

**AMENDED AND RESTATED BYLAWS
OF
THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION**

RECITALS

**ARTICLE I
PLAN OF CONDOMINIUM OWNERSHIP**

1.1 **Name and Location.** These are the Bylaws of “The landing at Newport” Condominiums Unit Owners Condominium Association (“Association”). “The Landing at Newport” Condominiums (the “Condominium”) is located in the City of Newport, Lincoln County, Oregon, and has been submitted to the provisions of the Oregon Condominium Act (ORS Chapter 100) by a Declaration of Condominium Ownership (the “Declaration”) recorded simultaneously herewith in the Records of Lincoln County, Oregon. The location of the Condominium is more specifically described in the Declaration.

1.2 **Bylaws Applicability.** The provisions of these Bylaws are applicable to the Condominium, the units owners, the Association and the entire management structure thereof.

1.3 **Personal Application.** All present or future owners, tenants, future tenants or their employees, or any other person that might use the facilities of the Condominium in any manner, are subject to the regulations set forth in these Bylaws. The acquisition, occupancy or rental of any of the units of the Condominium, or the mere act of occupancy of any units, will constitute acceptance and ratification of these Bylaws and agreement to comply with all the provisions hereof.

1.4 **Incorporation.** The Association shall be incorporated under the Oregon Nonprofit Corporation Act. The Articles of Incorporation shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated Association.

1.5 **Definitions.** The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws. In addition, all definitions as found in ORS 100.005 shall be applicable unless stated otherwise in these Bylaws.

**II
ASSOCIATION MEMBERSHIP
AND VOTING**

2.1 **Membership in Association.** The Association shall consist of all of the unit owners acting as a group in accordance with the Act, pursuant to the Declaration and these Bylaws. Upon

recordation of a conveyance of a unit, or any portion thereof or interest therein, the grantee named in the conveyance shall automatically be a member of the Association and shall remain a member of the Association until the person's ownership ceases for any reason. For all purposes of the Declaration and the administration of the property, unit ownership shall be determined from the records maintained by the Association.

2.2 **Allocation of Voting Rights.** Each unit shall be allocated one vote in the affairs of the Association in accordance with Section 6.3 of the Declaration. The calling and conducting of meetings of the Association and the exercise of voting rights shall be controlled by this article and Article III below.

2.3 **Majority of Owners.** As used in these Bylaws, the term "majority of owners" means those owners holding over fifty percent (50%) of the voting rights allocated to the unit owners in accordance with the Declaration. "Majority of owners present" means owner holder over fifty percent (50%) of the votes present at any legal meeting.

2.4 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of a majority of voting owners as defined in Section 2.3 above, shall constitute a quorum. The quorum at any adjourned meeting, as described in Section 3.8 below, shall be reduced to twenty-five percent (25%) of the outstanding votes in the Condominium.

2.5 **Proxies; Absentee Ballots.**

(a) **Proxies**

(1) A vote may be cast in person or by proxy. A proxy given by an owner to any person who represents the owner at meetings of the Association must be in writing, dated and signed by the owner and must be filed with the secretary in accordance with procedures adopted by resolution of the Board of Directors.

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than a year after the date of execution. Unless withdrawn, a proxy given to another person to vote at a specific meeting shall also be valid at an adjourned meeting called under the provisions of Section 3.8 below.

(3) No proxy shall be valid if it purports to be revocable without notice to the Association.

(4) An owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 3.9 below.

(5) Every proxy shall automatically cease upon sale of the unit by its

owner.

(b) Absentee Ballots. At the discretion of the Board of Directors, a vote may be cast by absentee ballot.

2.6 Authority to Vote. All unit owners who own units in the Condominium shall be entitled to vote, including those who have leased their units to a third party.

2.7 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian or trustee may vote, in person or by proxy at any meeting of the Association, including a meeting by written ballot held pursuant to Section 3.11 below, with respect to any unit owned or held by the person in such capacity, whether or not the same shall have been transferred to the person's name; provided that he or she shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee holding the unit in such capacity.

(b) Joint Owners. Whenever any unit is owned by two or more persons jointly according to the records of the Association, the vote of the 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 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 shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.8 Actions by Association; Legal Meeting. Except as otherwise provided in the Declaration, these Bylaws, the Act or the Oregon Nonprofit Corporation Act, decisions and resolutions of the Association shall require approval by a majority of owners present at any legal meeting. A legal meeting is one duly called pursuant to these Bylaws where a quorum is present in person, by proxy or by written ballot at a meeting held pursuant to Section 3.11 below.

ARTICLE III
ADMINISTRATION; MEETINGS

3.1 Association Responsibilities. The Association shall have the responsibility of administering the Condominium, approving the annual budget, establishing and collecting monthly common assessments and arranging for the operation, management and maintenance of the Condominium, including negotiating and contracting with and supervising any person, persons or business entity with respect to such matters and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The Board of Directors or a manager shall perform the foregoing responsibility as more particular set forth in these Bylaws.

3.2 Place of Meetings. Formal meetings of the Association shall be held at the principal

office of the Condominium or such other suitable place convenient to the owners as many be designated by the Board.

3.3 **Annual Meetings.** The Association shall hold at least one meeting of the owners each calendar year. The annual meetings of the Association shall be held on such date and hour as the Board may designate. At the annual meetings, new members of the Board shall be elected by the owners in accordance with the requirements of Section 4.6 below to replace those Directors whose terms have expired. The owners may also transact such other business of the Association as may properly come before them.

3.4 **Special Meetings.**

(a) It shall be the duty of the chairperson to call a special meeting of the owners as directed by resolution of the Board or upon a petition signed by ten percent (10%) or more of the owners having been presented to the secretary. All meetings called because of petition of unit owner shall be held at a formal gathering and not by written ballot pursuant to Section 3.11 above and shall be held with sixty (60) days after receipt of the petition.

(b) The notice of any special meeting shall state the time, place and purpose of the meeting. No business may be transacted at a special meeting except as stated in the notice unless by consent of all the owners of the units or as otherwise set out in these Bylaws.

3.5 **Notice of Meetings.**

(a) **Notice of Formal Gatherings.** It shall be the duty of the secretary to mail by first class or certified mail, or electronic mail if directed by the owner, or to hand deliver notice of each annual or special meeting, stating the purpose thereof and the time and place where it is to be held, to each owner of record at least ten (10), but not more than sixty (60) days prior to the meeting or the date when ballots of a ballot meeting held pursuant to Section 3.11 below are required to be returned.

(b) **Mailing of Written Ballot Meetings.** It shall be the duty of the secretary to hand deliver or mail by first class or certified mail written ballots for a meeting by written ballot meeting held pursuant to Section 3.11 below to each owner of record not less than twenty (20) days before the date the ballots must be received by the Association in order to be counted.

(c) **Place of Mailing.** The mailing shall be to the owner's address last given the secretary in writing by the unit owner. If unit ownership is split or the unit has been sold on a contract, notice shall be sent to a single address of which the secretary has been notified in writing by the parties. If no address has been given the secretary in writing, then mailings to the unit shall be sufficient. The mailings of a notice in the manner provided in this section shall be considered notice served.

3.8 **Adjourned Meetings.**

(a) **Formal Meetings.** If any gathering is not a legal meeting because a quorum has not attended, the owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than twenty (20) days from the time the original meeting was scheduled

(b) **Written Ballot Meetings.** The Board may postpone the date for counting the ballots of a ballot meeting held pursuant to Section 3.11 below, in one or more postponements, for up to ninety (90) days after the originally scheduled ballot return date if a quorum of ballots has not been returned or for matters on which a certain percentage approval is required and that vote has not been received nor have sufficient votes in opposition been received to negate the approval.

3.9 **Order of Business.** The order of business at all meetings of the owners shall be as follows unless the Boards sets a different agenda:

- (a) Roll Call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Election of inspectors of election.
- (f) Reports of committees.
- (g) Election of Directors
- (h) Unfinished business.
- (I) New business.
- (j) Adjournment.

3.10 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board of Directors:

(a) Meeting of the Association shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Association may not be challenged because the appropriate

rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Association is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

3.11 **Written Ballot In Lieu of a Meeting.**

(a) **Action By Written Ballot.** 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, subject to the requirements of Subsection (d) of this section, delivers a written ballot to every owner that is entitled to vote on the matter in accordance with Section 3.5 above.

(b) **Form and Effect of Ballot**

(1) The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(2) A written ballot may not be revoked.

(c) **Information Required in Ballot Solicitations.** All solicitations for votes by written ballot must:

(1) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(2) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

(A) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(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.

(d) **Secrecy Procedure.**

(1) The Board of Directors must provide owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. The notice must be delivered in the manner prescribed by the Board and must inform the owners that if at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, which date must be stated, at least ten percent (10%) of the owners petition the Board of Directors requesting the secrecy procedure, the procedure specified in Paragraph (2) of this subsection must be followed.

(2) If at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the owners petition the Board of Directors requesting the secrecy procedure, a written ballot must be accompanied by:

- (A) A secrecy envelope;
- (B) A return identification envelope to be signed by the owner; and
- (C) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting must be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(1) 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 owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of 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 the 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 the required percentage has not been met.

(3) Except as provided in Paragraph (4) of this subsection, 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.

(4) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.12 **Action Without a Meeting.**

(a) Any action that may be taken at any annual, regular or special meeting of the Association, may be taken without a meeting and without solicitation of written ballots pursuant to Section 3.9 above, if the action is taken by all of the owners entitled to vote on the action.

(b) The action must be evidenced by one or more written consents describing the action taken, signed by all of the owners entitled to vote on the action, and delivered to the Association for inclusion in the minutes or filing with the Association records.

(c) Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

ARTICLE IV
BOARD OF DIRECTORS

4.1 **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, each of whom must be a unit owner or the co-owner of a unit. An officer or employee of a corporation, or the trustee of a trust, or personal representative of an estate or an employee of the trust or estate may serve on the Board, if the corporation, trust or estate owns a unit.

4.2 **Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the owners.

4.3 **Other Duties.** In addition to duties imposed by these Bylaws or by resolutions of the Association, the Board shall have authority to carry out and be responsible for the following matter:

(a) Care, upkeep and supervision of the Condominium, association property, and the general common elements and the limited common elements, if any, and assigning, supervising assignments or approving any assignment of the use of any association property common element, general or- limited, as may be required by the Declaration.

(b) Establishing and maintaining, replacement reserve accounts and other reserves that are required to be maintained by the Act or these Bylaws and such other reserve accounts as are permitted by these Bylaws;

(c) Designation and collection of monthly assessments from the owners in accordance with these Bylaws, the Declaration and the Act.

(d) Establishing a budget for payment of all common expenses of the Association

and the institution and maintenance of a system for such payment as may be reasonably necessary to prevent any misuse of Association funds.

(e) Keeping financial records sufficient for proper accounting purposes and deposit assessments in a separate bank account in the name of the Association from which expenses of the Association shall be paid.

(f) Obtaining and maintaining insurance policies and payment of premiums therefore out of the common expense funds in respect to both the common elements and individual units as more specifically provided in Article VIII below.

(g) Hiring and firing personnel necessary for the maintenance and operation of the Condominium the general common elements and the limited common elements, if any.

(h) Causing the preparation and distribution of annual financial statements of the Condominium to each of the unit owners as more specifically provided in Section 12.5 below.

(i) Causing the annual filing of the necessary income tax returns for the Association.

(j) The adoption and amendment of administrative rules and regulations governing the details of operation and use of the common elements; provided, however, any such rules or regulations shall always be subject to rescission or amendment by the Association upon majority vote of owners present at any properly called meeting at which a quorum is present.

(k) Causing the Association to comply with ORS 100.480 relating to maintenance of documents of the Association and maintenance and distribution of financial statements. Also to maintain copies suitable for duplication of the documents specified in Section 12.8 below.

4.4 **Management Agent.** The Board may employ a management agent, to be compensated in an amount established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 4.3 above.

4.5 **Election and Term of Office.** Each of the Directors shall serve a term of three (3) years. The terms of the Directors shall be staggered so that one Director shall be elected each year at the annual meeting held in accordance with Section 3.3 above.

4.6 **Vacancies.** Vacancies on the Board caused by any reason other than the removal of a director by a vote of the Association shall be filled for the balance of the term of each directorship by vote of a majority of the remaining Board, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected upon expiration of the term for which the person was elected by the Board to serve.

4.7 **Removal of Directors.**

(a) At any legal annual or special meeting, other than a meeting by written ballot held pursuant to Section 3.11 above, any one or more of the directors may be removed, with or without cause, by a majority vote and a successor may be then and there elected to fill the vacancy thus created. Any director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

(b) Any director who fails to attend three (3) successive meetings of the Board which have been properly called, or who has failed to attend more than one-third of the Board meetings during a 12- month period which have been properly called, may be removed by a majority of the Board remaining.

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

4.9 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice by the chairperson on three (3) days' notice to each director, given personally or by mail, telephone, telegraph or other similarly reliable method, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting.

4.10 **Special Meetings.** Special meetings of the Board may be called by the Chairperson or Secretary or on the written request of at least three directors. Special meetings of the Board may be called on three (3) days' notice to each director, given personally or by mail, telephone or telegraph or other similar reliable method, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting.

4.11 **Waiver of Notice to Directors.** Before, at or after any meeting of the Board, any director may, in writing, waive notice of the meeting and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him or her of the time and place thereof. If all the directors are present at any meeting of the Board, no notice to directors shall be required and any business may be transacted at the meeting.

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

4.13 **Meeting Procedure.** Unless other rules of order are adopted by resolution of the Board of Directors:

(a) Meetings of the Board of Directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

(b) A decision of the Board of Directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied.

(c) A decision of the Board of Directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

4.14 **Open Meetings; Executive Sessions.**

(a) **Open Meetings.** Except as provided in Subsection (b) of this section, all meetings of the Board of Directors shall be open to unit owners. However, no owner shall have a right to participate in the Board of Directors meeting unless the owner is also a member of the Board. The chairperson shall have the authority to exclude an owner who disrupts the proceedings at a Board meeting.

(b) **Executive Sessions.** In the discretion of the Board, the following matters may be considered in executive session:

(1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

(2) Personnel matters, including salary negotiations and employee discipline;

(3) The negotiation of contracts with third parties;

(4) Collection of unpaid assessments; and

(5) Any other matters permitted under ORS 100.420 as it may be amended from time to time.

(c) **Executive Session Procedure.**

(1) Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board votes to meeting in executive session, the chairperson or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can

be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

(2) A contract or an action considered in executive session does not become effective unless the Board, following the executive session, reconvenes in open meeting and votes on the contract or action, which must be reasonably identified in the open meeting and included in the minutes.

4.15 **Notice to Association Members of Board Meetings.** Except for meetings held pursuant to Section 4.16 below, notice of Board meetings shall be posted at a place on the Condominium property at least three (3) days prior to the meeting or notice shall otherwise be provided to each member of the Association reasonably calculated to inform each member of such meetings. The posting of the notices shall be at a reasonable location which has been generally publicized to the unit owners.

4.16 **Meetings by Telephonic or Electronic Communication.**

(a) Unless a majority of the units are the principal residences of the occupants, meetings of the Board of Directors may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board of Directors participating to hear each other simultaneously or otherwise to be able to communicate during the meeting if at least two-thirds of the Board participate in the same and after an attempt has been made to contact each director in accordance with the contact information on file with the Board for such purpose.

(b) The Directors shall keep telephone numbers or other electronic address information on file with the chairperson to be used for meetings held under this section. No notice to either directors or Association members shall be required for a meeting of the Board to be held under this section.

4.17 **Compensation of Directors.** No director shall be compensated in any manner, except for out-of-pocket expenses, unless such compensation is approved by vote of the unit owners.

ARTICLE V
OFFICERS

5.1 **Designation.** The principal officers of the Association shall be a Chairperson, a Secretary and a Treasurer, all of whom shall be elected by the directors. The directors may appoint an Assistant Treasurer and an Assistant Secretary and any such other officers as in their judgment may be necessary.

5.2 **Election of Officers.** The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter and shall hold office

at the pleasure of the Board.

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

5.4 **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. The Chairperson shall have all of the general powers and duties which are usually vested in the office of president of an Association.

5.5 **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary shall have charge of such books and papers as the Board may direct and shall, in general, perform all the duties incident to the office of secretary.

5.6 **Treasurer.** The Treasurer shall have responsibility for Association funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate accounts of all receipts and disbursement in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board.

5.7 **Directors as Officers.** Any director may be an officer of the Association.

ARTICLE VI **OBLIGATIONS OF THE OWNERS**

6.1 **Assessments.**

(a) All owners are obligated to pay annual assessments imposed by the Association to meet all the Condominium's common expenses, which shall include premiums for insurance required or permitted under Article VIII of these Bylaws. In the discretion of the Board, the annual assessment may be made payable semiannually, quarterly or monthly.

(b) All of the reserve accounts set up pursuant to these Bylaws shall be funded by allocation and payment from the monthly assessment of unit owners. The assessment of all unit owners who may be benefited by expenditure of reserve funds may be increased as necessary, so the reserve fund in question can be maintained in an amount sufficient to meet the needs for which fund was established.

(c) Each unit will be liable for the common expense in the allocations specified in Section 6.2 of the Declaration.

(d) The annual assessment of units shall include the following items, which shall be common expenses:

- (1) Expenses of administration.
- (2) Expenses of maintenance, repair or replacement of the common elements.
- (3) Any deficit in common expenses for any prior period.
- (4) Utilities for the common elements and other utilities with a common meter or commonly billed, such as water and sewer.
- (5) At the discretion of the Board, the expense of basic cable television service to all units, together with maintenance and repair expenses for such system and service.
- (6) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (7) The cost of any professional management if required by mortgagees or desired by the Board.
- (8) Legal, accounting and other professional fees
- (9). Any other items properly chargeable as an expense of the Association.

6.2 **Major Maintenance and Replacement Reserve Account.**

(a) Establishment of the Reserve Account. The Board of Directors shall establish and maintain a reserve account for the purpose of effecting replacements of structural elements, mechanical equipment and other common elements of the Condominium, which will normally require replacement in more than three (3) years and less than 30 years. Payment into this account shall be deemed a contribution to capital improvement as and when made. The reserve fund need not include those items:

- (1) That could reasonably be funded from operating expenses; or
- (2) For which one or more owners are responsible for maintenance and replacement under the provisions of the Declaration or these Bylaws.

(b) Funding of Reserve Account.

(1) The reserve accounts for replacement shall be funded by assessment against the same units that are assessed for the maintenance of the items for which the reserve account is established. Accordingly, the reserve account for replacement of those general common

elements and limited common elements, the maintenance of which is provided by assessment against all owners, shall be created by assessment against all owners.

(2) The reserve account for replacement of those limited common elements, the maintenance of which is provided by assessment of less than all units shall be created by assessment only against the specific units responsible for the maintenance of such limited common elements.

(c) Determination of Reserve Account: Reserve Study.

(1) The Board of Directors of the Association annually shall conduct a reserve study, or review and update an existing study to determine reserve account requirements and may:

(A) Adjust the amount of payments as indicated by the study or update; and

(B) Provide for other reserve items that the Board of Directors in its discretion, may deem appropriate.

(2) The reserve study shall include:

(A) Identification of all items for which reserves are to be established;

(B) The estimated remaining useful life of each item as of the date of the reserve study;

(C) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and

(D) A 30-year plan with regular and adequate contribution, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

6.3 **General Operating Reserve Account.** In the discretion of the Board, the Board may establish and maintain a general operating reserve account by allocation and payment thereto monthly of an amount determined by the Board. If established, the account shall be sufficient to cover the deductible under the property damage insurance policy required under Article VIII below. This account may be used to pay expenses which exceed budgeted amounts.

6.4 **Other Special Reserve Accounts.** Other special reserve funds as may be set up by the Directors by special assessments of the .unit owners who benefit thereby as may be required by

the Declaration or otherwise determined by the Association of unit owners to be appropriate.

6.5 Reserve Account Requirements.

(a) Accounts. Each reserve account shall be kept in an account with a safe and responsible depository, shall be accounted for separately and, if invested, the obligation or security shall be fully guaranteed as to principal by the United States of America or one of its agencies.

(b) Reserve Funds Association Property. Assessments paid into the reserve accounts are the property of the Association and are not refundable to sellers of units. Owners may treat their outstanding allocable share of reserve accounts as a separate or reimbursable item in a sales agreement. No unit owner shall have any individual rights in any of these reserves, although it is understood that the value of their respective units may increase in proportion to each unit's right to receive repair, maintenance and replacement therefrom.

(c) Use of Reserve Fund.

(1) The reserve account shall be used only for the purposes for which the reserves have been established and is to be kept separate from other funds.

(2) The Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds.

(3) Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment within a reasonable time of any unpaid borrowed funds.

(4) The reserve account may be invested by the Board of Directors subject to normal prudent investment standards.

6.6 Initial Assessment.

(a) Determination. The initial assessment to unit owners shall be determined by the Board of Directors. Assessments for all units shall be payable from the date the Declaration is recorded.

(b) Initial Working Capital Fund. At the time of initial sale of each unit, each purchaser shall contribute a sum equal to one-sixth of the annual assessment, in respect to the unit being purchased, as a one-time contribution to the working capital of the Association.

6.7 Special Assessments. The Board shall have the power to levy special assessments

against an owner or all owners in the following manner for the following purposes:

- (a) To correct a deficit in the operating budget by vote of a majority of the Board;
- (b) To collect amounts due to the Association from an owner for breach of the owner's obligations under the Declaration, these Bylaws or the Association's rules and regulations, by vote of a majority of the Board;
- (c) Upon vote of a majority of the Board, to make repairs or renovations to the common elements if sufficient refunds are not available from the operating budget or replacement reserve accounts; or
- (d) To make capital acquisitions, additions or improvements, by vote of at least 75 % of all votes allocated to units in the Condominium.

6.8 **Budget.**

(a) Adoption. At least 60 days before the beginning of each fiscal year, the Board shall adopt a budget for the Association. The budget shall contain:

(1) An estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the common elements and those parts of the units as to which it is the responsibility of the Association to maintain, repair and replace, and

(2) The cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be common expenses by the Act, the Condominium instruments, or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and the rendering to the unit owners of all related services.

(3) Reasonable amounts as the Board considers necessary to provide working capital and such general operating reserve accounts, contingency and other reserve accounts as the Board shall determine.

(b) Adjust of Reserve Account Requirements. The amount designated for replacement reserves shall be adjusted annually to reflect current replacement cost and remaining useful life in accordance with Section 6.2 above.

(c) Copy of Budget. At least thirty (30) days before the beginning of each fiscal year, the Board shall send to each unit owner a copy of the budget in a reasonably itemized form that sets forth the amount of the common expenses and any special assessment payable by each unit owner. The budget shall constitute the basis for determining each unit owner's assessment for the

common expenses of the Condominium.

(d) Continuation of Prior Budget If Board Fails to Adopt Budget. The failure of the Board to timely prepare or to present a budget to the unit owners shall not be cause for any owner to fail or refuse to pay assessments. Assessments shall continue, based on the last adopted or accepted budget, until a new budget is created and announced. Retroactive increases or special assessments may be made by the Board to make up for any deficiency.

(e) Adoption and Amendment of Budget by Owners. If the Board fails to timely adopt a budget for a new fiscal year, unit owners holding a majority of the votes of the entire Association, at any general or specially called meeting, may adopt a budget, announce it to the unit owners and immediately commence assessments based on the newly adopted budget. Additionally, at any general or specially called meeting, unit owners holding a majority of the votes of the entire Association may amend any budget adopted by the Board. Thereafter, assessments to unit owners shall be based on the budget as so amended until a new budget is adopted in accordance with this section.

6.9 **Income Tax Returns; Determination of Fiscal Year**

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

(b) Filing of Income Tax Returns. The Board, in its sole discretion, shall determine the manner in which all necessary income tax returns are filed and of selecting any and all persons to prepare such tax returns. The Board shall cause to be filed annually the necessary income tax returns.

6.10 **Default.**

(a) Failure by an owner to pay any assessment of the Association shall be a default by such owner of his or her obligations pursuant to these Bylaws and the Act and, in addition to the Association's other remedies provided in the Declaration, these Bylaws shall entitle the Association to declare the balance of such owner's annual assessment otherwise being paid in installments to be immediately due and payable in full.

(b) Interest shall be charged on delinquent assessments at a rate as may be set by the Board, from, time to time, not to exceed the lower of 18% per annum or the highest rate permitted by applicable law. Prior to the imposition of or change in the interest rate charged on delinquent assessments, the Board shall give 30 days' written notice to all owners.

(c) In addition to the interest that may be charged on delinquent assessments, the Board, at its option, may impose a late penalty in respect to any assessment not paid with ten days from the due date. The penalty may not exceed the sum of 25% of the delinquent assessment, but

shall be imposed only once on each regular or special assessment or installment of such assessments.

(d) The Association shall be entitled to a lien that may be enforced on compliance with the provisions of ORS 100.450. In any foreclosure suit by the Association with respect to the lien, the Association shall be entitled to collect reasonable rent from the defaulting owner for the use of his or her unit or shall be entitled to the appointment of a receiver pursuant to ORS 100.460. Liability for all assessments, charges, interest, fees (including attorney fees), and other sums owing by the unit owner pursuant to the Declaration, these Bylaws, the Act and rules and regulations of the Association shall be the personal obligation of the unit owner and may be enforced by suit for a money judgment, in addition to all other remedies of the Association.

(e) Any default by the owner in any provisions of these Bylaws or of the Oregon Condominium Act shall be deemed to be a default by the owner of any mortgage to which the owner is a party or to which the unit is subject.

6.11 **Maintenance and Repair.**

(a) Every owner must perform promptly all maintenance and repair work within his or her own unit, which if omitted would affect the common elements of the Condominium or a part thereof belonging to other owners, and shall be responsible for the damages and liabilities that his or her failure to do so may cause, including, but not limited to, plugged toilets and bath drains and clothes washer and dishwasher overflow.

(b) All repairs of internal installations, of each unit, such as water, lights, gas, power, sewage, telephones, air conditioners and sanitary installations, window glass, lamps and all other accessories belonging to the unit area shall be at the sole expense of the owner of such unit.

(c) All owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common elements and/or facility damaged through is or her fault, not otherwise covered by insurance policies carried by the owner or the Association for the owner's and Association's benefit. In such circumstances, the insurance obtained by the owners shall be deemed the primary coverage.

ARTICLE VII **USE AND OCCUPANCY RESTRICTIONS** **RULES OF CONDUCT**

The restrictions and requirements in this article are in addition to all other restrictions and requirements contained in the Declaration and these Bylaws

7.1 **Leasing and Rental of Unrestricted Residential Units.** The rental or lease of an Unrestricted Residential Unit for thirty (30) or more days shall be in compliance with this section.

(a) No unit owner may lease-less than the entire Unrestricted Residential Unit.

(b) Any lease agreement for the lease of an Unrestricted Residential Unit for a term of thirty (30) days or more shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

(c) Upon the commencement of the lease period, the unit owner shall provide the Board of Directors written notice of the lease and also that the tenant has been provided with copies by the unit owner of the Declaration, Bylaws, any amendments thereto, and all rules and regulation promulgated by the Board of Directors in effect.

(d) If the unit owner fails to provide the tenant with copies of the documents specified in Subsection (c) of this section, the Association shall provide the documents to the tenant and charge the copy expenses to the unit owner as part of the owner's assessments.

(e) If the Board of Directors finds that a lessee or tenant has violated any provisions of the Declaration, the Bylaws or the rules and regulations, the Board of Directors may require that the owner terminate the lease or rental agreement.

7.2 **Additions, Alterations, or Improvements.**

(a) **Permitted Improvements or Alterations.** Subject to Subsection (b) and (c) of this section, a unit owner may make any improvement or alteration to owner's unit that does not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium.

(b) **Notification to Association.** No unit owner shall make structural modifications or alterations in his or her unit or installations located therein without previously notifying the Association in writing by certified mail to the management agent, if any, or to the chairperson of the Board, if no management agent is employed. The Association shall have the obligation to answer within 30 days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration. Nothing contained in this subsection shall waive or limit an owner's obligation to comply with the provisions of ORS 100.535 and subsection (c) of this section.

(c) **Consent Required for Certain Repairs, Alteration and Other Work.**

(1) A unit owner shall make no repair or alteration or perform any other work on the 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 the Board of Directors and all other unit owners affected is first obtained.

(2) A unit owner may not change the appearance of the general common elements or the exterior appearance of a unit without permission of the Board of Directors.

7.3 Use of Common Elements.

(a) Use of Common Elements. All common elements shall be used in a manner conducive to such purpose.

(b) Restrictions on Use of Common Elements. No owner shall place or cause to be placed in the lobbies, patios, decks, ramps, vestibules, stairways and other common elements of the Condominium of a similar nature any furniture, packages or objects of any kind, except that suitable furniture may be placed on the decks and patios without the prior written consent of the Board. Such areas shall be used for no purpose other than what is normal.

(b) Rules for Use of Common Elements. All general common elements, including but not limited to any common elevator, stairways, walkways, driveways, parking spaces and storage areas, are provided for the use of owners and their guests. Rules and regulations will be posted, setting out the hours the various facilities will be available for use, and the conditions attendant thereto. Compliance with such rules as determined by the Board is essential to the harmonious operation of the facilities.

7.4 **Pets.** An owner may keep a pet in his or her unit. The Association may, from time to time, establish rules and regulations concerning the types of pets allowed in a unit pursuant to Section 7.11 below. Any unit owner who maintains a pet shall be deemed to have indemnified and agreed to hold the Association and each of its members free and harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of the owner keeping or maintaining the pet within the Condominium.

7.5 Appearance of Condominium Building.

(a) No unit owner will cause anything to be hung, displayed or placed on the walls, doors, windows, walkways, ceilings of walkways or roof of the Condominium building or any other common element nor otherwise change the appearance of any portion of the common elements without the prior written consent of the Board in accordance with Section 7.2(c) above..

(b) Each unit owner shall provide draperies, miniblinds or other window coverings at all windows, which shall be lined with white materials sufficiently opaque so as not to disclose the color of the interior portion of the window coverings.

(c) No clothes lines or similar devices and no "For Sale" or "For Rent" signs will be allowed on any part of the Condominium property without the prior written consent of the Board.

7.6 Nuisances.

(a) No nuisances will be allowed on the Condominium property nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful possession and proper use of the property by its residents. Residents shall exercise extreme care about creating disturbances, making noises or using musical instruments, radios, televisions and amplifiers that may disturb other residents.

(b) All parts of the Condominium will be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. All such garbage and trash shall be placed inside disposal containers. No unit owner will permit any use of his or her unit or make any use of the common elements that will increase the cost of insurance on the Condominium property.

(c) No owner shall hang garments, rags and similar items from the windows or from any of the facades, decks or terraces of the Condominium, nor shall any owner hand or shake dust rags, mops and similar items from the windows or porches or terraces or clean such items by beating on an exterior part of the Condominium.

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

7.8 **Restriction on Exterior Installations.** No owner, resident or lessee shall install wiring for electrical or telephone installation, exterior antennae, machines or air conditioning units, or similar devices on the exterior of the Condominium building or cause them to protrude through the walls or the roof of the Condominium except as authorized by the Board. No window guards, awnings or shades shall be installed without the prior consent of the Board.

7.9 **Parking.** The common parking areas designated as general common elements in the Declaration are intended for use of automobiles of owners and guests. The directors may make such rules as may be necessary to govern the use of any general common-element parking areas by which all owners and other users shall be bound.

7.10 **Vehicle Restrictions.** Vehicular traffic on the parking areas and driveways on Condominium property shall be limited to five miles per hour as a safety precaution. This speed limit shall apply to bicycles, motor scooters, motorcycles, automobiles and trucks. No recreational vehicles, campers, trailers,, boats, boat trailers, vehicles in disrepair or similar things may be parked or kept on Condominium property without the prior written consent of the Board.

7.11 **Additional Rules.** Rules and regulations concerning other use of the Condominium property may be made and amended from time to time by the Association or the Board. Copies of

such rules and regulations must be furnished to all unit owners and residents of the Condominium, on request.

7.12 **Covenants, Conditions, Restrictions and Easements in Other Documents.** In addition to the provisions of the Declaration and Bylaws and any rules or regulations promulgated thereunder, each unit owner in the condominium is subject to covenants, conditions, restrictions, easement, and assessments set forth in the following instruments recorded in the real property records of Lincoln County, Oregon:

- (a) Easement, including the terms-and provisions thereof,
Granted by: Newport Marine Oreg. Ltd., an Oregon limited partnership, Yaquua Development Corp., an Oregon corporation, Shore Properties Oreg. Ltd., an Oregon limited partnership, Clyde Hamstreet and Rhonda Hamstreet, dba Newport Marine Co.
To: Newport Marine Oreg. Ltd., an Oregon limited partnership
Recorded: February 20, 1979 in Book 97, Page 1194
- (b) Agreement, including the terms and provisions thereof,
Recorded: December 23, 1999 in Book 395, Page 47
Between: Association of Unit Owners of Embarcadero
And: Newport Landing, LLC, an Oregon limited liability company, as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.
- (c) Grant of Easement and Reciprocal Easement, including the terms and provisions thereof,
Recorded: December 23, 1999 in Book 39, Page 66
Between: Newport Landing, LLC, an Oregon limited liability company as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.
And: Association of Unit Owners of Embarcadero
- (d) The condominium is within the urban renewal boundaries or within the shared area of the City of Newport and is subject to the terms and provisions thereof.
- (e) Each unit owner in the Condominium is subject to and the Condominium and its unit owners shall enjoy the benefit of the covenants, conditions, restrictions, easements and rights set forth in that certain Special Warranty Deed described as follows:

Recorded: July. 1, 1999 in Book 384, Page 16
Between: Clyde A. Hamstreet and Newport Marine
Co., an Oregon general partnership consisting of Clyde A.
Hamstreet and Rhonda V. Hamstreet, general partners,
formerly known as Newport Marine Oreg. Ltd., Grantor.,
And: Newport Landing, LLC, an Oregon limited liability
company, Grantee

7.13 **Commercial Units.** Nothing in these Bylaws shall be so construed so as to limit the viable and customary operation of the commercial units for business purposes. This shall include, but not be limited to, the placement of signs identifying the business uses conducted in the commercial units on and about the common elements so long as said signage is aesthetically compatible to the condominium project as a whole and in conformance with the City of Newport's sign code. Commercial uses may be conducted at hours reasonable and prudent to the type of business in each commercial unit without limitation of the Association so long as the uses do not become a nuisance or annoyance to the non-commercial unit users.

ARTICLE VIII INSURANCE

The Board shall obtain and maintain at all times insurance of the type and kind and in the amounts hereinafter provided, and including insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other Condominiums similar in construction and design, and which insurance shall be governed by the provisions in this numbered section.

8.1 **Types of Insurance Policies.** For the benefit of the Association and the owners, the Board shall obtain and maintain at all times, and shall pay for out of the common expense funds, the insurance set forth below to the extent available at reasonable cost:

(a) (1) A policy or policies of property insurance, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, for the full insurable replacement value, if available, of all units and common elements, and such other fire and casualty insurance as the Board shall determine, to give substantially equal or greater protection to the owners and their mortgagees, as their respective interests appear, which policy or policies shall provide for a separate loss-payable endorsement in favor of the mortgagee or mortgagees, of each unit, if any.

(2) For the purposes of any policy or policies of fire insurance, the term "building" shall include fixtures, installations or additions comprising a part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual Condominium units initially installed or replacement thereof, in accordance with the original Condominium plans and specifications, or installed by or at the expense of any unit owner or owners.

(b)(1) A policy or policies insuring the Association, its Board, the unit owners individually and the manager against any liability to the public or the owners of units and their invitees or tenants, incident to the ownership, supervision, control or use of the project. Limits of liability under such insurance shall be not less than \$1,000,000 per occurrence for bodily injuries and property damage liability.

(2) This limit and coverage shall be reviewed at least annually by the Board, which may increase the limit of and/or coverage, in its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsements wherein, the rights of the 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 to the extent necessary to comply with any applicable laws.

(d) The Association shall not be responsible for any loss or damage to personal property of any owner, whether stored on the common elements or in the owner's unit, nor shall the Association maintain any insurance coverage for such loss.

8.2 **Insurance Companies Authorized.** All policies shall be written by a company licensed to do business in Oregon and hold a "Commissioner's rating" of "A+" and a size rating of "AAA," or better, by Best's Insurance Reports, or as may be otherwise acceptable to all mortgagees and Directors.

8.3 **Authority to Adjust Losses.** All losses under policies hereafter in force regarding the property shall be settled exclusively with the Board or its authorized representative; provided, however, that when a first mortgagee has been designated as a loss payee by a unit owner and the first mortgagee has requested the opportunity to exercise the rights provided by this section, the mortgagee shall be entitled to settle losses as to the mortgaged unit, provided that the loss which occurs is severable. Releases and proofs of loss shall be executed by at least two Directors.

8.4 **Value of Owner Improvements.** Each owner must inform the Board of the value of improvements made to his or her unit in excess of \$1,000 so that the Board may make any desired adjustments in insurance coverage. Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the Board pursuant to Article VII above.

8.5 **Provisions in Insurance Policies.** The Board shall make every effort to secure insurance policies that will provide the following:

(a) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the unit owners and their respective servants, agents and guests.

(b) A provision that the master policy on the Condominium, cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual owners.

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

(d) A provision that any "no other insurance" clause in the master policy exclude individual owners, policies and not otherwise prevent such individual policies from providing coverage for damage to-units or common elements.

8.6 **Reconstruction Costs.**

(a) If the Association is required or elects to reconstruct any of the common elements or units that have been damaged or destroyed, all affected unit owners (i.e., owners whose units or limited common elements have been damaged or destroyed) shall contribute to the Association all amounts received by them from property loss insurance policies to the Association to help pay for the repairs.

(a) To the extent such insurance proceeds are unavailable or unpaid when needed, the Association shall assess any owner the amount of the Association's "deductible" under its policy to pay the cost of repairing or reconstructing such owner's unit or limited common elements. The assessment shall be both a personal obligation of the owner and a lien against the owner's unit in the same manner as any other Association assessment.

8.7 **Insurance Deductible/Owner and Tenant Insurance.**

(a) The Board shall determine the amount of the deductible for property loss insurance policies, as well as other insurance policies required to be procured by the Association under this article. In determining the deductible under the policies, the Board, among other factors, shall take into consideration the availability, cost and loss experience of the Association. In this regard, as in other Board responsibilities, the Board members shall exercise their reasonable business judgment.

(b) The Association shall have no responsibility to procure or assist in procuring property loss insurance for any owner or tenant for:

(1) 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 normally covered by fire and property loss insurance policies with extended coverage endorsements); or

(2) For any damage or loss to the owner's or tenant's personal property.

Owners shall 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.

(c) Tenants shall be responsible for insuring their own personal property for any loss or damage.

(d) The Board shall notify all owners of the amount of the deductible under the Association policies, to the extent reasonably practicable, the Board shall give at least 30 days' a notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies owners and tenants of all units shall procure and maintain comprehensive liability policies having combined limits of not less than \$50,000 for each occurrence. Such insurance shall provide coverage for, but not limited to, 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.

8.8. **Review of Insurance Policies.** At least annually, the Board shall review all insurance carried by the Association of unit owners, which review shall include a consultation with a representative of the insurance carrier writing the master policy.

ARTICLE IX

DAMAGE AND DESTRUCTION

9.1 **Insurance Proceeds Sufficient to Cover Loss.** In case of fire, casualty or any other damage and destruction, the insurance proceeds of the master policy, if sufficient to reconstruct the buildings damaged or destroyed, shall be applied to such reconstruction.

9.2 **Insurance Proceeds Insufficient to Cover Loss.**

(a) Except as provided in Subsection (b) of this section, if the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to or destruction of the buildings shall be promptly repaired and restored by the manager or the Board, using the proceeds of insurance, if any, on the buildings for that purpose and all the unit owners shall be liable for assessment for any deficiency for the reconstruction, the deficiency to take into consideration as the owner's contribution any individual policy insurance proceeds provided by such owner.

(b) If three-fourths or more in value of all the buildings are destroyed or substantially damaged and if the owners of at least 60 percent of the units so vote, and on the approval of holders of at least 51 percent of the mortgages on units in the Condominium, the manager or Board shall record with the county recorder a notice setting forth such facts, and on the recording of such notice:

(1) The Condominium property shall be deemed to be owned in common

by the owners.

(2) The respective interest of each unit owner in the property shall be determined by the provisions of ORS 100.610 that are in effect on the date the Condominium Declaration is recorded.

(3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interests of the owners in the Condominium.

(4) The Condominium shall be subject to an action for partition at the suit of any owner. If a decree of partition orders the sale of the Condominium property, the net proceeds of sale, together with the net proceeds of the policies of insurance on the Condominium, if any, shall be considered as one fund and shall be divided among all the owners in proportion to their respective undivided interests, after first paying, out of the respective shares of the owners, to the extent such share is sufficient for the purpose, all liens on the undivided interest in the project owned by each owner.

9.3 **Architectural Changes After Damage or Destruction.**

(a) Reconstruction, of the damaged or destroyed building as used in this article means restoring the buildings to substantially the same condition in which they existed before the fire, casualty or disaster and shall be performed substantially in accordance with the Declaration and the original plans and specifications unless other action is approved by the holders of at least 51% of the mortgages on units in the Condominium. The reconstruction shall be accomplished under the direction of the manager or the Board.

(b) Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of sufficient owners to amend these Bylaws, cause an amendment to be made to the Condominium documents so as to facilitate architectural changes that the owners affected thereby and the Association deem desirable if, and only if, the partial or total destruction of the Condominium, or any buildings thereof, by fire, casualty or any other disaster is so great as to require the substantial reconstruction of the whole of the Condominium, or the buildings, and on approval by the holders of at least 51% of the mortgagees in the Condominium. Any amendment of the Condominium documents shall be valid only on:

(1) Compliance with all applicable provisions of the Act;

(2) Approval by the Oregon Real Estate commissioner, if required by the Act; and

(3) Recording of the amendment, including the approval thereof of each mortgagee and each other lienholder of record having a lien against any part of the Condominium

or building affected by the amendment, with the recording officer of Lincoln County, Oregon.

9.4 **Reallocation of Percentage Interest.** In the event of a partial destruction of the Condominium buildings or units therein, the unit owners may not reallocate percentage interest in the common elements without the prior approval of the mortgagees of all the remaining units, whether existing in whole or in part. Any reallocation shall also comply with the Act and other provisions of the Declaration and Bylaws.

ARTICLE X **CONDEMNATION**

10.1 The Board shall have the sole authority to negotiate with any public or private body or person having tie-power of eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the common elements of the Condominium and shall assist any unit owner whose unit or a part thereof is the subject of any condemnation or eminent domain proceeding

10.2 Nothing in this or any document or agreement relating to the Condominium shall be construed to give a unit owner or any party priority over the rights of the first mortgagees of any Condominium units in the case of a distribution to the unit owner of any such condemnation awards for losses to or a taking of a unit and/or the common elements.

10.3 In the event of a taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, for the use and benefit of the unit owners and their mortgage holders as their interest may appear. The Board shall distribute the proceeds of any such award or settlement on a reasonable and equitable basis among the unit owners.

ARTICLE XI **AMENDMENTS TO BYLAWS**

11.1 **How Proposed.** Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by unit owners holding at least thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

11.2 **Adoption.** Amendments may be approved by the Association at a duly constituted meeting or written ballot in lieu of a meeting in accordance with Section 3.11 above conducted for such purpose or by action without a meeting under Section 3.12 above.
A vote of a majority of the unit owners is required for approval of any amendment except:

(a) In accordance with ORS 100.415(20), in the case of any provision required to be in the Declaration under ORS 100.105 that is included in these Bylaws, the voting requirements for amending the Declaration shall also govern the amendment of the provision in these

Bylaws.

(b) Any amendments relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units and limitations on the rental or leasing of units shall require the approval of at least seventy-five percent (75%) of the unit owners. Any such amendment must be reasonable in light of all of the facts and circumstances that affect the Condominium at the time the amendment is made.

(c) No amendment of these Bylaws shall be made without the consent of the mortgagees to the extent required under Article 11 of the Declaration.

(d) No amendment of these Bylaws shall be made without the consent of the owners of Commercial Units to the extent required under 14.9 of the Declaration and Section 7.13 above.

11.3 **Execution; Recording; Approval.** 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 ORS 100.410 and recorded as required by law. Any amendment adopted within five (5) years after the recording of these Bylaws shall be approved by the Real Estate Commissioner, to the extent required by the Act.

ARTICLE XII **RECORDS AND AUDITS**

12.1 **General Records.** The Board and the manager agent or manager, if any, shall keep detailed records of the actions of the Board and the managing agent or manager, minutes of the meetings of the Board and minutes of the meetings of the Association. The Board shall maintain a list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units.

12.2 **Records of Receipts and Expenditures.** The Board or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners and mortgagees at convenient hours on weekdays.

12.3 **Assessment Roll.** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. The 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 on the account and the balance due on the assessments.

12.4 **Payment of Common Expenses.** The Board shall authorize the treasurer, the management agent or another specified party to pay all legitimate expenses of the Association. The

payments shall be made pursuant to the payment system instituted by the Board as described in Section 4.3(d) above.

12.5 Reports and Audits.

(a) The Board shall prepare or cause to be prepared an annual report of the receipts and expenditures of the Association and a balance sheet and income and expense statement setting forth the financial condition of the Association as at the end of each year. The report shall be prepared according to generally accepted accounting procedures and shall be distributed to all unit owners and to all mortgagees of units within 90 days after the end of each fiscal year.

(c) At any time any owner or mortgagee may, at his or her own expense, cause an audit or inspection to be made of the books and records of the Association.

12.6 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 such vendee, mortgagee, lessee or tenant.

12.7 Annual Report. The Board shall cause an annual report, including any amendments, to be filed with the Oregon Real Estate Agency pursuant to ORS 100.250.

12.8 Inspection of Records by Unit Owners.

(a) Except as otherwise provided in ORS 100.480, all documents and records of the Association shall be reasonably available for examination by an owner and any Mortgagee of a unit pursuant to rules adopted by resolution of the Board of Directors.

(b) The Board of Directors shall maintain a copy, suitable for the purposes of duplication, of the following:

- (1) The Declaration, Bylaws and any amendments or supplements thereto, and rules and regulations of the Association currently in effect.
- (2) The most recent financial statement prepared pursuant to ORS 100.480
- (3).
 - (3) The current operating budget of the Association.
 - (4) The reserve study required by ORS 100.175.
 - (5) Any other records required by ORS 100.480.

(c) The Association, within ten (10) business days after receipt of a written

request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

(d) The Board of Directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

ARTICLE XIII **COMPLIANCE**

These By laws are intended to comply with the provisions of the Act, which are incorporated herein and to supplement the provision in the Declaration, In case any of the provisions of these Bylaws conflict with the provisions of the statutes, the statutory provisions shall apply. In case of any conflict between the provisions of these Bylaws and the Declaration, the provisions in the Declaration shall apply.

ARTICLE XIV. **INDEMNIFICATION OF DIRECTORS,** **OFFICERS, EMPLOYEES AND AGENTS**

14.1 The Association shall indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by the Association) by reason of the fact that he or she is or was a director, officer, employee or agent of the Association or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such suit, action or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or "not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful.

14.2 The termination of any action, suit or proceeding by judgment, order, settlement, conviction or with a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful.

14.3 Payment under this clause may be made, during -the pendency of such claim, action, suit or- proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that the person had no right to such payments. All persons who are ultimately

held liable for their actions on behalf of the Association as a director, officer, employee or agent" shall have a right of contribution over and against all other directors,. officers, employees or agents and members of the Association who participated with or benefited from the acts that created the liability.

ARTICLE XV
ASSESSMENT COLLECTION COSTS;
SUITS-AMD ACTIONS

Whether or not suit or action is commenced, unit owners shall be obliged to pay reasonable fees and costs, including, but not limited to, attorney fees incurred in connection with efforts to collect delinquent and unpaid assessments. In addition to the assessment for operating • expenses and the funding of reserves, such assessments may include fees, late charges, fines and interest the trial court and, in the event of an appeal, the cost of the appeal, together with reasonable attorney fees in the appellate court to be fixed by that court.

ARTICLE XVI
MISCELLANEOUS

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

16.2 **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 that may occur.

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