

**BYLAWS OF THE ASSOCIATION OF UNIT OWNERS OF  
PENINSULA PARK COMMONS CONDOMINIUM**

Filed by:

Peninsula Park Commons LLC, an Oregon Limited Liability Company

**RECITALS**

Peninsula Park Commons Condominiums is founded in the belief that the health and enrichment of individuals, communities, and the places in which they exist are inextricably linked. In forming the Commons, we are striving to establish a cooperatively governed community in the Piedmont neighborhood where a diverse group of people will share physical and social space, and where the development, decision-making and day-to-day operations of the community reflect our core shared values. We commonly understand these values to include:

- ▶ Care and respect for other people
- ▶ Care and respect for the earth and its natural systems
- ▶ A commitment to cooperative decision-making
- ▶ Valuing diversity: diverse opinions, backgrounds and styles
- ▶ Respect for the balance between personal freedom, privacy and the other needs of individuals, and the needs of the community as a whole
- ▶ Commitment to ongoing personal and community growth
- ▶ A desire for connection to the larger community of the neighborhood, city and region

To foster these values in life at Peninsula Park Commons Condominiums, we will:

- ▶ Share in the maintenance and management of buildings and grounds as equitably as possible.
- ▶ Create an environment in which it is convenient to share such items as motor vehicles, home appliances, books, garden equipment, costumes, games, outdoor gear, construction tools, entertainment systems and other things suitable for community ownership.
- ▶ Create and participate in opportunities for sharing, trust, and spontaneous fun necessary to build a sense of place and community.

**ARTICLE I**

**PLAN OF UNIT OWNERSHIP**

1. Name and Location. These are the Bylaws of the ASSOCIATION OF UNIT OWNERS OF PENINSULA PARK COMMONS CONDOMINIUM (hereinafter the "Association"). PENINSULA PARK COMMONS CONDOMINIUM, (hereinafter the "condominium") is located in the City of Portland, Multnomah County, Oregon, and has been submitted to the Oregon Condominium Act by a Declaration filed

simultaneously herewith (hereinafter called the "Declaration"). The location of the condominium is more specifically described in the Declaration.

2. Principal Office. The principal office of the Association shall be located at 6325 North Albina Ave., Apt. #3, Portland, Oregon, 97217.
3. Purposes. This Association is formed under the provisions of the Oregon Condominium Act to serve as the means through which the unit owners may take action with regard to the administration, management and operation of the condominiums. The Association will be an unincorporated association.
4. Applicability of Bylaws. The Association, all unit owners and all persons using the condominium property shall be subject to these Bylaws and to all rules and regulations which may be promulgated hereunder.
5. Personal Application. All present or future owners, tenants, future tenants or their employees, or any other person that might use the facilities of said real property in any manner, are subject to the regulations set forth in these Bylaws and to the restrictions, provisions, conditions and regulations set forth in the recorded Declaration.
6. Composition of Association: The Association shall be composed of all the unit owners of the condominiums, including Peninsula Park Commons LLC, its successors and assigns (hereinafter, the "Declarant"), and the Association, itself, to the extent any of these own any unit or units of the condominiums.
7. Definitions.
  - (a) Adoption by Reference. The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.
  - (b) Percentage of Unit Owners. Whenever a percentage of unit owners is specified herein, such percentage means the owners of that percentage of the total number of unit owners existing in the condominium except that where there are multiple owners of a single unit all such owners taken together shall constitute one owner for the purpose of calculating the percentage.
  - (c) Mortgage and Mortgagee. As used herein, the terms of "mortgage" and "mortgagee" shall include, respectively, a deed of trust and the beneficiary of a deed of trust.
  - (d) Common Unit. As used herein, the "Common Unit" is former apartment #3, which is a general common element of the Condominium.

## ARTICLE II

### **TURNOVER MEETING**

1. Time of Meeting: The Declarant shall call a turnover meeting within ninety (90) days of the expiration of the earlier of the three years from the date of the conveyance of the first unit to a person other than the Declarant or conveyance of fifty percent (50%) of the units.
2. Notice. The Declarant shall give notice of the turnover meeting in accordance with the Bylaws of the Association to each unit owner at least seven (7) but not more than fifty (50) days prior to the meeting. The notice shall state the purpose of the meeting and the time and place where it is to be held. If the turnover meeting is not called by the Declarant within the time specified, the meeting may be called and notice given by any unit owner or any first mortgagee of the unit.
3. Relinquishment of Control. At the turnover meeting, the Declarant shall relinquish control of the administration of the Association and the unit owners shall elect a Board of Directors in accordance with the Bylaws of the Association. At the turnover meeting the Declarant shall deliver to the association all items, articles and documents specified in ORS 100.210.
4. Continuing Declarant Responsibility. In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the Declarant or an informed representative shall be made available to meet with the Board of Directors on at least three mutually acceptable dates to review the documents delivered under Section 3 of this Article. If the Declarant has complied with the provisions of these Bylaws, unless the Declarant otherwise has sufficient voting rights as a unit owner to control the Association, the developer shall not be responsible for the failure of the unit owners to comply with Section 3 of this Article and the Declarant shall be relieved of any further responsibility for the administration of the Association except as a unit owner of any unsold unit.

## ARTICLE III

### **PARTICIPATION AND DECISION-MAKING**

1. Consensus. Consensus is the primary method of decision-making at all levels of Association governance, except where otherwise required by the Declaration, these Bylaws, or the Oregon Condominium Act. If agreed to by consensus at an Association meeting, decision-making can be delegated to a committee or an individual as appropriate. One member or designated representative of each active unit of the Association physically present at a meeting may participate in consensus polling arising during the course of such meeting.

2. Determination of Membership in the Association. Upon recordation of a conveyance or contract to convey a unit, each grantee or purchaser named in such conveyance or contract shall automatically be a member of the Association (herein “member”) and shall remain a member of said Association until such time as such person’s ownership ceases for any reason.
3. Responsibility of Membership. Active members shall be responsible to participate in the administration and management of the Association and in the maintenance of the Condominium common areas a number of hours per month (herein “participation hours”) as specified by the Board of Directors from time to time. Participation hours shall be regarded as part of the common expenses of the Association to the extent determined by the Board of Directors. Unless otherwise decided by the Board, the number of participation hours required of a household with two (2) adults will be greater than, but less than twice, the participation hours required of a one (1) adult household.
4. Types of Membership.
  - a. Active Members. Each member of the Association shall be deemed an “active member” unless otherwise designated by the Association. Active members shall be charged with defining the will of the Association as a whole.
  - b. Inactive Members. The status of “inactive member” may be granted to certain members who request in writing not to be involved in Association governance, including participating in consensus decision-making, voting as an active member, or serving as a Director of the Association. Granting or denying of inactive status shall be at the sole discretion of the Board of Directors. The terms of granting inactive member status shall be decided by the Board on a case-by-case basis. An inactive member may return to active member status at any time upon written notification to the Board. Inactive members may be specially assessed by the Board of Directors in lieu of providing participation hours.
5. Active Units. An “active unit” is a unit with at least one active member.
6. Voting at Meetings of the Association. If consensus cannot be reached on an issue after two meetings of the Association at which an issue is discussed, a third meeting of the Association requiring a quorum shall be called and voting may be used. A decision to shift from consensus to voting shall be called by an active member and agreed upon by a majority of active members present at such third meeting. In decisions made by vote at meetings of the Association, each active unit shall be allocated one (1) vote. Where any active unit is jointly owned by two or more owners, according to the records of the association, the vote of such unit may be exercised by any one of the co-owners then present, in the absence of protest by a co-owner. In the event of such protest, no one co-owner shall be entitled to vote without

the approval of all co-owners. In the event of disagreement among the co-owners, the vote of such unit shall be disregarded completely in determining the proportion of votes given with respect to such matter. The Declarant shall be entitled to vote as the unit owner of any then existing units retained by the Declarant, and the Board of Directors shall be entitled to vote on behalf of any unit which has been acquired by or on behalf of the Association; provided, however, that the Board of Directors shall not be entitled to vote such units in any elections of directors. A decision on the issue shall require the affirmative vote of more than fifty percent (50%), except where a higher percentage is required by law, the Declaration, or these Bylaws.

7. Voting at meetings of the Board of Directors. If consensus cannot be reached on an issue after two meetings of the Board of Directors at which an issue is discussed, a third meeting of the Board requiring a quorum shall be called and voting may be used. A decision to shift from consensus to voting shall be called by a Board member and agreed to by a majority of the Board at such third meeting. In decisions made by vote at meetings of the Board, each Director shall be allocated one (1) vote. The Declarant shall be entitled to vote as the unit owner of any then existing units retained by the Declarant, and the Board of Directors shall be entitled to vote on behalf of any unit which has been acquired by or on behalf of the Association; provided, however, that the Board of Directors shall not be entitled to vote such units in any elections of directors. A decision on the issue shall require the affirmative vote of more than fifty percent (50%), except where a higher percentage is required by law, the Declaration, or these Bylaws.
8. Proxies. A vote may be cast in person or by proxy. A proxy given by an active unit owner to any person who represents such owner at meetings of the Association and/or the Board of Directors shall be in writing, signed by such owner, and filed with the secretary. A proxy representative shall count towards complying with applicable meeting quorum requirements. No proxy shall be valid after the meeting(s) for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon sale of the unit by its owner. An active unit owner may pledge or assign his/her voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall be entitled to receive all notices to which the unit owner is entitled hereunder and to exercise the unit owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association or the Board of Directors.
9. Fiduciaries. Unless granted inactive member status, an executor, administrator, guardian, or trustee shall be deemed an active member with respect to any unit owned or held by her/him in such capacity, whether or not the unit shall have been transferred to her/his name; provided, that she/he shall satisfy the secretary that she/he is the executor, administrator, guardian, or trustee holding such unit in such capacity.

10. Quorum. At any meeting of the Association, representation of sixty percent (60%) of the active units shall constitute a quorum. At any meeting of the Board of Directors, sixty percent (60%) of the Directors must be present to constitute a quorum. The subsequent joinder of an active member or Director of an active unit not otherwise represented, in the action taken at a meeting by signing and concurring in the minutes thereof, shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of any member or Director. If any meeting of members or Directors cannot be organized because of a lack of quorum, the members or Directors who are present in person may adjourn the meeting from time to time until a quorum is present.

## **ARTICLE IV**

### **MEETINGS OF ASSOCIATION**

1. Place of Meetings. The Association shall hold meetings in the Common Unit or at other such suitable place convenient to the unit owners as may be designated by the Board of Directors from time to time.
2. Annual Meetings. The annual meetings of the Association (which is immediately followed by the annual meeting of the Board of Directors) shall be held on the first Sunday of November. The annual meetings shall be for the purposes of approving the annual budget, hearing committee reports, and for the transaction of such other business as may properly come before the meeting.
3. Special Meetings. Special meetings of the Association may be called by the chair or secretary or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from at least thirty percent (30%) of the unit owners stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.
4. Notice of Meetings. Notice of all meetings of the Association stating the time and place and the purpose for which the meeting is being called shall be given by the chair or secretary. Such notice shall be in writing, prominently posted in the Common Unit, and mailed or e-mailed to each unit owner and to first mortgagees who have a written request for same on file with the secretary. Notice shall be posted and mailed/e-mailed not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting. Proof of such mailed or e-mailed notices shall be given by affidavit of the person giving the notice. Notice of meeting may be waived by any unit owner before or after meetings. When a meeting is adjourned for less than thirty (30) days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place and by posting of notice at the Common Unit.

5. Order of Business. The order of business at annual meetings of the Association shall be:
- (a) Calling of the roll and certifying of proxies;
  - (b) Proof of notice of meeting or waiver of notice;
  - (c) Reading of minutes of preceding meeting;
  - (d) Reports of officers;
  - (e) Reports of committees, if any;
  - (f) Election of directors;
  - (g) Unfinished business;
  - (h) New business; and,
  - (i) Adjournment

## **ARTICLE V**

### **BOARD OF DIRECTORS**

1. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors, each of whom shall represent one active unit of the Condominium. Unless a Director has been removed, the number of Directors shall be equal to the number of active units of the Condominium, and all directors shall be unit owners or co-owners of units of the condominiums. For purposes of this section, the officers of any corporate owner and partners of any partnership shall be considered co-owners of any units owned by such corporation or partnership.
2. Election and Term of Office. At the turnover meeting called by the Declarant, pursuant to Section 2.1 of these Bylaws, one (1) representative designated in writing from each active unit shall be deemed elected as Directors of the Board of Directors. A Director shall hold office until:
  - (a) The unit she/he represents is no longer owned by the unit owner(s) who designated such Director,
  - (b) The unit becomes inactive,
  - (c) The unit owner(s) who designated such Director designates in writing a replacement for such Director, or

- (d) The Director is removed by the Board.
3. Vacancies. Vacancies in the Board of Directors caused by the change of ownership of a unit shall be filled by the new unit owner, who shall designate in writing a Director to represent his/her unit. Vacancies in the Board of Directors caused by the removal of a Director may be filled by a co-owner of the same unit so long as fifty percent (50%) of the remaining board members agree to the co-owner's appointment to the Board of Directors. In the absence of an acceptable co-owner, a vacancy caused by the removal of a Director shall not be filled until ownership of the unit he/she represented changes or the Board of Directors, by a majority vote, provides an alternative remedy.
4. Removal of Directors. Any Director may be removed, with or without cause, by an affirmative vote of sixty-seven percent (67%) of the entire Board of Directors at any regular or special meeting of the Board. The notice of any such meeting shall state that such removal is to be considered and any director whose removal has been proposed shall be given an opportunity to be heard at the meeting.
5. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may be not be delegated to the Board of Directors by the unit owners. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to the following:
- (a) Operation, care, upkeep, maintenance, repair and replacement of the general and limited common elements, and Association property.
  - (b) Determination of the amounts required for the operation, maintenance and other affairs of the Association and the making of such expenditures.
  - (c) Collection of the common expenses from the unit owners.
  - (d) Employment and dismissal of such personnel as secretary for the efficient maintenance, upkeep and repair of the common elements.
  - (e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as they may be required for the proper administration of the Association and for the preparation of any required tax return.
  - (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

- (g) Purchasing units of the condominium project at foreclosure of other judicial sales in the name of the Association, or its designee, on behalf of all unit owners as provided in these Bylaws.
  - (h) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with units of the condominium acquired by the Association or its designee on behalf of all the unit owners.
  - (i) Obtaining insurance or bonds pursuant to the provisions of the Bylaws.
  - (j) Making additions and improvements to, or alterations of, the common elements; provided, however, that not such project may be undertaken by the Board if the total cost will exceed the amount of five hundred dollars (\$500.00), unless the unit owners have enacted a resolution authorizing the project by a vote of seventy-five percent (75%) of the unit owners present in person or by proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to repairs or maintenance undertaken pursuant to paragraph (a) above.
  - (k) Subject to Article V, Section 13, enforcement by legal means of the provisions of the Oregon Condominium Act, the Declaration filed thereunder, these Bylaws and any rules and regulations adopted hereunder.
  - (l) Filing with the Real Estate Agency an annual report and any amendment thereto in accordance with ORS Sections 100.250 and 100.260.
  - (m) Filing any necessary income tax returns for the Association.
6. Managing Agent or Manager. On behalf of the Association, the Board of Directors may employ or contract for a manager agent or a manager at the compensation to be established by the Board of Directors. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize. In the absence of such appointment, the Board of Directors shall act as manager.
7. Regular and Special Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Special meetings of the Board of Directors may be called by the chair and must be called by the secretary at the written request of at least twenty-five percent (25%) of the directors. Notice of any special meeting shall be given to each director, personally or by mail, e-mail, telephone, telegraph or passenger pigeon at least seven (7) days prior to the day named for such meeting and shall state the time, place and purpose of such meeting. Notice of meetings of the Board of Directors shall be posted in the Common Unit at least three (3) days prior to the meeting or shall be provided by a method otherwise reasonably calculated to inform

Association members of such meetings. Any unit owners may attend a Board meeting, except that, in the discretion of the Board, the following matters may be considered in executive session:

- (a) Consultation with legal counsel concerning the rights and duties of the association regarding existing or potential litigation, or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline; and
- (c) The negotiation of contracts with third parties.

Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer of the Board of Directors 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.

8. Waiver of Notice. Any director may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall constitute a waiver by him/her of notice of the time and place thereof, except where a director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or conveyed. If all of the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
9. Compensation. No director shall receive any compensation from the Association for acting as such.
10. Liability and Indemnification of Directors, Officers, Manager or Managing Agent. The directors and officers shall not be liable to the Association of the unit owners for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The Association shall indemnify and hold harmless each director and officer and the manger or managing agent, if any, against all contractual liability to others arising out of contracts made by the Board of Directors, officers, manager or managing agent on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. Each director and officer and the manager or managing agent, if any, shall be indemnified by the Association against all expenses and liabilities, including attorney's fees reasonably incurred or imposed upon them in connection with any proceeding to which they may be a party, or, in which they may become involved, by reasons of being or having been a director, officer, manager or managing agent, and shall be indemnified upon any reasonable settlement thereof; provided, however, there shall be no indemnity if the director, officer, manager or managing

agent is adjudged guilty of willful nonfeasance, misfeasance or malfeasance in the performance of his/her duties.

11. Fidelity Bonds. The Board of Directors may require that any person or entity, including, but not limited to, employees of any professional manager, who handles or is responsible for Association funds shall furnish such fidelity bond as the Board deems adequate. The premiums on such bonds may be paid by the Association.
12. Insurance. The Board of Directors shall obtain the insurance required in Article X of these Bylaws. In addition, the Board of Directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association of unit owners. The Board of Directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the condominiums.
13. Lawsuits. The Board of Directors shall obtain the majority vote of the unit owners before the filing any lawsuit may occur by the Board of Directors on behalf of the Association of Unit Owners.

## **ARTICLE VI**

### **OFFICERS**

1. Designation. The principal officers of the Association shall be the chair, the secretary and the treasurer, all of whom shall be elected by the Board of Directors. The directors may appoint such other officers as in their judgment may be necessary.
2. Election of Officers. Each officer of the Association must be a member of the Board of Directors. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. If any office shall become vacant, the Board of Directors shall elect a successor to fill the unexpired term at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. No officer shall serve for more than two (2) consecutive years in the same office except by the unanimous consent of the Board of Directors.
3. Removal of Officers. Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and her/his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.
4. Chair. The chair shall be the chief executive officer of the Association. He/she shall preside at all meetings of the Association and of the Board of Directors. He/she shall have all of the general powers and duties which are usually vested in the chief executive officer of an association.

5. Secretary. The secretary shall keep the minutes of all proceedings of the Board of Directors and the minutes of all meetings of the Association. He/she shall attend to the giving and serving of all notices to the unit owners and directors and other notices required by law. He/she shall keep the records of the Association, except for those of the treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the chair. In addition, the secretary shall act as vice-chair, taking the place of the chair and performing his/her duties whenever the chair is absent or unable to act, unless the directors have appointed another vice-chair.
6. Treasurer. He/she shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of required financial statements. He/she shall be responsible for the deposit of all monies and other valuable effects in such depositories as may from time to time be designated by the Board of Directors, and he/she shall disburse funds of the Association upon properly authorized vouchers, in accordance with the budget adopted by the Board of Directors.
7. Execution of Instruments. All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the Board of Directors and in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the chair. All checks shall be signed by the treasurer, or in her/his absence or disability, by the chair.
8. Compensation of Officers. No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the unit owners.

## **ARTICLE VII**

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

1. Budget. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the common expenses expected to be incurred, less any previous overassessment, and assess the common expenses to each unit owner in the same proportion as his/her percentage interest in the common elements, except that legal and accounting expenses, if any, will be charged equally to units. The budget shall provide for a reserve fund in accordance with Article VII, Section 5 below. Within thirty (30) days after adopting the annual budget, the Board of Directors shall advise each unit owner in writing of the amount of common expenses payable by him/her, and furnish copies of each budget on which

such common expenses are based to all unit owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

2. Determination of Common Expenses. Common element expenses shall include:

- (a) Expenses of Administration.
- (b) Expenses of maintenance, repair or replacement of common elements.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) A general operating reserve.
- (e) Reserve for replacements, repairs and deferred maintenance.
- (f) Any deficit in common expenses for any prior period.
- (g) Utilities for the common areas and other utilities with a common meter or commonly billed, such as water, sewer and/or gas.
- (h) Any other items properly chargeable as a common expense of the Association.

3. Assessment of Common Expenses.

- (a) Obligation to pay. All unit owners shall be obliged to pay common expenses assessed to them by the Board of Directors on behalf of the Association pursuant to these Bylaws and the Declaration. Assessments may not be waived due to limited or nonuse of common elements. A unit owner may not claim an offset against an assessment for failure of the Association to perform its obligations and no unit owner may offset amounts owing or claimed to be owing by the Association or Declarant to the unit owner. Subject to paragraph (c) below, Declarant shall be assessed as the unit owner of any unsold unit, but such assessments shall be prorated to the date of sale of the unit. The Board of Directors, on behalf of the Association, shall assess the common expenses against the unit owners from time to time, and at least annually, and shall take prompt action to collect from a unit owner any common expense which remains unpaid by him for more than thirty (30) days from the due date for its payment.
- (b) Initial working capital fund. Declarant shall establish an initial working capital fund in an amount at least equal to one month of estimated regular association assessments for each unit. At the time of closing of the initial sale of each unit, the purchaser shall make an initial contribution to the working capital of the Association equal to one month's regular association

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

- (c) Commencement of regular operating expense assessments. Regular monthly assessments for common operating expenses for units in the condominium shall commence upon closing of the first sale of a unit in the condominium.
- (d) Commencement of assessment for replacement reserves. Regular monthly assessments for replacement reserves as described in Article VII, Section 5 shall commence upon the closing of the sale of the first unit in the condominium, except that Declarant may elect to defer payment of such assessments to the Association for each unit owned by Declarant until the closing of the sale of such unit, not to exceed three (3) years from the date the Declaration was recorded. The books and records of the Association shall reflect the amount owing from Declarant for all reserve assessments.

4. Special or Extraordinary Assessments.

- (a) Special Assessments for Capital Improvements. In the case of any duly authorized capital improvement to the common elements, the Board of Directors may by resolution establish separate assessments for the same, which may be treated as capital contributions by the unit owners, and the proceeds of which shall be used only for the specific capital improvements described in the resolution. The Association shall not assess units owned by Declarant for additional capital improvements to the condominium without the written consent of Declarant.
- (b) Other Special or Extraordinary Assessments. In the event the Board of Directors determines that the assessments established upon adoption of the budget as provided in Article VII, Section 1 above will be insufficient to pay the common expenses, or the Board of Directors determines that additional funds will be needed to meet unexpected or unbudgeted common expenses, the Board may levy an additional special or extraordinary assessment. Such assessment shall be allocated to each unit owner in the same proportion as his/her percentage interest in the common elements, and may be payable in installments over a specified period, in a lump sum, or in a lump sum with

option to pay in installments with interest, as determined by the Board of Directors.

5. Replacement Reserves.

- (a) Establishment of Account. The Declarant shall establish a reserve account in the name of the Association for replacement of those common elements all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years, and for exterior painting if the common elements include exterior painted surfaces. The reserve account need not include those items that could reasonably be funded from operating assessments. The reserve account shall be established such that withdrawals require two (2) signatures by signatories as selected by the Board of Directors.
- (b) Funding of Account. The reserve account shall be funded by assessments against the individual unit assessed for maintenance of the items for which the reserve account is being established, which sums shall be included in the regular monthly assessment for the unit, except as otherwise provided in Article VII, Section 3(b). The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items.
- (c) Reserve Studies. The amount of the reserve payments shall be adjusted at least annually to recognize changes in current replacement costs over time. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, of the common elements to determine the reserve account requirements. A reserve account shall be established for those items of the common elements all or part of which will normally require replacement in more than three (3) and less than thirty (30) years, for exterior painting if the common elements include exterior painted surfaces, and for the maintenance, repair or replacement of other items the Board of Directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:
  - (i) Identification of all items for which reserves are to be established;
  - (ii) The estimated remaining useful life of each item as of the date of the reserve study;
  - (iii) An estimated cost of maintenance, repair, or replacement of each item at the end of its useful life; and

- (iv) A 30-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.
  - (d) Use of Reserve Funds. The reserve account shall be used only for maintenance, repair and replacement of common elements for which the reserves have been established and shall be kept separate from other funds. After the organizational and turnover meeting described in Article II, however, the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. After such meeting the Association may, on an annual basis, elect not to fund the reserve account described in Article VII, Section 5(a) of this section by unanimous vote of the owners.
  - (e) Sale of Units. Nothing in this section shall prohibit prudent investment of the reserve account. Assessments paid into the reserve account are the property of the Association and are not refundable to sellers of units. Sellers of the units, however, may treat their outstanding share of the reserve account as a separate item in any sales agreement.
6. Default in Payment of Common Expenses. In the event of default by any unit owner in paying any assessments to the Association, including assessed common expenses and any other charge imposed or levied by the Association pursuant to the provisions of the Declaration, these Bylaws or the Oregon Condominium Act, such unit owner shall be obligated to pay interest at the rate of the Federal Funds Rate, as set by the Federal Reserve Board of the U.S., plus eight percent (8%), not to exceed the maximum lawful rate, if any. In addition, the defaulting unit owner shall pay a late charge for any assessment not paid within fifteen (15) days of its due date in the amount of five percent (5%) of the delinquent payment, or such other reasonable late charge as may be established by the board of directors from time to time, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the Board of Directors may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable. The Board of Directors shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorneys' fees, by an action brought against such unit owner or by foreclosure of the lien upon the unit granted by the Oregon Condominium Act. The Board of Directors shall notify the holder of any first mortgage upon a unit and any eligible mortgage insurer or guarantor thereof of any default not cured within sixty (60) days of the date of default.

7. Written Statement of Amounts Due. The Association shall provide, within 10 business days of receipt of a written request from a unit owner, a written statement that provides:
  - (a) the amount of assessments due from the owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late payment charges;
  - (b) the percentage rate at which interest accrues on assessments that are not paid when due; and
  - (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.

The Association is not required to comply with this subsection if the Association has commenced litigation by filing a complaint against the unit owner and the litigation is pending when the statement would otherwise be due.

8. Foreclosure of Liens for Unpaid Common Expenses. In any suit brought by the Association to foreclose a lien on a unit because of unpaid common expenses, the unit owner shall be required to pay a reasonable rental for the use of the unit during the pendency of the suit and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the unit. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing the liens securing the same.
9. First Mortgages. Where the purchaser or mortgagee of a unit obtains title to the unit as a result of foreclosure of a first mortgage or by deed in lieu of foreclosure, such purchaser or mortgagee, his/her successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser or mortgagee. Such unpaid share of common expenses, to the extent uncollectible from the foreclosed owner(s), shall be a common expense and reallocated on a pro rata basis to all units, including the mortgaged unit.

## **ARTICLE VIII**

### **RECORDS AND AUDITS**

1. General Records. The Board of Directors and the managing agent or manager, if any, shall keep detailed records of the actions of the Board of Directors and the managing agent or manager, minutes of the meetings of the Board of Directors and minutes of the meetings of the Association. The Board of Directors shall maintain a

list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units.

2. Records of Receipts and Expenditures. The Board of Directors 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 expense incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners and mortgagees at convenient hours of weekdays.
3. Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.
4. Payment of Vouchers. The secretary/treasurer shall pay all vouchers up to five hundred dollars (\$500.00) signed by the chair, managing agent, manager or other person authorized by the Board of Directors. Any voucher in excess of five hundred dollars (\$500.00) shall require the signature of the chair, as well as one (1) other person authorized by the Board of Directors.
5. Reports and Audits. A brief annual statement of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all unit owners and to all mortgagees of units who have requested the same within thirty (30) days after the end of each fiscal year in compliance with ORS Section 100.480. From time to time the Board of Directors, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the owners and such mortgagees. At any time any owner or mortgagee may, at his/her own expense, cause an audit or inspection to be made of the books and records for the Association.
6. Notice of Sale, Mortgage, Rental or Lease. Immediately upon the sale, mortgage, rental or lease of any unit, the unit owner shall promptly inform the secretary or manager of the name and address of said vendee, mortgagee, lessee or tenant.

## **ARTICLE IX**

### **MAINTENANCE AND USE OF CONDOMINIUM PROPERTY**

1. Maintenance and Repair. Except as otherwise provided herein for damage of destruction caused by casualty:
  - (a) Units. All maintenance of said repairs to any unit shall be made by the owner of such unit, who shall keep the same in good order, condition and repair and shall do all redecorating, painting and staining which at any time

may be necessary to maintain the good appearance and condition of the unit. In addition, each unit owner shall be responsible for the maintenance, repair, or replacement of windows and doors and any plumbing, heating or air conditioning fixtures (including each unit's furnace in the basement or crawl space), telephones, water heaters, fans, lighting or other appliances and accessories that may be in or connect with the unit.

- (b) Common Elements. All maintenance, repairs and replacements to the general and limited common elements shall be made by the Association and shall be charged to the unit owners as provided in the Declaration. Each unit owner, however, shall keep the limited common elements which pertain to his/her unit in a neat, clean and sanitary condition.

2. Additions, Alterations or Improvements.

- (a) A unit owner may make any improvement or alteration to his/her 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) After acquiring an adjoining unit, or an adjoining part of an adjoining unit, a unit owner may submit a written request to the Board of Directors for permission to remove or alter any intervening partition or to create apertures therein even if the partition, in whole or in part, is a common element. The Board of Directors shall approve the change unless it determines within forty-five (45) days that the proposed change will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The Board of Directors may require the unit owner, at his/her own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries. Expenses incurred in amending the Declaration, plat, and floor plans in conjunction with an alteration as set forth herein shall be borne by the affected unit owners.
- (c) A unit owner shall make no repair or alteration or perform any other work on his/her unit which would jeopardize the soundness or safety of the property, or reduce the value thereof or impair any easement or hereditament unless the written consent of all unit owners affected is obtained.
- (d) A unit owner shall not paint or decorate any portion of the exterior of the buildings or other general or limited common elements without first obtaining written consent of the Board of Directors.

3. Damage or Destruction by Casualty of Condominium Property.
- (a) In the event of damage or destruction by casualty of condominium property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of such damage or destruction, the Board of Directors or more than ten percent (10%) of the unit owners shall have requested a special meeting of the Association. Such special meeting must be held within sixty (60) days of the date of damage or destruction. At the time of such meeting, unless ninety percent (90%) of the unit owners, whether in person, by writing or by proxy, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt. In the case of substantial damage or destruction, timely written notice thereof shall be given to the unit owners and their mortgagees.
  - (b) The Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the common elements and, to the extent of the Association's insurance coverage, all such damage or destruction to the units. Each unit owner shall be responsible for such repairing, reconstructing or rebuilding of his/her unit as is not covered by the Association's insurance.
  - (c) If, due to the act of neglect of a unit owner or of a member of his/her family or his/her household pet or of a guest or other authorized occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a common expense, such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not covered by the Association's insurance.
  - (d) In the event the insurance proceeds paid to the Association are not used to repair, reconstruct or rebuild the damaged or destroyed property, the Association shall distribute the proceeds among the unit owners and their mortgagees (as their interests may appear) in the same proportion as their respective interest in the general common elements.
4. Condemnation. In the event of a taking in condemnation by eminent domain of part or all of the common elements, the award made for such taking shall be payable to the Association. If such proceedings are instituted or such acquisition is sought by a condemning authority as to any portion of the property, prompt notice thereof shall be given to the unit owners and their mortgagees. If seventy-five percent (75%) or more of the unit owners do not duly and promptly approve the repair and restoration of such common elements, the Board of Directors shall disburse the net proceeds of such award to the unit owners and their mortgagees (as their interests

may appear) in the same proportion as the respective undivided interests of the unit owners in the general common elements.

5. Unit Occupancy. No more than twenty-five percent (25%) of units may be occupied by renters or lessees at any given time, unless an exception is made on a time-limited, case-by-case basis by a seventy-five percent (75%) vote of the Board of Directors. Unless otherwise authorized by the Board of Directors, no owner of a unit may lease or rent her/his unit for a period of more than one (1) year in any two (2) year period.
6. Association Rules and Regulations. The Board of Directors from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the units and common elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the condominium property. However, the Board of Directors cannot adopt any rule or regulation banning residency by children. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the secretary promptly to each unit owner and shall be binding upon all unit owners and occupants of all units from the date of delivery.
7. Right of Entry. A unit owner shall grant the right of entry to the Board of Directors, managing agent, manager of any other person authorized by the Board of Directors in the case of any emergency originating in or threatening his/her unit or other condominium property, whether or not the owner is present at the time. A unit owner shall also permit such persons to enter his/her unit for the purpose of performing installation, alterations or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in Section 5 of this Article, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. The owner of any unit adjoining an outside fire escape shall permit access throughout his/her unit to the fire escape in the case of any emergency. Any damage caused to the unit in order to obtain such emergency access, to the extent not covered by insurance, shall be the responsibility of the person seeking access.
8. Easements and Declarant. The Declarant and its agents, successors and assigns shall have an easement over and upon the common elements for the purpose of constructing additional stages, making repairs to existing structures and carrying out sales and rental activities necessary or convenient for the sale or rental of units owned by the developer as model units and the right to use a unit as a sales office.
9. Abatement and Enjoining of Violations. The violation of any rule or regulation adopted hereunder or the breach of any Bylaw contained herein or of any provision of the Declaration shall give the Board of Directors, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws:

- (a) To enter the unit in which, or as to which, such violation exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing, or condition that may exist there contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass; or,
- (b) Subject to the provisions of Article XI of these bylaws, to enjoin, abate or remedy such thing or condition by appropriate proceedings.

## **ARTICLE X**

### **INSURANCE**

1. Insurance. For the benefit of the Association and the unit owners, the Board of Directors shall obtain and maintain at all times and shall pay for out of the common expense funds the following insurance:
  - (a) A policy or policies of insurance covering loss or damage from fire with extended coverage endorsement and such other coverages such as flooding, which the Association may deem desirable, for not less than the full insurable replacement value of the units and common elements. Such policy or policies shall name the developer, the Association and the unit owners as insureds, as their interest may appear, and shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each unit, if any. In no event shall the policy or policies have a deductible clause in excess of one thousand dollars (\$1,000.00) per unit.
  - (b) A policy or policies insuring the developer, the Association, the Board of Directors, the unit owners and the managing agent, against liability to the public or to the owners of units and of common elements, and their invitees or tenants, incident to the ownership or use of the property. There may be excluded from such policy or policies coverage of a unit owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omissions of such unit owner and liability incident to the ownership and/or use of the part of the property as to which such unit owner has the exclusive use of occupancy. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single limit basis. Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced respect to his, her or their action against another named insured; and,

- (c) Workpersons Compensation insurance to the extent necessary to comply with any applicable laws.

Each unit owner shall be responsible for obtaining, at his/her own expense, insurance covering his/her property not insured under paragraph (a) above and covering his/her liability not covered under paragraph (b) above, unless the Association agrees otherwise.

2. Policies. Insurance obtained by the Association shall be governed by the following provisions:

- (a) All policies shall be written with the State of Oregon or a company licensed to do business in the State of Oregon and holding a policyholder's rating of "A" or better, and a financial size rating of at least class 10 or better by the Best's Insurance Reports current at the time the insurance is written or prior to the initial meeting of the Association, with a company acceptable to the Developer.
- (b) All losses under policies hereafter in force regarding the property shall be settled exclusively with the Board of Directors or its authorized representative. Proceeds of the policies shall be paid to the Association as trustee for the unit owners, or upon demand of any mortgagees, to an insurance trustee acceptable to the Association and mortgagees of units.
- (c) Each unit owner shall be required to notify the Board of Directors of all improvements made by the owner to his/her unit, the value of which is in excess of five hundred dollars (\$500.00). Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the Board of Directors pursuant to Article V, Section 5(j).
- (d) Any unit owner who obtains individual insurance policies covering any portion of the property other than his/her personal property and fixtures shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

3. Provisions. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

- (a) A waiver of subrogation by the insurer the condominium cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual owners.
- (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 of Directors or the managing agent without prior demand in writing that the Board of Directors or managing agent cure the defect.
- (d) A provision that any "no other insurance" clause in the master policy exclude individual owners' policies from consideration, and a waiver of the usual proration with respect to such policies.
- (e) A provision that the insurer issue subpolicies specifying the portion of the master policy earmarked for each unit owner's interest and that until the insurer-furnished written notice and a grace period to the mortgagee insured under the loss-payable clause thereof, the mortgagee's coverage is neither jeopardized by the conduct of the unit mortgager-owner, the Association, or other unit owners not canceled for nonpayment of premiums.
- (f) A rider on the master policy patterned after "Use and Occupancy" insurance which will provide relief from monthly assessments while a unit is uninhabitable by the payment of the condominium expenses thereof and any other fixed costs, including, but without being limited to, taxes, rent, insurance, and mortgage payments. The proceeds from any casualty policy, whether held by the Association or a unit owner, payable with respect to any loss or damage to the common elements, shall be held in trust for the benefit of all insured as their interest may appear.
- (g) A waiver of the insurer's right to determine whether damage should be repaired. If reasonably available, the policy or policies should contain a stipulated amount clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild.

## **ARTICLE XI**

### **DISPUTE RESOLUTION**

1. Use of Dispute Resolution. If any dispute arises relating in any way to matters governed by, or for which procedures are set forth in, these Bylaws, the Declaration of the Association, or any Rules or Regulations adopted by the Board of Directors, the parties to the dispute must utilize the procedures described in this Article before commencing any legal or other action provided by the Declaration, the Bylaws, or otherwise provided by law. In the event any party subject to the Declaration and Bylaws initiates legal action before exhausting all remedies provided in this Article, then such party shall pay the non-initiating party any and all documented reasonable legal expenses incurred in defending against such action, regardless of the outcome

of that action. If the party initiating any such action is the legal or equitable owner of a condominium unit, such attorney fees and costs shall constitute a lien on that party's interest in such unit. A request for mediation cannot be refused and at least two sessions of two hours each must be conducted within the stated time limits.

2. Initiation of Procedure. The initiating party shall give written notice to the other party, describing the nature of the dispute, its claim for relief, and identifying one or more individuals with authority to resolve the dispute on such party's behalf. The other party shall have five (5) business days within which to designate in writing one or more individuals with authority to resolve the dispute on such party's behalf.
3. Selection of Mediator. Within ten (10) business days from the date of designation, the parties shall make a good faith effort to select a person to mediate the dispute. If no mediator has been selected under this procedure, the parties shall jointly use the resources of the Oregon Mediation Association to select such mediator.
4. Time and Place for Mediation. Parties Represented. In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, such time to be no later than thirty (30) days after selection of the mediator. In the mediation, each party shall be represented by persons with authority and discretion to negotiate a resolution of the dispute. The parties may be represented by counsel.
5. Conduct of Mediation. To the extent that the parties are unable to agree on a format or procedures, the mediator shall determine the format for the meetings, and the mediation session shall be private. The mediator will keep confidential all information learned in private caucus with any party unless specifically authorized by such party to make disclosure of the information to the other party. The parties agree that the mediation shall be governed by the rules of the Oregon Mediation Association and such other rules as the mediator shall prescribe.
6. Fees of Mediator; Disqualification. Unless otherwise negotiated by the parties, the fees and expenses of the mediator shall be shared equally by the parties. The mediator shall be disqualified as a witness, consultant, expert or counsel for any party with respect to the dispute and any related matters. The parties agree that neither they nor any attorney for them will seek the production of the mediator's notes nor will they seek the appearance of the mediator in any judicial or administrative hearing.
7. Confidentiality. Mediation is a compromise negotiation for purposes of Federal and State Rules of Evidence. The degree of confidentiality shall be decided and agreed to by the parties to the dispute.
8. Binding Nature of Agreements. The parties agree that if they reach an agreement in the mediation session that is written and signed then they will be bound by that

agreement; not seek to overturn that agreement and will conform to the terms of that agreement.

9. Progress Review. There shall be a progress review meeting within ninety (90) days of the mediation decision. That date shall be set at the time of the mediation decision. The parties to the mediation, along with the mediator, shall determine any further changes to be made to fulfill the letter and spirit of the decision.
10. Arbitration/Litigation. The parties acknowledge that they may not resolve any or all of the issues through mediation. If mediation fails to produce an agreement within two (2) two-hour sessions, at the option of any of the parties in dispute, the matter may be submitted to binding arbitration or may be litigated in a court proceeding. If any of the parties calls for arbitration in such an event, it shall be conducted in the following manner:
  - a. Submission of Names. The parties shall submit a list of five names to each other as potential arbitrators. Each side shall rank in order their choice with the highest number indicating the first preference. If each side presents their list to the other with preferences, then the arbitrator most closely matching the preferences of each side, meaning the arbitrator with the highest score, shall be appointed. If either side finds no arbitrator suitable or cannot come to agreement regarding the process of selection, then the parties shall jointly utilize the resources of the Oregon Arbitration Association.
  - b. Submission of Issues. Both sides shall meet to clarify the submission of issues to the arbitrators and to render a single text of those issues. Failing such agreement, the mediator shall supply the arbitrator with submission of the issues, that may be amended by agreement of both parties.
  - c. Timing. Within ten (10) days of being named, the arbitrator shall schedule a hearing no later than thirty (30) days later at which time the parties will present their evidence and arguments. The arbitrator shall weigh the evidence and arguments and the elements of the equity inherent in the position of each side. The parties shall be given up to, but no more than, three days to present the total case unless both sides agree differently. At the end of the last day of the hearing the arbitrator shall close the hearing and shall render an award within fourteen (14) days thereafter.
  - d. Nature of the Decision. The decision of the arbitrator shall be final and binding and shall be complied with as ordered by the arbitrator. Either party may enter the arbitrator's award into the appropriate court. The arbitrator shall determine what, if any, costs shall be recovered by either side from the other and shall award total advocacy fees and arbitration fees, as costs to one side or to be divided between both sides.

- e. Liability of the Mediators or Arbitrators. It is declared by all parties subject to the Declaration and these Bylaws that they waive any and all right, title and interest in any claims against the mediators or arbitrators absent a finding of gross negligence against them. Absent such finding, any party undertaking legal action against the mediator or the arbitrator shall be obligated to pay the attorney's fees of the mediator or the arbitrator in defending against such action.

## **ARTICLE XII**

### **AMENDMENTS TO BYLAWS**

1. How Proposed. Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by thirty percent (30%) of the unit owners. The proposed amendment must be reduced to writing and shall be included in the notice any meeting at which action is to be taken.
2. Adoption. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the unit owners and may be approved by the unit owners at a meeting called for this purpose or at a regular annual meeting. Unit owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by a majority of the unit owners except for 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 which must be approved by seventy-five percent (75%) of the unit owners. If required under the Oregon Condominium Act, any amended Bylaws of amendment to a Bylaw shall be approved by the Real Estate Commissioner before it is recorded. Neither Article VII, Section 8, nor any other provision of these Bylaws which is for the benefit of mortgagees may be amended without written consent of all mortgagees.
3. Execution and Recording. An amendment shall not be effective until certified by the chair and secretary of the Association, approved by the Real Estate Commissioner and recorded as required by law.

## **ARTICLE XIII**

### **MISCELLANEOUS**

1. Notices. All notices to the Association or to the Board of Directors shall be sent care of the managing agent or, if there is not managing agent, to the principal office of the Association or to such other address as the Board of Directors 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 from time to time, in writing,

to the Board of Directors or if no address has been designated, then to the owner's unit.

2. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.
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 herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall include the masculine, feminine and neuter, as the context required. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.
4. Action Without a Meeting. Any action which the Oregon Condominium Act, the Declaration or the Bylaws require or permit the owners or directors to take at a meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the unit owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the owners or directors, shall be filed in the records of minutes of the Association.
5. Conflicts. These Bylaws are intended to comply with the Oregon Condominium Act and the Declaration. In case of any irreconcilable conflict, such statute and document shall control over these Bylaws or any rules and regulations adopted hereunder.

DATED, at Portland, Oregon, this \_\_\_\_ day of \_\_\_\_\_, 2004.

Adopted by Peninsula Park Commons LLC  
An Oregon Limited Liability Company

By: \_\_\_\_\_  
Eli Spevak, member, Peninsula Park Commons LLC