reallocated on a pro rata basis for all units, including the mortgaged unit. The purchaser or mortgagee shall not be relieved of the obligation to pay further assessments. A deed in lieu of foreclosure accepted by the holder of a first mortgage shall extinguish a lien filed by the Association to secure unpaid assessments under the circumstances described in ORS 100.465.

5.10 **Voluntary Conveyance.** In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the

unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser the board of directors shall make and deliver a statement of the unpaid assessments against the prospective grantor or the unit, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid assessments against the grantor in excess of the amount set forth in the statement.

ARTICLE 6.

RECORDS AND AUDITS

6.1 **General Records.** The board of directors and the managing agent or manager, if any, shall keep detailed records of the actions of the board of directors and the managing agent or manager, minutes of the meetings of the board of directors and minutes of the meetings of the Association. The board of directors shall maintain a Book of Resolutions containing the rules, regulations and policies adopted by the Association, board of directors and the manager. The board of directors shall maintain a list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units.

6.2 **Financial Records and Accounts.** The board of directors or its designee shall keep financial records sufficient for proper accounting purposes. All assessments shall be deposited in a separate bank account in the name of the Association. All expenses of the Association shall be paid from the Association's bank account.

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

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

6.5 **Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the board of directors to all unit owners and to all mortgagees of units who have requested the same within 90 days after the end of each fiscal year. From time to time the board of directors, at the expense of the Association, may obtain an audit or review of the books and records pertaining to the Association and furnish copies thereof to the owners and such mortgagees. Upon written request, any holder, insurer or guarantor of a first mortgage shall be entitled to an audited financial

statement for the immediately preceding fiscal year at the expense of the requesting party, if one is not otherwise available.

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

6.7 **Availability of Records.** During normal business hours or under other reasonable circumstances, the Association shall make available to unit owners, prospective purchasers and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, bylaws, other rules concerning the Condominium, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Association may charge a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs incurred to furnish the information.

ARTICLE 7.

MAINTENANCE AND USE OF CONDOMINIUM PROPERTY

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

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

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

7.2 **Additions, Alterations or Improvements.**

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

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

(c) A unit owner may not change the appearance of the common elements or the exterior appearance of a unit without permission of the board of directors.

7.3 **Damage or Destruction by Casualty of Condominium Property.** In the case of damage or destruction which affects a material portion of the project, timely written notice shall be given to the unit owners and their mortgagees and any eligible mortgage insurer or guarantor and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of Condominium property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of such damage or destruction, the board of directors or more than ten percent (10%) of the unit owners shall have requested a special meeting of the Association. Such special meeting must be held within sixty (60) days of the date of damage or destruction. At the time of such meeting, unless unit owners holding ninety percent (90%) of the voting power, whether in person, by writing or by proxy, with the approval of mortgagees as required by the Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt. If the damage or destruction is not repaired, reconstructed or rebuilt, then the property shall be removed from condominium ownership in the manner provided in the Oregon Condominium Act.

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

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

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

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

(a) **Complete Taking.** If the entire Condominium property is taken, or if unit owners holding ninety percent (90%) of the voting power agree that such substantial portion of the Condominium has been taken as to make the project obsolete, then the property shall be deemed removed from unit ownership. In such event, any proceeds of the condemnation paid to the Association, together with any other proceeds upon sale of the remaining Condominium property, shall be distributed among the unit owners and their mortgagees, as their interests may appear, in accordance with the provisions of the Oregon Condominium Act.

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

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

(a) **Residential use**. No commercial activities of any kind shall be carried on in any unit or in any other portion of the Condominium without the consent of the board of directors of the Association, except activities relating to the rental or sale of units. This provision, however, shall not be construed so as to prevent or prohibit a unit owner from maintaining his or her professional personal library, keeping his or her personal business or professional records or accounts, handling his or her personal business or professional telephone calls, or conferring with business or professional associates, clients or customers, in such owner's unit.

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

(c) **Offensive or unlawful activities**. No noxious or offensive activities shall be carried on in any unit nor shall anything be done in or placed upon any unit or common element which interferes with or jeopardizes the enjoyment of other units or the common elements or which is a source of annoyance to residents. Unit occupants shall exercise extreme care not to make noises which may disturb other unit occupants, including the use of musical instruments, radios, televisions and amplifiers. No unlawful use shall be made of the Condominium nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(d) **Animals**. No animals or fowls shall be raised, kept or permitted within the Condominium or any part thereof, except domestic dogs, cats, or other household pets kept within a unit. No such dogs, cats or pets shall be permitted to run at large nor shall be kept, bred or raised for commercial purposes or in unreasonable numbers. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof, and owners shall be responsible for removal of wastes of their animals. All dogs shall be carried or kept on a leash while outside a unit. No pet shall be permitted to cause or create a nuisance or unreasonable disturbance or noise. A unit owner may be required to remove a pet upon receipt of the third notice in writing from the board of directors of violations of any rule, regulation or restriction governing pets within the Condominium.

(e) **Exterior lighting or noisemaking devices and antennas**. Except with the consent of the board of directors of the Association, no exterior lighting or noisemaking devices shall be installed or maintained on any unit and no antennas, satellite dishes or transmitting towers shall be affixed to the general or limited common elements.

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

(g) **Leasing and rental of units**. 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, or for a period of less than seven days. 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. If the board of directors 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. Other than the foregoing, there is no restriction on the right of any unit owner to lease or rent such owner's unit.

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

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

maintained on any part of the property, except in sanitary containers out of public view, except on garbage pickup days.

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

(k) **Garage doors.** All garage doors shall remain closed except to permit the entrance and exit of vehicles or access to any garage storage area.

(l) **Association rules and regulations.** In addition, the board of directors from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the units and common elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Condominium property. Such action may be modified by vote of not less than seventy-five percent (75%) of the voting rights present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation or rules and regulations will be under consideration. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the secretary promptly to each unit owner and shall be binding upon all unit owners and occupants of all units from the date of delivery.

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

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

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

(c) to levy reasonable fines; or

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

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

ARTICLE 8.

INSURANCE

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

(a) **Property Damage Insurance.**

(i) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

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

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

(iv) Such policy or policies shall name the Association as insured, and shall provide for loss payable in favor of the Association, as a trustee for each unit owner and each such unit owner's mortgagee, as their interests may appear. The policies shall

contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

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

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

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

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

(d) **Fidelity Insurance.**

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

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

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

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

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

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

(a) All policies shall be written with the State of Oregon or a company licensed to do business in the State of Oregon acceptable to Fannie Mae which falls into an A-general policyholder's rating or a financial performance index of 6 or better, as designated in Best's Key Rating Guide, or an A or better rating from Demotech, Inc.

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

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

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

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

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

(g) Any unit owner who obtains individual insurance policies covering any portion of the property other than such owner's personal property and fixtures shall file

a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

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

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

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

(c) A Steam Boiler and Machinery Coverage Endorsement if the Condominium has central heating or cooling, which coverage per accident shall at least equal the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the building housing the boiler or machinery.

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

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

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

ARTICLE 9.

AMENDMENTS TO BYLAWS

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

9.2 **Adoption.** A resolution adopting a proposed amendment may be proposed by either the board of directors or by the unit owners and may be approved by the unit owners at a meeting called for this purpose or by ballot vote. Unit owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by unit owners holding a majority of the voting rights and by mortgagees to the extent required by the Declaration, except that any amendment relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units, or limitations on the rental or leasing of units must be approved by unit owners holding seventy-five percent (75%) of the voting rights. Declarant's consent shall also be required so long as Declarant owns twenty-five percent (25%) or more of the units in the Condominium. Such consent shall not be required after three years from the date of conveyance of the first unit to a person other than Declarant. Any amendment which would limit or diminish any special Declarant rights established in these Bylaws shall require the written consent of Declarant.

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

ARTICLE 10.

DISPUTE RESOLUTION

10.1 **Mediation/Arbitration.** Any claim, controversy or dispute by or among Declarant, Association, the manager or managing agent, or one or more unit owners, or any of them, arising out of or related to the Declaration, these Bylaws or the Condominium shall be first subject to mediation and, if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. Any party may at any time opt to forego mediation and submit the matter directly to arbitration as provided herein. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Portland, Oregon pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes

of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

10.2 **Selection of Arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the Presiding Judge of the Circuit Court of Multnomah County, Oregon shall designate the arbitrator.

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

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

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

10.6 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.7 below): (a) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article.

10.7 **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of the Declaration or these Bylaws, to obtain a judicial

construction of any provision of the Declaration or these Bylaws, to rescind the Declaration or these Bylaws or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

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

ARTICLE 11.

MISCELLANEOUS

11.1 **Notices.** All notices to the Association or to the board of directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the board of directors may designate from time to time. All notices to any unit owner shall be sent to such address as may have been designated by such owner from time to time, in writing, to the board of directors, or, if no address has been designated, then to the owner's unit.

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

11.3 **Action Without a Meeting.** Any action which the Oregon Condominium Act, the Declaration or the bylaws require or permit the owners or directors to take at a meeting or ballot meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the owners or directors, shall be filed in the records of minutes of the Association.

11.4 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular.

The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

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

DATED this 18th day of October, 2001.

VIEWPOINT TERRACE, LLC, an Oregon limited liability company

By: MK Development, LLC, Member

By  _____
Martin Kehoe, Member

