

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
“THE LANDING AT NEWPORT” CONDOMINIUMS**

**ARTICLE 1  
DEFINITIONS**

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

- 1.1     **“Act”** means the Oregon Condominium Act, ORS Chapter 100.
- 1.2     **“Association”** means Landing at Newport Condominiums Unit Owners Association established pursuant to Article \* below.
- 1.3     **“Board of Directors”** or **“Directors”** means the directors selected pursuant to this Declaration and the Bylaws to govern the affairs of the Association.
- 1.4     **“Bylaws”** means the Bylaws of the Association recorded February 5, 2001 as Exhibit C to Document No. 6238455, Records of Lincoln County, Oregon as they may be amended from time to time.
- 1.5     **“Commercial Unit”** means a units\ labeled as such in attached Exhibit B and used for the purposes described in Article 7 below.
- 1.6     **“Condominium”** means The Landing at Newport Condominiums, including all land, buildings and all easements, rights, and appurtenances belonging thereto.
- 1.7     **“Declaration”** means this Amended and Restated Declaration as the same may hereafter be amended.
- 1.8     **“Mortgage”** and **“Mortgagee”** and **“Mortgagor”** mean, respectively, a recorded first mortgage or first trust deed which creates a first lien against a unit and the holder or beneficiary of the mortgage or trust deed, but only when the holder or beneficiary notifies the Association in writing of the existence of the mortgage and gives the current name and mailing address of the holder.
- 1.9     **“Percent of Owners or Unit Owners”** or **“Percentage of Owners or Unit Owners”** means the percent of the voting rights allocated under Section 8.2 below.
- 1.10    **“Plat”** means the plat of “The Landing at Newport” Condominiums recorded in Plat Book 1, Page 153, Plat Records of Lincoln County, Oregon and any amendments thereto.

1.11 **“Residential/Commercial Unit”** means a unit labeled as such in attached Exhibit B and used for the purposes described in Article 7 below.

1.12 **“Residential Unit”** means those units labeled as such in attached Exhibit B and used for the purposes described in Article 7 below.

1.13 **“Restricted Residential Unit”** means a Residential Unit classified as a “Restricted Residential Unit” as provided in Article 7 below.

1.14 **“Unit”** means the space which is owned in fee simple by each unit owner and which is more specifically described in Section 3.2 below.

1.15 **“Unit Owner”** or **“Owner”** means any person or entity or combination thereof at any time owning a unit, or any interest therein or any portion thereof.

(a) The term “Unit Owner” shall not include any Mortgage (unless the mortgagee has acquired title for other than security purposes).

(b) Unless the context provides or requires otherwise, the lowercase terms “Owner” or unit owner” or Unit owner” as used in this Declaration, the Bylaws and other Condominium governing documents shall each have the same meaning as the defined described in this Section 1.15.

1.16 **“Unrestricted Residential Unit”** means a Residential Unit classified as “Unrestricted Residential Unit” as provided in Article 7 below.

1.17 **Incorporation By Reference.** Except as otherwise provided in this Declaration, each of the terms used herein that are defined in ORS 100.005, a part of the Oregon Condominium Act, shall have the meanings set forth in such section.

## **ARTICLE 2**

### **DESCRIPTION AND NAME OF CONDOMINIUM**

A fee simple interest in the land has been submitted to the Act. The land is located in Lincoln County, Oregon is more particularly described on attached Exhibit A. The name by which the property shall be known is “The Landing at Newport” Condominiums.

## **ARTICLE 3**

### **UNIT DESCRIPTION**

3.1 **General Description of Buildings.** The Condominium consists of two three-story buildings designated “Building A” and “Building B” in which 57 Units are located. Building A contains 29 units and Building B contains 28 units The buildings are three-story, wood-frame

construction on concrete foundations with a composition roof. All or most of each building and the spaces in between cover a subterranean parking garage.

3.2 **General Description, Location, and Designation of Units.** The Condominium consists of three types of units. There are 55 Residential Units, one Commercial Unit and one Residential/Commercial Unit. The Residential Units are further classified as “Restricted Residential” and “Unrestricted Residential” as described in Section 7.3 below. The unit designation, type and area of each of the units are shown on the attached **Exhibit B**. The unit designation, dimensions, and location of each unit are shown on the Plat.

3.3 **Boundaries of Units.**

(a) **Boundaries.** 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 and the exterior surfaces so described 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 exterior walls, floors or ceilings and interior load bearing partitions shall be a part of the common elements. In addition, each unit shall include the following:

(1) All spaces, non-bearing interior partitions, fireplaces (except chimneys and flues) and all other fixtures and improvements within the boundaries of the unit; and

(2) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), 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 the lines or ducts themselves.

(b) **Interpretation.** In interpreting deeds, mortgages, deeds of trust, and other instruments for any purpose whatsoever, or in connection with any matter, the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original Plat shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of the building and regardless of variances between boundaries as shown on the Plat and those of the actual building or buildings.

**ARTICLE 4**  
**GENERAL COMMON ELEMENTS**

The general common elements consist of all portions of the Condominium that are not part of a unit or a limited common element including but not limited to all elements of any building necessary or convenient to its existence, maintenance and safety or normally in common use.

**ARTICLE 5**  
**LIMITED COMMON ELEMENTS**

Each of the decks (including privacy walls and the ceiling (roof) bordering the decks) immediately adjacent to the Unit and on the south side of the unit as shown on the Plat shall constitute limited common elements, the use of which shall be restricted to the unit which it adjoins as shown on the Plat.

**ARTICLE 6**  
**ALLOCATION OF UNDIVIDED INTEREST**  
**IN COMMON ELEMENTS; COMMON EXPENSES**  
**AND INCOME; VOTING**

6.1 **Allocation of Interest in Common Elements.** Each unit is entitled to an undivided percentage ownership interest in the common elements as shown on attached **Exhibit B**. The undivided interests is allocated according to the ratio by which the approximate square footage of each unit bears to the total square footage of all units as shown on attached **Exhibit B**.

6.2 **Allocation of Common Profits and Expenses.**

(a) Except as provided in Subsection (b) of this section, the common expenses of the Condominium shall be allocated to the owner of each unit according to the allocation of undivided interest of the unit in the common elements as provided in Section 6.1 above as shown on attached **Exhibit B**. Amounts may be rounded to the nearest dollar.

(b) Owners shall be responsible for owner share, if affected, of the deductible for the master insurance policy of the Association as provided in Section 10.2 of the Bylaws. The share of an owner shall be determined by the ratio by which the approximate square footage of the affected unit bears to the total square footage of all affected units.

(c) All profit received by the Association shall be income of the Association. In its discretion, the Board of Directors may use such income to help meet the expense of maintaining the common elements or for such other purpose as may benefit the Association and the unit owners according to the allocation of undivided interest of each unit in the common elements as provided in Section 6.1 above as shown on attached **Exhibit B**.

6.3 **Allocation of Voting Rights.** Each unit shall be entitled to one vote in the affairs of the Association and for the purpose of this Declaration. The method of voting shall be as specified in the Bylaws.

**ARTICLE 7**  
**USE OF PROPERTY**

7.1 **Conditional Use Permit 10-CUP-98.** All units are subject to a conditional use permit identified as “10-CUP-98, City of Newport, County of Lincoln, State of Oregon, Conditional Use Permit ( “Permit 10-CUP-98”). No owner may use or allow a unit to be used in violation of Permit 10-CUP-98.

7.2 **Use of Units.**

(a) **Residential Units.** Each Residential Unit shall be used for residential purposes as described in this Article and the Bylaws.

(b) **Commercial Units.** A commercial unit shall be used for non-residential commercial purposes authorized outright or as conditional uses by the zoning ordinance of the City of Newport, Oregon.

(c) **Residential/Commercial Unit.** Unit 219 may be used as either a Residential Unit or a Commercial Unit or a combination thereof. If Unit 219 is used as a Residential Unit, it shall be initially classified as a Restricted Residential Unit and subject to the provisions of Section 7.4 below.

(d) **Additional Restrictions and Regulations** Additional restrictions and regulations may be set forth in the Bylaws and rules and regulations adopted pursuant to Section 7.10 below.

7.3 **Classification of Residential Units.**

(a) **Permit 10-CUP-98 Restrictions.** Permit 10-CUP-98 restricts the number of units that may be used for periods of thirty (30) consecutive days or more. As of the date of recording of this Declaration, Permit 10-CUP-98 permits up to fifteen (15) units to be used for periods of thirty (30) consecutive days or more. To comply with Permit 10-Cup 98, Residential Units are hereby further classified as “Unrestricted Residential Units” and “Restricted Residential Units.”

(1) **Unrestricted Residential Unit.** An Unrestricted Residential Unit may be occupied by the same person or persons for consecutive periods of thirty (30) days or more.

(2) **Restricted Residential Units.** A Restricted Residential Unit may not be occupied by the same person or persons for more than twenty-nine (29) consecutive days.

(b) **Initial Residential Unit Classification.** All Residential Units are initially classified as Restricted Residential Units. A Residential Unit classification may be changed only by the issuance of a Certificate of Reclassification of Residential Unit by the Association pursuant to Section 7.4 below.

7.4 **Reclassification of Residential Unit.** A Residential Unit may be reclassified by the issuance of a Certificate of Reclassification of Residential Unit only as provided in this section

(a) **Request for Reclassification; Action of the Board.** An owner may submit to the Board of Directors a request for owner's Residential Unit to be reclassified. The Board shall review the request for reclassification and make a determination if granting the reclassification will result in more than fifteen (15) Residential Units being classified as Unrestricted Residential Units (the "Residential Use Limit") or otherwise be in violation of Permit 10-CUP-98. The Board shall:

(1) Subject to Subsection (c) of this section, approve the request and issue the certificate described in Section 7.5 below if it determines that the reclassification will not exceed the Residential Use Limit or otherwise be in violation of Permit 10-CUP-98.

(2) Deny the request if it determines that the reclassification will exceed the Residential Use Limit or otherwise be in violation of Permit.

(b) **Review Procedure.** The Board of Directors shall review requests for reclassification in chronological order based upon the date of receipt of the request. Within ten (10) business days of receipt, the Board shall approve or deny a request as provided in Subsection (a) of this section and shall notify the owner within fifteen (15) business days of receipt of the request if certificate is not issued and the reason for the denial.

(c) **Waiting List.** If an owner's request is denied because the Unrestricted Residential Use Limit has been reached, the owner may be placed on a waiting list according to the date the request was received so that the owner whose request was earliest received will have first opportunity to have a certificate issued.

(d) **Limitations.** An owner is not eligible to have more than one unit classified as an Unrestricted Residential Unit until the pending requests of:

(1) All owners of units classified as Restricted Residential Units have been approved for reclassification and

(2) All owners of Residential Units that are classified as Unrestricted Residential Units own fewer units than the owner requesting the reclassification to Unrestricted Residential Unit.

7.5 **Certificate of Reclassification of Residential Unit.** A Certificate of Reclassification of Residential Unit issued pursuant to Section 7.5 shall be a format adopted by resolution of the Board of Directors which shall comply with ORS 100.405(10). The certificate shall be recorded in the Records of Lincoln County, Oregon.

7.6 **Certificate of Classification of Residential Unit.** Upon the written request of an

owner, the Board shall caused to be issued a certificate of Classification of Residential Unit setting for the classification of the Residential Unit. The certificate shall be in a form complying with ORS 100.405(10).

7.7 **Adoption of Rules.** An Request form, the request and approval process, a waiting list, and any other rules deemed necessary by the Board to implement the provisions of this article shall be established by rules adopted by resolution of the Board of Directors consistent with this section and pursuant to Section 7.10 below and ORS 100.405.

7.8 **Modifications to Permit 10-CUP -98.** The classifications of Residential Units specified in this article are for the purpose of complying with Permit 10-CUP-98. If Permit 10-CUP-98 is modified to increase the number of Residential Units that may be classified as Unrestricted Residential Units or eliminate the need for the classification, the Board shall adopt by resolution the rules necessary to reflect the modification.

7.9 **Additional Restrictions and Regulations.** Additional restrictions and regulations may be set forth in the Bylaws and rules and regulations adopted pursuant to Section 7.10 below.

7.10 **Rules and Regulations Promulgated by the Association.** Subsection Section 16.9 below, the Board of Directors shall have the authority from time to time to promulgate such rules and regulations as the Board may deem in the best interest of the Association. Without in any manner intending to limit the generality of the foregoing, the Board of Directors shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the common elements to the members of the Association and their respective families, guests, invitees and servants. Uses may be conditioned upon, among other things;

(a) The payment by the Unit owner of assessments for common expense and such other assessments or fees as may be established by the Board of Directors for the purpose of defraying the costs associated with the use of common elements; and

(b) The observance by the unit owners, his or her guests, invitees and servants, of the Declaration, Bylaws and the Association's rules and regulations.

## **ARTICLE 8**

### **MAINTENANCE OF COMMON ELEMENTS**

8.1 **Common Element 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.

8.2 **Damage Caused by Owner's Negligence or Intentional Acts.** Any damage caused by the negligence or intentional act of any owner, his or her invitee, guest or servant shall be repaired by the Association at the owner's sole cost and expense, to the extent not covered by Association

insurance. If the damage is covered by an Association insurance policy, the owner shall be responsible for the payment of any deductible under the policy.

**ARTICLE 9**  
**THE ASSOCIATION OF UNIT OWNERS**

9.1 **Organization.** An association of unit owners has been organized as a nonprofit corporation under ORS Chapter 65 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 the Association is The Landing at Newport Condominiums Unit Owners Association.

9.2 **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.

9.3 **Powers and Duties.** The Association shall have such powers and duties as may be granted to it by the Act, including each of the powers set forth in ORS 100.405(4) as such statute may be amended to expand the scope of association powers, together with such additional powers and duties afforded by this Declaration, the Bylaws and the Oregon Nonprofit Corporation Act, ORS Chapter 65.

9.4 **Adoption of the Bylaws.** The Association has adopted bylaws for the Association a copy of which are being recorded concurrently with the recording of this Declaration.

**ARTICLE 10**  
**SERVICE OF PROCESS**

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

**ARTICLE 11**  
**MORTGAGEES**

In the event of a conflict between Article 11 and other provisions of this Declaration or any supplemental condominium Declaration, the provisions of this Article 11 shall prevail. The terms “mortgage,” mortgagor” and “mortgagee” are defined in Article 1 above.

11.1 **Notice of Action.** Upon written request to the Association identifying the name and address of the mortgagee, and the unit number or address, any mortgagee shall be entitled to timely notice of:

- (a) Any condemnation loss or any casualty loss that affects a material portion of

the Condominium, any unit on which there is a mortgage held, insured or guaranteed by such mortgagee.

(b) Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to a mortgage held, insured or guaranteed by such mortgagee, which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action that would require the consent of a specified portion of mortgagees as set forth in this Article 11.

11.2 **Mortgagee Except from Certain Restrictions.** Any mortgagee that comes into possession of the unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any “right of first refusal” or other restriction on the sale or rental of the mortgaged unit including, but not limited to, restrictions on the age of the unit occupants and restrictions on the posting of signs pertaining to the sale or rental of the unit.

11.3 **Subordination of Association Lien to Mortgage/Discharge of Lien Upon Foreclosure.** The lien of the Association shall be subordinate to any first mortgage. Any mortgagee that comes into possession of the unit pursuant to the remedies provided in the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit that accrue prior to the time such mortgage comes into possession of the unit (except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all units, including the mortgaged unit).

#### 11.4 **Professional Management.**

(a) Upon written request of the mortgagees holding at least fifty-one percent (51%) of the mortgages on units in the Condominium, the Board of Directors shall employ a professional manager to manage the affairs of the Association. Any agreement for professional management shall provide that the management contract may be terminated for cause on thirty (30) days’ written notice

(b) After the mortgagees’ request, the association may not terminate professional management and assume self-management of the Condominium without the prior written approval of the mortgagees holding fifty-one percent (51%) of the mortgages on the units in the Condominium.

(c) If professional management has previously been required by any mortgagee, any decision to establish self-management shall require the prior consent of the owners of units to which sixty-seven percent (67%) of the votes in the Association are allocated.

**11.5 Consent of Mortgagees to Change Percentage Ownership in Common Elements.**

The unit owners may not reallocate the percentage interest in the common elements attributable to any unit without prior approval of the mortgagees holding fifty-one percent (51%) of the mortgages on units in respect to which the percentage ownership is proposed to be altered. Nothing in this Section 11.5 shall be construed to give the owners, the Association or the Board of Directors any specific authority to alter such percentage ownership, and if any attempt is made to do so, full compliance shall be made with the Declaration, the Bylaws and the Act.

**11.6 Consent of Mortgagees Required to Terminate Project.** Except with respect to termination of the Condominium as a result of destruction, damage or condemnation, any termination of the Condominium shall require the approval of mortgagees holding fifty-one percent (51%) of the mortgages on units in the Condominium. Additionally, any such terminations shall be carried out by the owners pursuant to the Declaration, any applicable supplemental condominium Declaration, the Bylaws and the Act.

**11.7 Limited Right of Amendment.**

(a) Except upon the approval of mortgagees who hold fifty-one percent (51%) of the mortgages on units in the Condominium, no amendments may be made to the Declaration or Bylaws which add to or amend any material provisions of the Declaration or Bylaws which establish, provide for, govern, or regulate the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of liens;
- (3) Reserves for maintenance, repair and replacement of the common elements (or units, if applicable);
- (4) Insurance;
- (5) Rights to use of common elements;
- (6) Responsibility for maintenance and repair of the several portions of the Condominium;
- (7) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (8) Boundaries of any unit;
- (9) The interests in the general or limited common elements;

(10) Convertibility of units into common elements, or of common elements into units;

(11) Leasing of units;

(12) Imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer or otherwise convey his or her units;

(13) Any provisions that are for the benefit of mortgagees.

(b) The provisions of this subsection are intended only to be a limitation on the right of the unit owners, the Board of Directors and association to amend the Declaration and Bylaws, and are not intended to give any such parties any specific rights to effect any amendments. Any amendments to the Declaration or Bylaws shall be made only upon full compliance with the provisions of the Declaration, Bylaws and the Act relating to the procedure and percentage of votes required for the amendment.

(c) An addition or amendment to the Declaration or Bylaws shall not be considered material so as to require the consent or approval of mortgagees if it is for the purpose of correcting technical errors or if it is for clarification only.

11.8 **Request for Approval of Mortgagees.** Any mortgagee who receives a written request to approve additions or amendments to the Declaration or Bylaw, or to any other action to be taken by the Board of Directors, the Association or units owners, shall be considered to have given the approval unless a negative response is delivered or posted by the mortgagee within thirty (30) days after the request is received.

11.9 **Proxy Held By Mortgagee in Certain Cases.** A mortgagee may attend a meeting of the Association and may cast the vote of the mortgagor of that unit for the purpose of voting to paint or otherwise maintain the common elements, including the imposition of any special assessment necessary to pay the cost of such painting or repair; provided, however, that such right shall arise only in the event the mortgagee reasonably believes that the Association has failed to maintain the common elements in sufficient manner to prevent excessive wear and tear.

11.10 **Right to Examine Documents.** The Association shall make available to unit owners and lenders and to mortgagees current copies of the Declaration, Bylaws, other rules concerning the Condominium and the books, records and financial statements of the Association. The Association shall have the right to impose a reasonable charge for any copies requested by owners, lenders and mortgagees.

11.11 **Right to Receive Written Notice of Meetings.** Upon request, the Association shall give all mortgagees written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all the meetings.

11.12 **List or Mortgagees.** The Association shall maintain at all times a list of mortgagees, their names, addresses, the units and mortgagors affected, and the matters with respect to which the mortgages have requested notice, provided that such information has been furnished to the association by the owners or their mortgagees.

## **ARTICLE 12** **AMENDMENT**

12.1 **How Proposed.** Amendments to the Declaration must 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 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.

### 12.2 **Approval Required.**

(a) Except as may be otherwise provided in Section 14.9 or other provision of this Declaration or by the Act, this Declaration may be amended if the amendment is approved by unit owners holding seventy-five percent (75%) of the voting rights of the Condominium and by mortgagees to the extent required by Article 11 above.

(b) Except as may otherwise be permitted by the Act, no amendment may change the allocation of undivided interest in the common elements or the method of determining liability for common expenses, the method of determining right to common profit or the method of determining voting rights of any unit unless the amendment has been approved by the owners and mortgagees of the affected unit.

12.3 **Execution; Approval and Recording.** The amendment or the Declaration as amended shall be:

(a) Executed and certified by the chairperson and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Act;

(b) Approved by the Real Estate Commissioner, Lincoln County assessor and tax collector, if the approvals are required by the Act; and

(c) Effective upon recording in the Deed Records of Lincoln County, Oregon.

## **ARTICLE 13** **EASEMENTS**

### 13.1 **In General.**

(a) 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.

(b) 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.

(c) 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.

### 13.2 **Right of Entry.**

(a) A unit owner shall grant the right of entry to the Board of Directors of the Association, managing agent, manager, or any other person authorized by the Board of Directors, in the case of any emergency originating in or threatening his or her unit or other Condominium property, whether or not the owner is present at the time.

(b) An easement is reserved to the Association in and through any unit and the common elements providing access at reasonable times and with reasonable notice for purposes of maintenance, repair and replacement of the common elements 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, If, in the process of any repair and maintenance by the Association, it is necessary to alter or damage any unit or common elements, the alterations or damages will be permitted without compensation, provided the unit and/or common elements are promptly restored to substantially their prior condition by the Association.

### 13.3 **Encroachments.**

(a) Pursuant to ORS 100.520, each unit and all common elements shall have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments shall exist, and except as otherwise provided in Subsection (b) of this section, the rights and obligations of owners shall not be altered in any way by the encroachment.

(b) The easement described under Subsection (a) of this section does not relieve a unit owner of liability in case of willful misconduct of a unit owner or relieve the Declarant or any contractor, subcontractor, or materialman of liability for failure to adhere to the Plat.

(c) The encroachments described in subsection (a) of this Section 13.3 shall not be construed to be encumbrances affecting the marketability of title to any unit.

(d) If structures are partially or totally destroyed and then rebuilt, the owners of the units agree that minor encroachment of parts of the common elements due to such rebuilding shall be allowed and an easement shall exist for such purpose.

### 13.6 **Granting of Easements and Other Interest by Association.**

(a) Pursuant to ORS 100.405(5), the Association shall have the authority to execute, acknowledge, deliver, and record on behalf of the unit owners, leases, easements, rights-of-way, licenses, and other similar interests affecting the common elements and consent to vacation of roadways within and adjacent to the Condominium.

(b) Subject to Subsections (d) and (e) of this Section 13.6, the granting of a lease, easement, right of way, license or other similar interest shall first be approved by at least seventy-five percent (75%) of the unit owners as required by ORS 100.405, except:

(1) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two years or less requires only the approval of a majority of the Board of Directors.

(2) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of more than two years to a public body, as defined in ORS 174.109, or to a utility or a communications company for underground installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires only the approval of a majority of the Board of Directors.

(3) The granting of a lease, easement, license or other similar interest to an owner for the exclusive use of a part of the general common elements to which the owner's unit provides primary access requires only the approval of a majority of the Board of Directors. If the approval by the board includes the right of the owner to make improvements to the general common elements to which the owner is being granted exclusive use, ORS 100.535 applies to the general common elements to the same extent that ORS 100.535 applies to a unit, including the right of the Board under ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect or registered professional engineer that the proposed improvement will not impair the structural integrity or mechanical systems of the Condominium.

(4) The consent to vacation of roadways within and adjacent to the Condominium must be approved first by at least a majority of unit owners present voting in person or by proxy at a duly constituted meeting of the Association called for the purpose.

(c) No interest shall be granted pursuant to this Section 13.6 with regard to a

limited common element unless the owners and mortgagees of the units having the right to use the limited common element consent to and join in the instrument granting the interest.

(d) The instrument granting any interest or consent pursuant to this Section 13.6 shall be executed by the chairperson and secretary of the Association, and any owners and mortgagees required by subsection (c) of this section, and acknowledged in the manner provided for acknowledgment of such instruments by such officers, and shall state that the grant or consent was approved, if appropriate, by at least the percent of owners required by ORS 100.405(6).

(e) The approvals required under Subsection (b) of this Section 13.6 are intended to comply with ORS 100.405(6) in effect as of the recording of this Declaration. To the extent ORS 100.405(6) is amended to reduce any approval requirements stated in Subsection (b) of this section, ORS 100.405(6), as amended, shall apply to Subsection (b) of this section.

#### **ARTICLE 14** **GENERAL PROVISIONS**

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

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

14.3 **Waiver of Rights.** The failure of the Association, Board of Directors, an officer or a unit owner to enforce any right, provision, covenant or condition of the Declaration or Bylaws shall not constitute a precedent or estoppel impairing the right or a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

14.4 **Legal Proceeding.** Failure to comply with any of the terms of the Declaration, any supplemental condominium declaration, the Bylaws and any rules or regulations adopted thereunder shall be grounds for relief which may include, without intending to limit the same, an action to recover money dues, damages or a suit for injunctive relief, to foreclose a lien or any combination thereof. Relief may be sought by the Association, Board of Directors, an officer, a professional manager or management firm or, if appropriate, by an aggrieved unit owner.

14.5 **Costs and Attorney Fees.** In any proceeding arising because of alleged default by a unit owner to comply with the terms and provisions of this Declaration (as may be amended or supplemented), the Bylaws (as may be amended), rules and regulations of the Association or any provision of the Act, the prevailing party shall be entitled to recover the cost of the proceedings and such reasonable attorneys fees as may be determined by the trial court in any trial or by the appellate court in any appeal thereof. In addition, the Association shall be entitled to recover costs and attorney fees incurred by it to collection delinquent assessments whether or not any collection or

foreclosure action or suit is filed.

14.6 **Compliance.** Each unit owner shall comply with the Declaration, any supplemental condominium declaration, and the Bylaws, and with the administrative rules and regulations adopted thereunder, and with all other applicable covenants, conditions and restrictions of records. Failure to comply therewith shall be grounds for suit or action maintainable by the Association or any unit owner in addition to other sanctions that may be provided by the Bylaws or by any existing administrative rules and regulations.

14.7 **Conflicting Provisions.** Subject to ORS 100.122 and 100.100, if a conflict arises between or among the provisions of the Declaration, the Articles of Incorporation of the Association, the Bylaws, and any administrative rules and regulations, the provisions of the Declaration shall be paramount to those of the Articles, the Bylaws, and the rules and regulations; the Articles will be paramount to the Bylaws and the rules and regulations and those of the Bylaws will be paramount to the rules and regulations, except to the extent the Declaration, Bylaws and Articles are inconsistent with the Act.

14.8 **Section and Paragraph Captions.** Section and paragraph captions are not a part hereof unless the context otherwise requires. In construing this Declaration, it is understood that if the context so requires, the singular pronouns shall be taken to mean and include the plural, the masculine to include the feminine and neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions of this Declaration apply equally to all individuals, trusts, estates, personal representatives, trustees and corporations.

14.9 **Protection of Commercial Units.** There shall be no amendment to the Declaration or Bylaws nor shall there be any rules, regulations, conditions or restrictions affecting a Commercial Unit after the recording of the Declaration and Bylaws that in any way limits the commercial utility and viability of the Commercial Unit beyond any Commercial Unit controls contained in this Declaration and the Bylaws without the consent of all Commercial Unit owners.

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**THE LANDING AT NEWPORT  
CONDOMINIUMS UNIT OWNERS  
ASSOCIATION, INC.**

By: \_\_\_\_\_  
Chairperson

By: \_\_\_\_\_  
Secretary

**EXHIBIT A  
LEGAL DESCRIPTION**

**LEGAL DESCRIPTION FROM SURVEYOR'S  
CERTIFICATE ON PLAT**

**EXHIBIT B**

***SEE SEPARATE EXHIBIT B***