

PLAT AMENDMENT
 "THE LANDING AT NEWPORT" CONDOMINIUMS
 LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 9
 TOWNSHIP 11 SOUTH, RANGE 11 WEST, WILLAMETTE MERIDIAN, LINCOLN COUNTY, OREGON

I DO HEREBY CERTIFY THAT THIS CONDOMINIUM PLAT WAS RECEIVED FOR RECORD ON THIS 29th DAY OF June, 2001 AT 02:38:19 O'CLOCK P.M., AND RECORDED AS PLAT NO. Book 1, Page 153, 153A, 153B LINCOLN COUNTY RECORDS.

By *Dana H. Jenkins* by *RJP* 06/29/01
 COUNTY CLERK

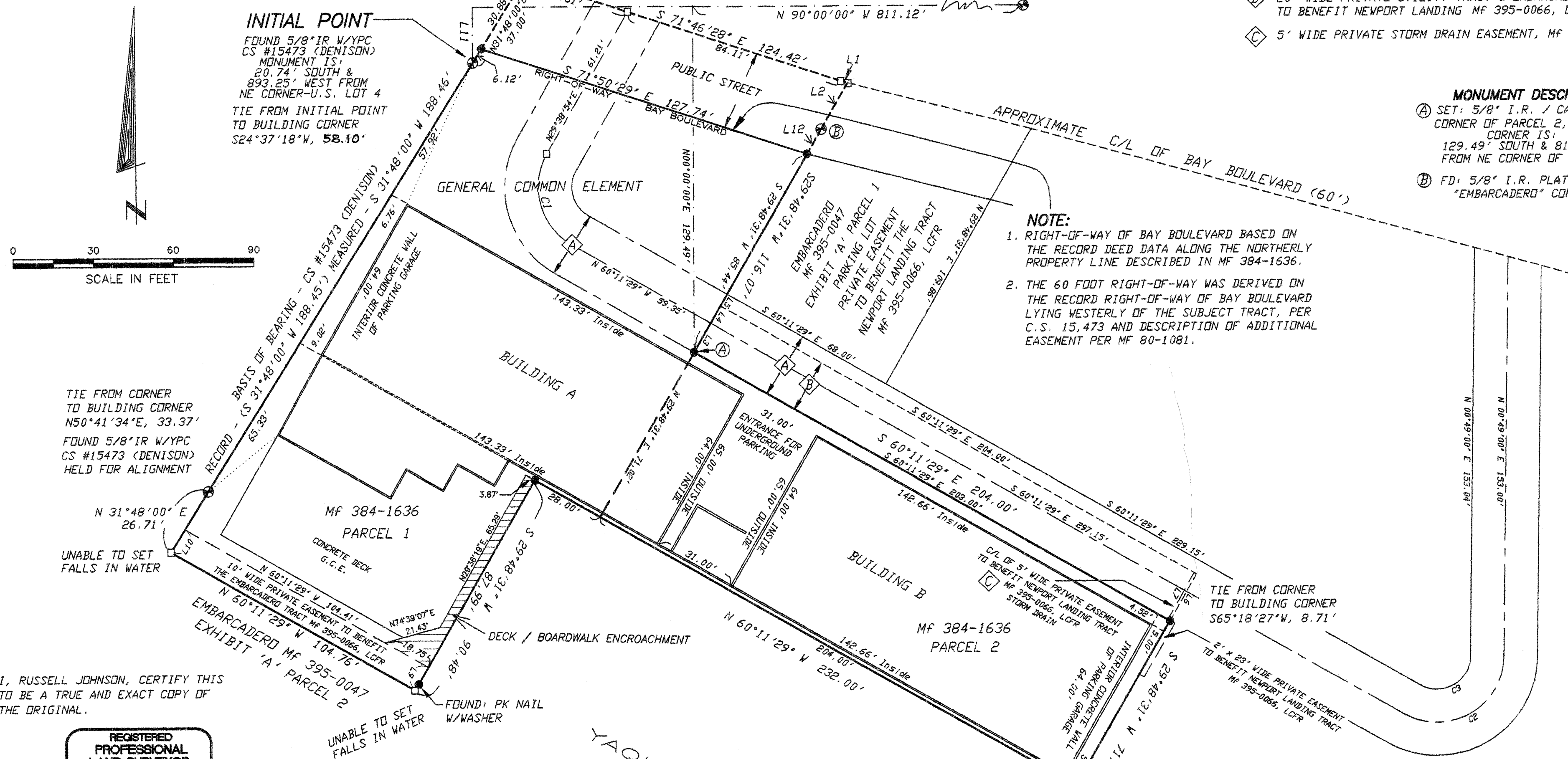
INDEX
 SHEET 1: BOUNDARY, EASEMENT AND BUILDING TIES
 SHEET 2: SIGNATURE, CERTIFICATE, DECLARATION
 SHEET 3: PORTION OF BUILDING "B"

SCALE: 1" = 30' JUNE 2001

THE NE CORNER OF U.S. LOT 4
 SECTION 9, T11S, R11W
 FD: 5/8' I.R. (REF. C.S. 15,473)

- EASEMENTS**
- (A) C/L OF 25' WIDE PRIVATE ACCESS EASEMENT TO BENEFIT NEWPORT LANDING TRACT & EMBARCADERO TRACT--MF 395-0066, LCFR
 - (B) 20' WIDE PRIVATE UTILITY TRACT & EMBARCADERO TRACT TO BENEFIT NEWPORT LANDING MF 395-0066, LCFR
 - (C) 5' WIDE PRIVATE STORM DRAIN EASEMENT, MF 395-0066

- MONUMENT DESCRIPTIONS**
- (A) SET: 5/8" I.R. / CAP, FOR THE NW CORNER OF PARCEL 2, MF 384-1636 CORNER IS: 129.49' SOUTH & 811.12' WEST FROM NE CORNER OF U.S. LOT 4
 - (B) FD: 5/8" I.R. PLAT BOOK 1, PAGE 12 "EMBARCADERO" CONDO PLAT BOOK



NOTE:

- RIGHT-OF-WAY OF BAY BOULEVARD BASED ON THE RECORD DEED DATA ALONG THE NORTHERLY PROPERTY LINE DESCRIBED IN MF 384-1636.
- THE 60 FOOT RIGHT-OF-WAY WAS DERIVED ON THE RECORD RIGHT-OF-WAY OF BAY BOULEVARD LYING WESTERLY OF THE SUBJECT TRACT, PER C.S. 15,473 AND DESCRIPTION OF ADDITIONAL EASEMENT PER MF 80-1081.

TIE FROM CORNER TO BUILDING CORNER N50°41'34"E, 33.37'
 FOUND 5/8" IR W/YPC CS #15473 (DENISON) HELD FOR ALIGNMENT

I, RUSSELL JOHNSON, CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL.

REGISTERED PROFESSIONAL LAND SURVEYOR

Russell Johnson
 OREGON
 JULY 26, 1988
 RUSSELL JOHNSON
 2400

RENEWAL DATE: JUNE 30, 2003

SURVEY BY:
 DENISON SURVEYING, INC.
 720 SW ANGLE ST.
 NEWPORT, OREGON 97365
 (541) 265-9308

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 75°38'24" E	2.19
L2	S 29°48'31" W	20.00
L3	N 29°48'31" E	12.50
L4	N 29°48'31" E	7.50
L5	N 29°48'31" E	5.00
L6	S 29°48'31" W	20.00
L7	N 29°48'31" E	20.00
L8	S 29°48'31" W	15.00
L9	N 29°48'31" E	10.00
L10	S 31°48'01" W	10.01
L11	S 00°00'00" E	20.74
L12	S 29°52'49" W	10.63'

CURVE TABLE

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARING
C1	39.20	89°50'23"	25.00	35.31	N 15°16'17" W
C2	51.92	118°59'31"	25.00	43.08	N 60°18'46" E
C3	25.96	118°59'31"	12.50	21.54	N 60°18'46" E

- LEGEND:**
- ⊙ MONUMENTS FOUND - HELD FOR CONTROL
 - CALCULATED POSITION
 - MONUMENTS FOUND: 5/8" IRON RODS W/ PLASTIC CAPS INSCRIBED "DENISON SURVEYING, NEWPORT, DR.", UNLESS NOTED CONDOMINIUM PLAT BOOK 1, PAGE 147, "THE LANDING AT NEWPORT" BEARING AND DISTANCE SAME AS PLAT, UNLESS NOTED
 - L.C.E. LIMITED COMMON ELEMENT
 - G.C.E. GENERAL COMMON ELEMENT
 - () RECORD DATA SHOWN IN PARENTHESIS.
 - LCFR LINCOLN COUNTY FILM RECORD

PLAT AMENDMENT
"THE LANDING AT NEWPORT" CONDOMINIUMS
LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 9
TOWNSHIP 11 SOUTH, RANGE 11 WEST, WILLAMETTE MERIDIAN, LINCOLN COUNTY, OREGON

SCALE: 1" = 30' JUNE 2001

SURVEYOR'S NARRATIVE:

THIS PLAT AMENDMENT IS ACCOMPANIED BY A FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM FOR THE LANDING AT NEWPORT CONDOMINIUMS RECORDED OR TO BE RECORDED SIMULTANEOUSLY HEREWITH. THE PURPOSE OF THIS SURVEY IS TO AMEND THE PLAT PURSUANT TO THE REQUEST OF BAYFRONT, L.L.C. AND THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, AND SALEM ALI ALJDAIB TO THE EXTENT HI IS THE INDIVIDUAL OWNER OF COMMERCIAL UNIT B-4 AND RESIDENTIAL UNIT 309, (1) TO PERMIT THE USE OF THE CONDOMINIUMS FOR TIME SHARING, (2) TO AMEND THE BOUNDARY LINES OF COMMERCIAL UNIT B-4 AND TO RECLASSIFY IT AS GENERAL COMMON ELEMENTS, (3) TO AMEND THE BOUNDARY LINES OF RESIDENTIAL UNIT 309, (4) TO RECLASSIFY COMMERCIAL UNIT B-1 AS GENERAL COMMON ELEMENTS, AND (5) TO RECLASSIFY COMMERCIAL UNIT B-3 AS GENERAL COMMON ELEMENTS (AS EACH UNIT IS SHOWN IN LINCOLN COUNTY CONDOMINIUM PLAT BOOK 1, PAGE 147).

I HELD BOUNDARY MONUMENTATION AND BASIS OF BEARING FROM SAID PLAT TO CONTROL THIS SURVEY.

THE CONDOMINIUM BUILDING THAT IS LOCATED WITHIN SAID BOUNDARIES WAS FOUND AS SHOWN, BASED ON THE FIELD LOCATIONS OF THE EXTERIOR CORNERS OF THE CONCRETE FOUNDATION.

SURVEYOR'S CERTIFICATE:

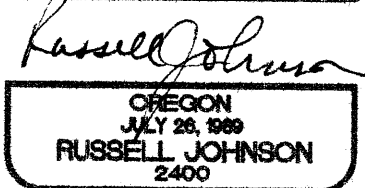
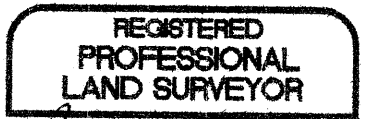
I, RUSSELL JOHNSON, A REGISTERED LAND SURVEYOR IN THE STATE OF OREGON, DO HEREBY SAY THAT I HAVE ACCURATELY SURVEYED AND MARKED WITH PROPER MONUMENTS, AS PROVIDED IN O.R.S. 92.070 THE LANDS REPRESENTED ON THE ACCOMPANYING PLAT OF "THE LANDING AT NEWPORT" CONDOMINIUMS, LOCATED IN THE NORTHWEST 1/4 OF SECTION 9, T11S, R11W, W.M., LINCOLN COUNTY, OREGON SAID CONDOMINIUM PLAT BOUNDARIES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, SAID POINT BEING 20.74 FEET SOUTH AND 893.25 FEET WEST OF THE NE CORNER OF GOVERNMENT LOT 4 OF SAID SECTION 9 IN THE CITY OF NEWPORT, COUNTY OF LINCOLN AND STATE OF OREGON, SAID POINT BEING S 88°40'11" W, 893.49 FEET FROM SAID NORTHEAST CORNER OF GOVERNMENT LOT 4, T11S, R11W, W.M., IN LINCOLN COUNTY, OREGON; THENCE NORTH 31°48'00" EAST, ALONG THE EASTERLY BOUNDARY OF A TRACT AS DESCRIBED IN BOOK 274, PAGE 277, LINCOLN COUNTY DEED RECORDS, TO THE CENTERLINE OF COUNTY ROAD NO. 515, A DISTANCE OF 37.00 FEET; THENCE SOUTH 71°46'28" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 124.42 FEET; THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 75°38'24" EAST, A DISTANCE OF 2.19 FEET; THENCE SOUTH 29°48'31" WEST, ALONG THE WESTERLY BOUNDARY OF A TRACT OF LAND AS DESCRIBED IN MICROFILM 208-1052, LINCOLN COUNTY FILM RECORDS, A DISTANCE OF 116.07 FEET; THENCE SOUTH 60°11'29" EAST, ALONG THE SOUTH BOUNDARY OF THE ABOVE DESCRIBED TRACT, A DISTANCE OF 204.00 FEET; THENCE S 29°48'31" WEST, A DISTANCE OF 71.02 FEET; THENCE NORTH 60°11'29" WEST, A DISTANCE OF 232.00 FEET; THENCE SOUTH 29°48'31" WEST, A DISTANCE OF 90.48 FEET; THENCE NORTH 60°11'29" WEST, TO THE EASTERLY BOUNDARY OF TRACT DESCRIBED IN BOOK 274, PAGE 277, DEED RECORDS, A DISTANCE OF 104.76 FEET; THENCE NORTH 31°48'00" EAST, ALONG SAID EASTERLY BOUNDARY, A DISTANCE OF 215.16 FEET TO THE INITIAL POINT, EXCEPTING ANY PORTION WITHIN PUBLIC STREET, AS SHOWN.

I HEREBY CERTIFY THAT THE PLAT OF "THE LANDING AT NEWPORT" CONDOMINIUMS FULLY AND ACCURATELY DEPICTS THE BOUNDARIES OF THE UNITS OF THE BUILDING, AND THAT CONSTRUCTION OF THE UNITS OF THE BUILDING, AS DEPICTED ON THE PLAT, HAVE BEEN COMPLETED.

Russell Johnson
RUSSELL JOHNSON

SURVEY BY:
DENISON SURVEYING, INC.
720 SW ANGLE ST.
NEWPORT, OREGON 97365
(541) 265-9308



I, RUSSELL JOHNSON, CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL.

RENEWAL DATE:
JUNE 30, 2003

DECLARATION:

STATE OF OREGON
COUNTY OF MARION

KNOW ALL MEN BY THESE PRESENTS, THAT "BAYFRONT, L.L.C.", AN OREGON LIMITED LIABILITY COMPANY, OWNERS OF THE ABOVE DESCRIBED TRACT, DOES HEREBY MAKE, ESTABLISH AND DECLARE THE AMENDED MAP OF "THE LANDING AT NEWPORT" CONDOMINIUMS, TO BE A TRUE AND CORRECT MAP THEREOF, AND DOES HEREBY COMMIT THIS PROPERTY TO THE OPERATION OF THE STATE OF OREGON CONDOMINIUM LAW AND ARE SUBJECT TO THE PROVISIONS OF ORS 100.005 TO 100.625.
IN WITNESS WHEREOF I THE UNDERSIGNED HAVING EXECUTED THIS INSTRUMENT THIS 28 DAY OF JUNE 2001

Salem Ali Aljdaib

SALEM ALI ALJDAIB, MANAGER OF BAYFRONT AND A MEMBER OF BAYFRONT L.L.C.

ACKNOWLEDGMENT:

STATE OF OREGON
COUNTY OF MARION

ON THIS 28 DAY OF JUNE, IN THE YEAR 2001, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED SALEM ALI ALJDAIB, MANAGER OF BAYFRONT L.L.C. AND A MEMBER OF BAYFRONT L.L.C. PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE, TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED ON THE BEHALF OF "BAYFRONT L.L.C."

Christine Hoch
NOTARY PUBLIC
12-7-2004
MY COMMISSION EXPIRES:



APPROVALS:

Tom Hanilla 29 June 2001
LINCOLN COUNTY SURVEYOR--DATE

Roli Thomas by ce 06-29-01
LINCOLN COUNTY ASSESSOR--DATE

Linda Pitzer by ce 6/29/01
LINCOLN COUNTY TAX COLLECTOR--DATE

Diane St. Jean by ce 06/29/01
LINCOLN COUNTY CLERK--DATE

DECLARATION:

STATE OF OREGON
COUNTY OF MARION

THE UNDERSIGNED, SALEM ALI ALJDAIB, HOLDS FEE TITLE TO RESIDENTIAL UNIT 309 AND COMMERCIAL UNIT B-4, EACH OF WHICH IS LOCATED IN BUILDING "B", PURSUANT TO ORS 100.135(4) OF THE OREGON CONDOMINIUM ACT. SALEM ALI ALJDAIB HEREBY CONSENTS TO THE RECORDATION OF THIS PLAT AMENDMENT.

THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, AN OREGON NONPROFIT CORPORATION ("ASSOCIATION") IS THE ASSOCIATION OF CONDOMINIUM UNIT OWNERS AT THE LANDING AT NEWPORT CONDOMINIUMS, AND BY PLACING THEIR SIGNATURES BELOW, SALEM ALI ALJDAIB, WHO IS ALSO THE PRESIDENT OF THE ASSOCIATION, AND SALEM ALI ALJDAIB, WHO IS THE SECRETARY OF THE ASSOCIATION, EACH ON BEHALF OF THE ASSOCIATION, HEREBY DECLARE THAT THE PLAT BEING AMENDED PURSUANT TO ORS 100.115(6) (B) (IV) AND HEREBY CONSENT TO THE RECORDATION OF THIS PLAT AMENDMENT.

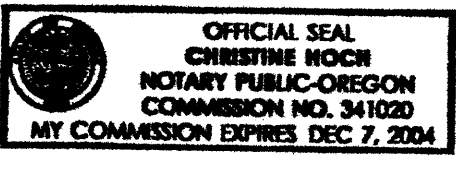
Salem Ali Aljdaib
SALEM ALI ALJDAIB, PRESIDENT AND SECRETARY

ACKNOWLEDGMENT:

STATE OF OREGON
COUNTY OF MARION

ON THIS 28 DAY OF JUNE IN THE YEAR 2001, THE ABOVE NAMED SALEM ALI ALJDAIB, IN HIS INDIVIDUAL CAPACITY AS FEE SIMPLE OWNER OF RESIDENTIAL UNIT 309 AND COMMERCIAL UNIT B-4, AND IN HIS CAPACITY AS PRESIDENT OF THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, AN OREGON NONPROFIT CORPORATION, PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE, TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED ON BEHALF OF THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION.

Christine Hoch
NOTARY PUBLIC
12-7-2004
MY COMMISSION EXPIRES:

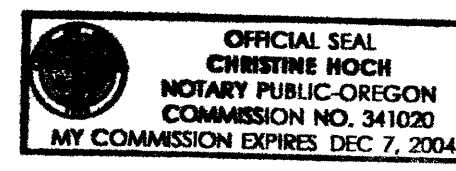


ACKNOWLEDGMENT:

STATE OF OREGON
COUNTY OF MARION

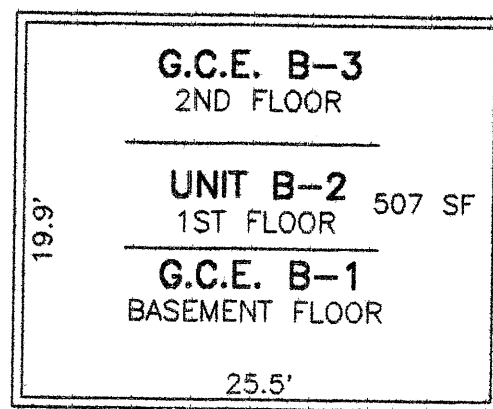
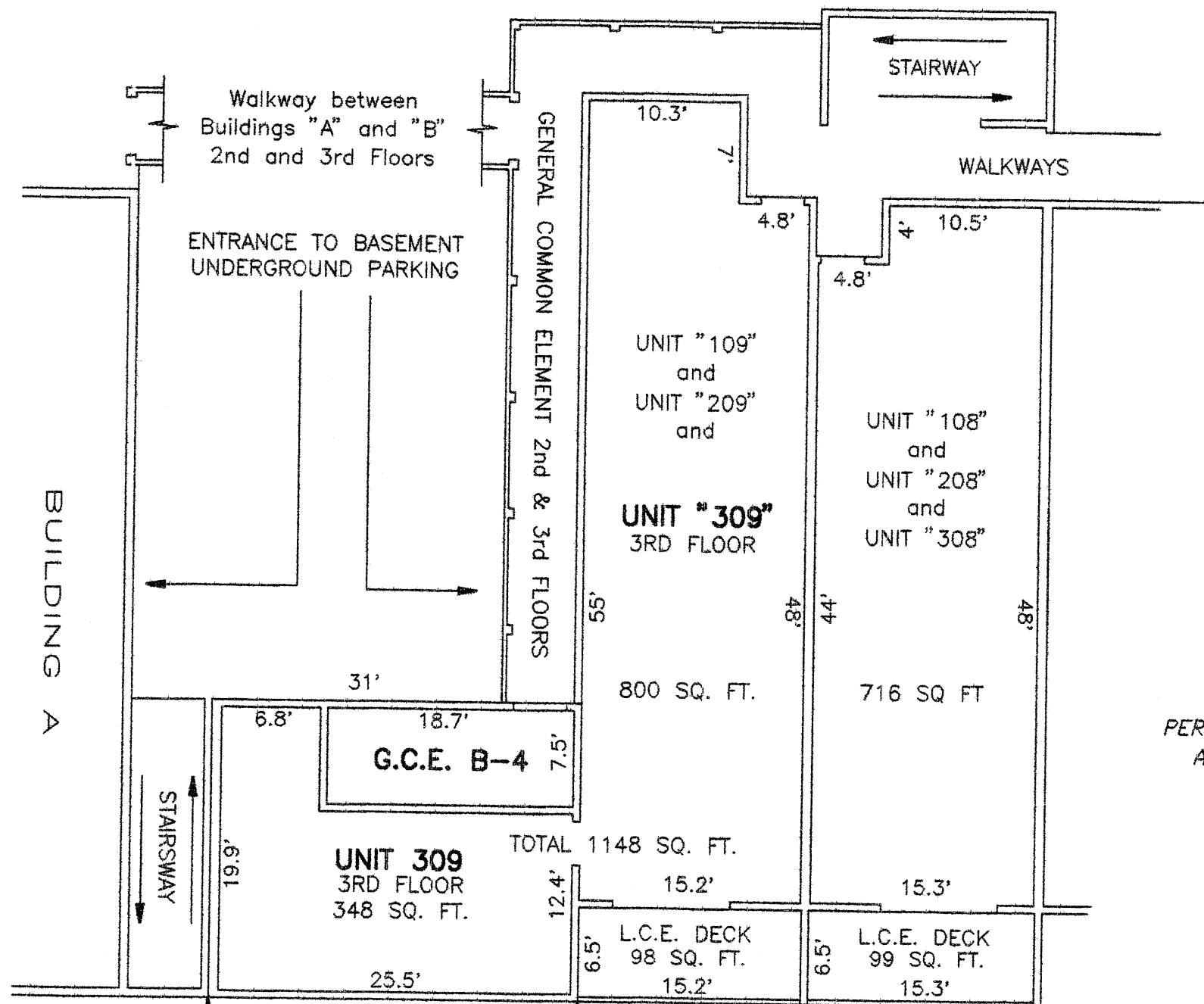
ON THIS 28 DAY OF JUNE IN THE YEAR 2001, THE ABOVE NAMED SALEM ALI ALJDAIB, IN HIS CAPACITY AS SECRETARY OF THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, AN OREGON NONPROFIT CORPORATION, PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE, TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED ON BEHALF OF THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION.

Christine Hoch
NOTARY PUBLIC
12-7-2004
MY COMMISSION EXPIRES:



PLAT AMENDMENT
 "THE LANDING AT NEWPORT" CONDOMINIUMS
 LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 9
 TOWNSHIP 11 SOUTH, RANGE 11 WEST, WILLAMETTE MERIDIAN, LINCOLN COUNTY, OREGON
 SCALE: 1" = 10' JUNE 2001

PORTION OF BUILDING B
 1st, 2nd and 3rd FLOORS



LEGEND:
 L.C.E. LIMITED COMMON ELEMENT
 G.C.E. GENERAL COMMON ELEMENT

SURVEY BY:
 DENISON SURVEYING, INC.
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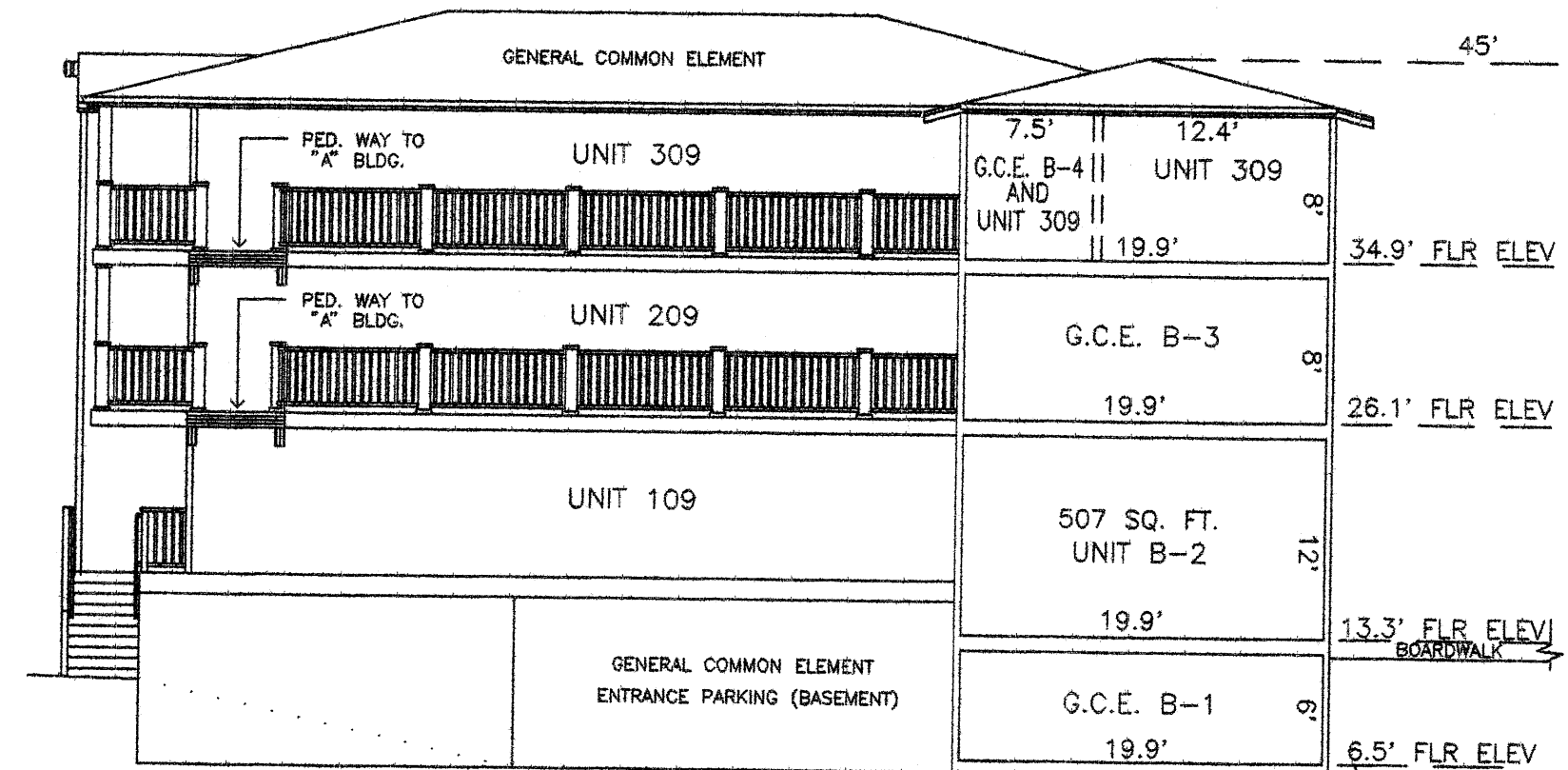
REGISTERED PROFESSIONAL LAND SURVEYOR

Russell Johnson
 OREGON JULY 26, 1989 RUSSELL JOHNSON 2400

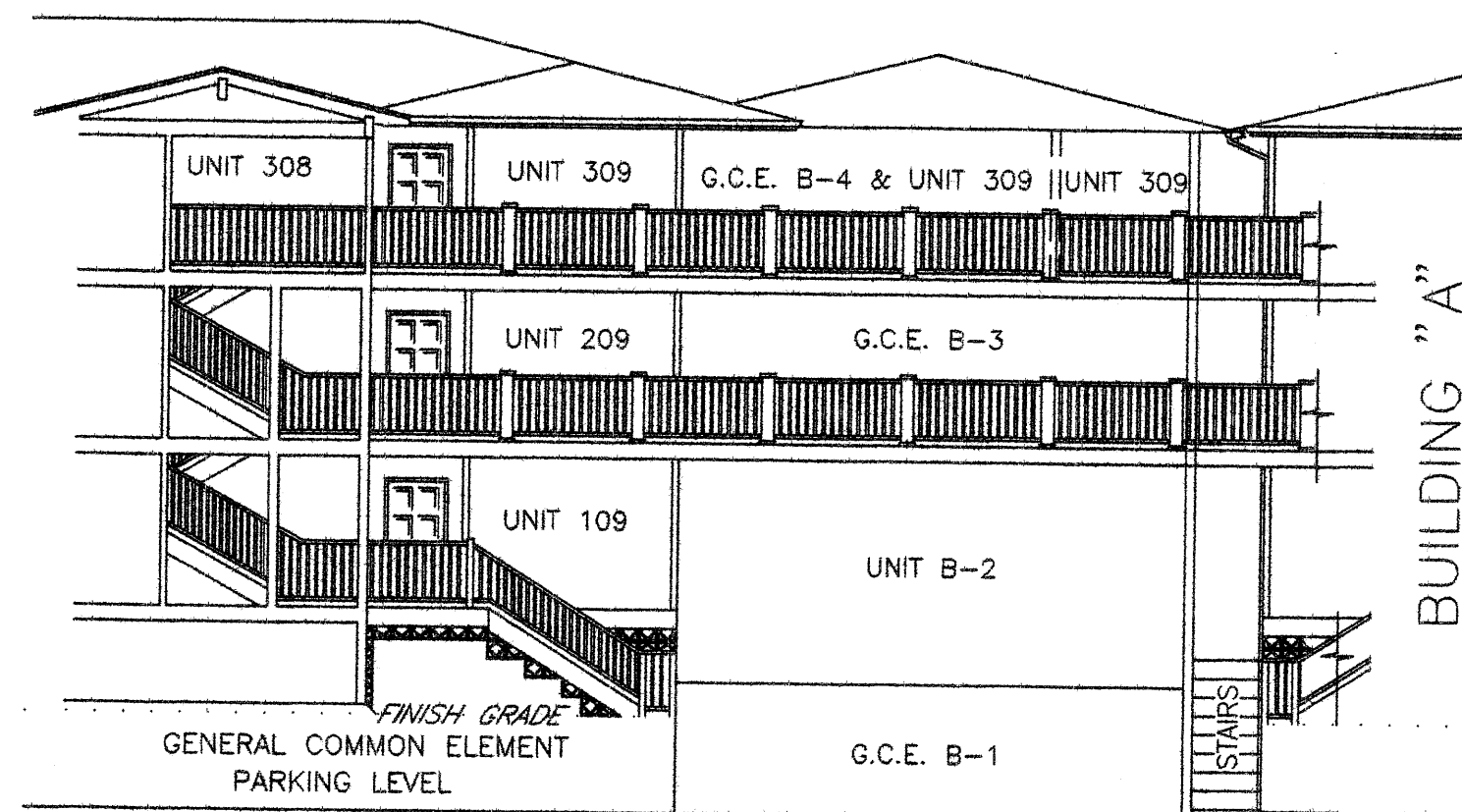
RENEWAL DATE: JUNE 30, 2003

I, RUSSELL JOHNSON, CERTIFY THIS TO BE TRUE AND EXACT COPY OF THE ORIGINAL.

NOTE
 ALL DECKS, EACH OF WHICH SHALL PERTAIN TO THE UNIT WHICH IT ADJAINS AS AS SHOWN ON THE ACCOMPANYING PLAT ARE LIMITED COMMON ELEMENTS.



WEST VIEW
 PORTION OF BUILDING "B"



NORTH VIEW
 PORTION OF BUILDING "B"

NOTE:
 SEE SHEET 6 OF 8
 BENCH MARK INFORMATION
 BOOK 1, PAGE 147
 LINCOLN COUNTY CONDO PLAT BOOK

After recording return to:
Kurt Carstens
P.O. Box 1730
Newport, Oregon 97365

**DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS**

This Declaration submits to the provisions, restrictions and limitations of the Oregon Condominium Act the land hereinafter described and all improvements now existing or to be constructed on such property to be known as "THE LANDING AT NEWPORT" CONDOMINIUMS.

DECLARANT

This Declaration is made and executed by Bayfront, L.L.C., an Oregon limited liability company, hereinafter referred to as "Declarant." Declarant desires to submit the Property to the condominium form of ownership, to be covered, handled and used in the manner provided by the Oregon Condominium Act.

NOW, THEREFORE,

DECLARATION

Declarant hereby declares on behalf of itself, its successors, grantees and assigns, as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the property as follows:

1.0. Definitions. Except as otherwise provided or modified by this section, the terms herein shall have the meaning set forth in the Oregon Condominium Act, ORS 100.005, *et seq.*, and the statute and definitions are incorporated herein by this reference. As used in this Declaration and in the bylaws, the following terms shall have the following meanings:

1.1 "Act" means the Oregon Condominium Act.

1.2 "Association:" means "The Landing at Newport" Condominiums Unit Owners Association.

1.3 "Board of Directors" means the directors selected pursuant to the provisions of this Declaration and the Bylaws to govern the affairs of the Association.

1.4 "Bylaws" means the Bylaws of the Association adopted as provided herein, as the same may be amended from time to time.

1.5 "Commercial Unit" means the units depicted on the plat and described in this Declaration to be used for non-residential commercial purposes authorized outright or as conditional uses by the zoning ordinance of the City of Newport.

1.6 "Condominium" means "The Landing at Newport" Condominiums, including all land, building and appurtenant rights and easements.

1.7 "Condominium Hotel Unit" means a unit in a building or group of buildings in which lodging -- with or without cooking facilities -- is available to owners or transient guests for rent, trade, exchange or other compensation for a period of less than 30 days, that is, upon a tenancy less than a tenancy from month-to-month, and where more than 20% of the lodging rooms or units are or may be used or available for residential use or rental for residential purposes on a month-to-month tenancy or a lease or rental agreement for periods of 30 days or more. An approved condominium hotel use simultaneously permits both residential and hotel uses.

1.8 "Mortgage," "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 such a mortgage or trust deed, but only when such holder or beneficiary notifies the Association in writing of the existence of such mortgage and gives the current name and mailing address of such holder.

1.9 "Plat" means the plat of the "The Landing at Newport" Condominiums recorded simultaneously with the recording of this Declaration.

1.10 "Residential Unit" means a unit for residential use as a primary or secondary residence that may be occupied by the owner without restriction as to duration of occupancy.

1.11 "Unit" means the space which is owned in fee simple by each unit owner and which is more specifically described in section 3.2 of this Declaration.

1.12 Except as otherwise provided in this Declaration, each of the terms used herein shall have the meaning set forth in ORS 100.005 as provided under the Act.

2.0. Land Description. The Declarant is fee simple owner of the land submitted hereunder. The land hereby being submitted to the Oregon Condominium Act is located in the County of Lincoln, State of Oregon, and is more particularly described on "Exhibit A."

3.0. Name and Unit Description.

3.1 Name. The name by which the property submitted hereunder and subsequently annexed shall be known as "The Landing at Newport" Condominiums.

3.2 Boundaries of Units. The boundaries of a unit are generally designated as the walls, floors and ceilings thereof and specifically all lath, furring, wallboard, plasterboard,

plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit, except those portions of the walls, floors and ceilings that materially contribute to the structural or sheer capacity of the condominium. A unit shall include all spaces, non-bearing interior partitions, windows, window frames, exterior doors, door frames and all other fixtures and improvements within the boundaries of the unit and all outlets of utility service lines including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal within the boundaries of the unit to the extent such improvements exist in this condominium project.

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 plans hereof 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.

3.3 Building Description and Unit Designation. The land submitted by this Declaration has two buildings thereon in which 58 Units are located. 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. Building A contains 27 residential units. Building B contains 27 residential units and four commercial units. The development will have 15 two bedroom, one bath residential units, 39 one bedroom, one bath residential units and four commercial units. The designation, location, area and square feet of each unit are as designated on the attached and incorporated "Exhibit B" and on the Plat.

3.4 Allocation of an Undivided Interest in General Common Elements. An undivided interest in the common elements is allocated to each Unit according to the schedule attached as "Exhibit B" and incorporated by this reference.

The allocation to each Unit of an undivided interest in the general common elements was determined by allocating a 1/58th undivided fractional interest in the general common elements to each Unit.

The allocation of an equal undivided interest in the common elements reflects each Unit Owner's equal right to use and enjoy the common elements. Each Unit's undivided interest shall be deemed to be conveyed or encumbered with conveyance of the Unit, even though the description in the instrument of conveyance or encumbrance may refer only to title in the Unit.

4.0. General Common Elements.

4.1 Definition of General Common Elements. The general common elements consist of all portions of the condominium not part of a Unit or limited common element, including, but not limited to the following:

4.1.1 The land;

4.1.2 The lobby, office area, manager's unit (quarters), entry, sidewalks, including sidewalks in the public right-of-way, walkways (and handrails adjacent and pertaining to walkways), stairways, driveways, underground parking garage and parking areas, the handrails, privacy walls and the ceiling/roof bordering the limited common element decks hereinafter described;

4.1.3 The foundations, columns, girders, beams, supports, bearing walls, perimeter walls, main walls, roofs, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

4.1.4 The yards, gardens, landscaped areas and any rip-rap within property boundaries;

4.1.5 The installations of central services, including electricity, natural gas, water, sewer, heating, air conditioning, waste disposal, incinerators, common elevators, cable and telephone lines, including all such utility service lines up to the outlets within any Units;

4.1.6 The tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use; and

4.1.7 All other elements of any building necessary or convenient to its existence, maintenance and safety or normally in common use.

4.2 Maintenance, Repair and Replacement; Liability for General Common Expenses. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the general common elements shall be a common expense, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner, his or her invitee, guest or servant shall be repairs by the Association at such owner's sole cost and expense. Although repair, maintenance and replacement of door and door frames (including deck), windows and window frames are the responsibility of the individual owners, exterior painting shall be the responsibility of the Association. Common expenses shall be assessed and apportioned among the owners as set forth below.

4.3 Income from General Common Elements. All income derived from the general common elements 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 in a substantially equal manner.

5.0. Limited Common Elements.

5.1 Definitions of Limited Common Elements. The following shall constitute limited common elements, the use of which shall be restricted to the Units to which they pertain:

5.1.1 Each unit is assigned a deck immediately adjacent to the Unit and on the south side thereof.

5.2 Maintenance, Repair and Replacement of Limited Common Elements.

Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the limited common elements shall be a common expense, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner, his or her invitee, guest or servant shall be repaired by the Association at such owner's sole cost and expense. Common expenses shall be assessed and apportioned among the owners as set forth below.

6.0. Voting. The owner or co-owners of each Unit shall be entitled to one vote per unit. "Majority" or "majority of unit owners" shall mean the owners of more than 50% of the voting rights allocated to the Units by the Declaration. The calling and conducting of meetings of the Association of Unit Owners and the exercise of voting rights shall be controlled by Articles II and III of the Bylaws.

7.0. Use of Property.

7.1 General. The condominium project is subject to a conditional use permit identified as "10-CUP-98, City of Newport, County of Lincoln, State of Oregon, Conditional Use Permit." As a result thereof, up to 15 of the non-commercial Units located on the second and third floors may be used for Residential Unit purposes only at the option of the non-commercial Unit owner. The remaining non-commercial Units at the option of the owner thereof shall be used as Condominium Hotel Units. On the deed to each non-commercial Unit at the time of the initial sale thereof, said deed shall bear a designation of either "Residential Unit" or "Condominium Hotel Unit." The Commercial Units may be used for the purposes set forth in the definition hereinabove. The common elements shall be used for the furnishing of service and facilities for the enjoyment and benefit of the Unit owners. Additional restrictions and regulations are set forth in the Bylaws and rules or regulations adopted pursuant to the provisions of the Bylaws.

7.2 Rules and Regulations Promulgated by the Association. 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. No person shall use the common elements or any part thereof in any manner contrary to or inconsistent with such rules and regulations. 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. Such use may be conditioned upon, among other things: (a) the payment by the Unit owner or assessments for common expenses and such other assessments or fees as may be established by the Association for the purpose of defraying the costs associated with the use of such common elements; and (b) the observance by the Unit owner, his or her guests, invitees and servants, of the Declaration, Bylaws and the Association's rules and regulations.

8.0. Contracts and Leases. All contracts or leases (including any management contract) that are entered into prior to the turnover meeting shall be terminable without penalty by the Association or the Board of Directors upon not less than 30 days' written notice to the other party by the Association given not later than 60 days after the turnover meeting; provided, however, any such contracting or leasing party may request the Association to affirm the continuation of any such agreement for the balance of its stated term. Affirmation by the Association after transfer of control shall extinguish all termination rights of the Association under this section.

9.0. Bylaws; Association; Management.

9.1 Adoption of Bylaws. On behalf of the Association, Declarant hereby adopts the Bylaws attached hereto as "Exhibit C" to govern the administration of the Condominium. The Bylaws shall be effective upon the execution and recording of this Declaration.

9.2 Association of Unit Owners; Membership. Each owner of a Unit in the Condominium shall be a member of the Association, and membership therein shall be limited to Unit owners only. The Association of Unit Owners, which shall be organized upon the recording of the Declaration and Bylaws, shall serve as a means through which the Unit owners may take action with regard to the administration, management and operation of the Condominium. The Association of Unit Owners shall be an Oregon non-profit corporation.

9.3 Management; Board of Directors. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Board of Directors shall elect officers consisting of a chairperson, secretary and treasurer. Pursuant to the provisions of the Bylaws and the Oregon Condominium Act, the Board of Directors may adopt administrative rules and regulations governing details of the operation, maintenance and use of the Condominium property. The Board of Directors may contract with a professional manager or management firm to manage the affairs of the Association.

9.4 Declarant Control; Interim Board and Officers. Declarant has reserved control over the administration of the Association by reserving the right in the Bylaws to appoint an interim board of directors to manage the condominiums until the turnover meeting. The three members of the interim board shall also serve as the interim chairperson, secretary and treasurer. The turnover meeting shall be held the earlier of within three years from the date the first unit is conveyed or on the date of conveyance to persons other than the Declarant of 75% of the Units.

9.5 Powers and Duties of the Association. The Association and the Board of Directors shall have the power and duties granted to them by this Declaration, the Bylaws and ORS 100.405(4), together with other provisions of the Oregon Condominium Act.

9.6 Covenant to Pay Assessments Liability for Common Expense. Each owner hereby covenants to pay the Association annual assessments for common expenses as more fully provided in the Bylaws. No owner may avoid liability for assessments by

abandonment of his or her Unit or non-use of the common elements. Except as otherwise provided in this Declaration or the Bylaws, each Unit and the owner thereof will be liable for the common expense in equal proportion, excepting for fire and casualty insurance (which shall be shared in proportion to the amount of coverage placed on each Unit).

10.0. 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 will be filed with the Oregon Real Estate Agency in accordance with ORS 100.250(1)(a).

11.0. Mortgagees. In the event of a conflict between section 11 and other provisions of this Declaration or any supplemental condominium Declaration, the provisions of this section 11 will prevail. The terms "mortgage," "mortgagor" and "mortgagee" are defined in section 1 of this Declaration.

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 will be entitled to timely notice of:

11.1.1 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;

11.1.2 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 60 days;

11.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

11.1.4 Any proposed action that would require the consent of a specified portion of mortgagees as set forth in this section 12.

11.2 Mortgagee Exempt 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 by 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 mortgagee 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 assessment or charges to all Units, including the mortgaged Unit).

11.4 Professional Management. Upon written request of the mortgagees holding at least 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 30 days' written notice. After such 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 51% of the mortgages on Units in the condominium. Additionally, if professional management has previously been required by any mortgagee, any such decision to establish self-management shall require prior consent of the owners of Units to which 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 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 Oregon Condominium 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 51% of the mortgages on Units in the Condominium. Additionally, any such terminations shall be carried out by the owners pursuant to provisions of the Declaration, any applicable supplemental condominium Declaration, the Bylaws and the Oregon Condominium Act.

11.7 Limited Right of Amendment. Except upon the approval of mortgagees who hold 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:

11.7.1 Voting;

11.7.2 Assessments, assessment liens or subordination of liens;

11.7.3 Reserves for maintenance, repair and replacement of the common elements (or Units, if applicable);

11.7.4 Insurance;

11.7.5 Rights to use of common elements;

- 11.7.6 Responsibility for maintenance and repair of the several portions of the condominium;
- 11.7.7 Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- 11.7.8 Boundaries of any Unit;
- 11.7.9 The interests in the general or limited common elements;
- 11.7.10 Convertibility of Units into common elements, or of common elements into Units;
- 11.7.11 Leasing of Units;
- 11.7.12 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 Unit; and
- 11.7.13 Any provisions that are for the express benefit of mortgagees.

The provisions of this paragraph are intended only to be a limitation on the right of the Unit owners, 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 such amendments to the Declaration or Bylaws shall be made only upon full compliance with the provisions of the Declaration, Bylaws and the Oregon Condominium Act relating to the procedure and percentage of votes required for such amendment. An addition or amendment to the Declaration or Bylaws shall not be considered material so as to require the consent or approval of mortgagees, if it is for the purpose of correcting technical errors or if it is for clarification only.

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

11.9 Proxy Held by Mortgagee in Certain Cases. A mortgagee may attend a meeting of the Association of Unit Owners 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 of Unit Owners 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 of Unit Owners 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 such meetings.

11.12 List of 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 such mortgages have requested notice, provided that such information has been furnished to the Association by the owners or their mortgagees.

12.0. Amendments to Declaration. Except when a larger vote is required by law, this Declaration may be amended from time to time by consent or approval of the Unit owners holding 75% or more of the voting rights as otherwise set forth in this Declaration; provided, however, that no amendment of this Declaration reducing or eliminating the right of any mortgagee shall be made without the prior written consent of all such mortgagees.

12.1 Declarant's Approval Required. Declarant's prior written consent shall be required for any amendment to the Declaration until the earlier of the conveyance to owners other than Declarant of 75% or more of the Units or three years after the conveyance of the first Unit in the Condominium; provided, however that even after such time, no amendment may limit or reduce any of the Declarant's special rights, whether reserved herein or otherwise provided by law. No amendment may change the size, location, percentage interest in the common elements, method of determining liability for common expenses, right to common profits or voting power of any Unit unless such amendment has been approved by the owners of the affected Units and the mortgagees of such Units.

12.2 Recordation. An amendment to the Declaration shall be effective upon recordation in the Deed Records of Lincoln County, certified to by the chairperson and secretary of the Association and, if required by law, approved by the county assessor and the Real Estate Commissioner.

13.0. Subdivision. No Unit may be subdivided into divisions of any nature.

14.0. Authority to Grant Easements, Rights of Way, Licenses and Other Similar Interests, and to Make Additions to the Common Elements.

14.1 General. The Association shall have the authority to execute, acknowledge, deliver and record on behalf of the Unit owners, easements, rights of way, licenses and other similar interests affecting the general common elements. The granting of any such interest shall be executed by the chairperson and secretary of the Association and

acknowledged in the manner provided for acknowledgement of such instruments by such officers and shall state that such grant was approved by at least 75% of the Unit owners. The Association shall also have the authority to make additions or improvements to the common elements.

14.2 Utility Easements; Dedications. Anything in this Declaration to the contrary notwithstanding, Declarant shall have the right to execute, deliver and record on behalf of the Association and the Unit owners such documents as may be required in order to grant easements, rights of way and licenses over the common elements for the installation, maintenance and repair of public utilities serving the condominium or adjacent property. Declarant shall also have the right to execute, deliver and record on behalf of the Association and the Unit owners such deeds and other documents as may be required to convey, dedicate or grant such easements, rights of way or licenses over common elements, as may be required by any government or governmental agency in order to complete development of the Condominium. In order to effect the intent of this section 14.2, each Unit owner, by acceptance of a deed or contract to a Unit whether or not it shall be expressed in such deed or contract for the Unit owner and his or her successors in interest, irrevocably appoints Robert P. Wright or his or her nominee, as his or her lawful attorney-in-fact for the purpose of executing any and all documents required or permitted to be executed hereunder.

15.0. Declarant's Special Rights. Declarant shall have the following special rights:

15.1 Sales Office and Model. Declarant shall have the right to maintain sales and/or rental offices and/or sales or rental models in one or more of the Units which Declarant owns. Declarant and their agents and prospective purchasers shall have the right to park automobiles in the parking area on the common elements and to use and occupy the sales and/or rental office and models during reasonable hours of any day of the week.

15.2 "For Sale"/"For Rent" Signs. Declarant may maintain a reasonable number of "For Sale" and/or "For Rent" signs at reasonable locations on the Condominium property.

15.3 No Capital Assessments Without Consent. Neither the Association nor the Board of Directors shall make any assessments for new construction, acquisition or otherwise without the prior written consent of Declarant, as long as Declarant owns the greater of two Units or 5% of the total number of Units in the condominium. Nothing contained in this section 15.3 shall be construed as a limitation on Declarant's obligation to pay assessments for common expenses on Units owned by Declarant pursuant to requirement of the Oregon Condominium Act.

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

15.5 Declarant's Easements Declarant, its agents and employees shall have an easement on and over the common elements for the completion of any portion of the

Condominium including the furnishing and decoration of any Unit, sales office or model and the right to store materials on the common elements at reasonable places and for reasonable lengths of time.

15.6 Other Declarant Rights. The rights reserved to Declarant in this section 15 shall in no way limit any other special Declarant rights that Declarant may have, whether pursuant to the Oregon Condominium Act or otherwise. Upon the expiration of any or all special Declarant rights, Declarant will have the same rights as any other owner in the Condominium in respect to such ownership.

15.7 Assignment of Declarant's Rights. Declarant shall have the right to assign any and all of its rights, including without limitation Declarant's special rights as set forth in section 15 hereof, or to share such rights with one or more other persons exclusively, simultaneously or consecutively.

15.8 Expiration of Declarant's Special Rights. Unless otherwise provided, Declarant's special rights reserved in this section 15 shall expire upon the conveyance by Declarant of the last Unit owned by Declarant or three years after conveyance of the first Unit in the Condominium, whichever is earlier.

16.0. General Provisions.

16.1 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.

16.2 Severability. Each provision of the Declaration and the 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.

16.3 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 and Bylaws shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

16.4 Legal Proceedings. 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 due, 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.

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

16.6 Compliances. 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 record. 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.

16.7 Conflicting Provisions. In the event of a conflict between or among the Declaration, Bylaws and any administrative rules and regulations, the provisions of the Declaration shall be paramount to the Bylaws and the rules and regulations, and the Bylaws shall be paramount to the rules and regulations. For purposes of this section, the term "Declaration" shall include all amendments and supplemental Declarations, and the term "Bylaws" shall include all amendments.

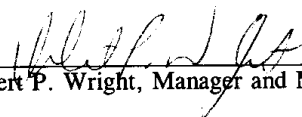
16.8 Section and Paragraph Captions. Section and paragraph captions are not a part hereof unless the context otherwise requires. In construing this Declaration, it is understood that if the context so requires, the singular pronouns shall be taken to mean and include the plural, the masculine to include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

16.9 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 the Commercial Units after the recording of the Declaration and Bylaws that in any way limits the commercial utility and viability of said Commercial Units beyond any Commercial Unit controls contained in the initial Declaration and Bylaws without the consent of all Commercial Unit owners.

The undersigned Declarant has caused this Declaration to be executed this 16th day of October, 2000.

DECLARANT:

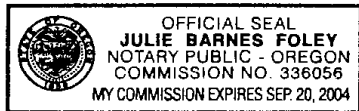
Bayfront, L.L.C., an Oregon
limited liability company

By: 
Robert P. Wright, Manager and Member

STATE OF OREGON)
) ss.
County of Lincoln)

On the 16th day of October, 2000, the above-named Robert P. Wright, in his capacity as manager and member of Bayfront, L.L.C., an Oregon limited liability company, personally appeared and acknowledged the foregoing instrument to be the company's voluntary act and deed.

Julie Barnes Foley
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-20-04



STATE OF OREGON)
) ss.
County of Marion)

The foregoing Declaration is approved pursuant to ORS 100.110 on this 14th day of December, 2000, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded with two (2) years from this date.

SCOTT W TAYLOR
REAL ESTATE COMMISSIONER

By: Brian DeMarco
Brian DeMarco

The foregoing Declaration is approved pursuant to ORS 100.110(2) on this 29th day of January, ~~2000~~ 2001

LINCOLN COUNTY ASSESSOR

By: Rob Thomas by c.H.

The foregoing Declaration is approved pursuant to ORS 100.110(3) on this 29th day of January, ~~2000~~ 2001

LINCOLN COUNTY TAX COLLECTOR

By: Linda Pitzer by al

**ALLOCATION OF AN UNDIVIDED INTEREST
IN COMMON ELEMENTS**

<u>Unit Designation</u>	<u>Unit Location</u>	<u>Area in Sq. Ft.</u>	<u>Allocation of Undivided Ownership in General Common Elements</u>
Residential Units			
101	Building B	800 sq. ft.	1/58th
102	Building B	716 sq. ft.	1/58th
103	Building B	716 sq. ft.	1/58th
104	Building B	716 sq. ft.	1/58th
105	Building B	716 sq. ft.	1/58th
106	Building B	716 sq. ft.	1/58th
107	Building B	716 sq. ft.	1/58th
108	Building B	716 sq. ft.	1/58th
109	Building B	800 sq. ft.	1/58th
110	Building A	800 sq. ft.	1/58th
111	Building A	716 sq. ft.	1/58th
112	Building A	716 sq. ft.	1/58th
113	Building A	800 sq. ft.	1/58th
114	Building A	716 sq. ft.	1/58th
115	Building A	716 sq. ft.	1/58th
116	Building A	716 sq. ft.	1/58th
117	Building A	716 sq. ft.	1/58th
118	Building A	800 sq. ft.	1/58th
201	Building B	800 sq. ft.	1/58th
202	Building B	716 sq. ft.	1/58th
203	Building B	716 sq. ft.	1/58th
204	Building B	716 sq. ft.	1/58th
205	Building B	716 sq. ft.	1/58th
206	Building B	716 sq. ft.	1/58th
207	Building B	716 sq. ft.	1/58th
208	Building B	716 sq. ft.	1/58th
209	Building B	800 sq. ft.	1/58th
210	Building A	800 sq. ft.	1/58th
211	Building A	716 sq. ft.	1/58th
212	Building A	716 sq. ft.	1/58th
213	Building A	800 sq. ft.	1/58th
214	Building A	716 sq. ft.	1/58th
215	Building A	716 sq. ft.	1/58th
216	Building A	716 sq. ft.	1/58th
217	Building A	716 sq. ft.	1/58th
218	Building A	800 sq. ft.	1/58th

301	Building B	800 sq. ft.	1/58th
302	Building B	716 sq. ft.	1/58th
303	Building B	716 sq. ft.	1/58th
304	Building B	716 sq. ft.	1/58th
305	Building B	716 sq. ft.	1/58th
306	Building B	716 sq. ft.	1/58th
307	Building B	716 sq. ft.	1/58th
308	Building B	716 sq. ft.	1/58th
309	Building B	800 sq. ft.	1/58th
310	Building A	800 sq. ft.	1/58th
311	Building A	716 sq. ft.	1/58th
312	Building A	716 sq. ft.	1/58th
313	Building A	800 sq. ft.	1/58th
314	Building A	716 sq. ft.	1/58th
315	Building A	716 sq. ft.	1/58th
316	Building A	716 sq. ft.	1/58th
317	Building A	716 sq. ft.	1/58th
318	Building A	800 sq. ft.	1/58th

Commercial Units

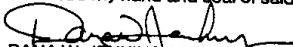
A	West end of Building B	507 sq. ft.	1/58th
B	West end of Building B	507 sq. ft.	1/58th
C	West end of Building B	507 sq. ft.	1/58th
D	West end of Building B	507 sq. ft.	1/58th

STATE OF OREGON } ss.
County of Lincoln

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.

Book 414 Page 2062

WITNESS my hand and seal of said office affixed.


DANA W. JENKINS, Lincoln County Clerk



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Rect: 107416 106.00
02/05/2001 04:31:57pm

**BYLAWS
OF
"THE LANDING AT NEWPORT" CONDOMINIUMS UNIT OWNERS ASSOCIATION
EXHIBIT C TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS**

ARTICLE I.

PLAN OF UNIT OWNERSHIP

Section 1. Unit Ownership. The condominium located in Newport, County of Lincoln, State of Oregon, known as "The Landing at Newport" Condominiums ("Condominium") is submitted to the provisions of the Oregon Condominium Act, ORS 100.005 *et seq.* (the "Act").

Section 2. Bylaws Applicability. The provisions of these Bylaws are applicable to the Condominium, Declarant and its successors and assigns, the owners' association and the entire management structure thereof. (The term "Condominium" as used herein shall include the land.)

Section 3. Personal Application. All present or future owners, tenants, future tenants or their employees, or any other person that might use the facilities of the Condominium in any manner, are subject to the regulations set forth in these Bylaws. The acquisition, occupancy or rental of any of the units of the Condominium, or the mere act of occupancy of any such units, will constitute acceptance and ratification of these Bylaws and agreement to comply with all the provisions hereof.

Section 4. Definitions. Except as otherwise provided below, the terms herein shall have the meaning set forth in the Act as supplemented by the Declaration of Condominium Ownership for "The Landing at Newport" Condominiums (the "Declaration"), and the Act and Declaration are incorporated herein by this reference.

ARTICLE II.

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

Section 1. Membership in the Association. Upon recordation of a conveyance of a unit, the grantee named in the conveyance shall automatically be a member of the "The Landing at Newport" Condominiums Association (the "Association") and shall remain a member of the Association until the person's ownership ceases for any reason. For all purposes of the Declaration and the administration of the property, unit ownership shall be determined from the records maintained by the Association. The record shall be established by the unit owner filing with the Association a copy of the deed for his or her unit, to which shall be affixed the

certificate of the recording officer of the County of Lincoln, Oregon, showing the date and place of recording of such deed. No person shall be recognized as a unit owner unless a copy of the deed has been filed with the Association as provided above showing him to be the current owner of a unit. Notwithstanding the foregoing, Declarant shall be the owner of all previously unsold units, although no deed, with respect to such units, has been filed with the Association.

Section 2. Composition of Voting Rights. The Association shall be composed of all owners of condominiums of "THE LANDING AT NEWPORT" CONDOMINIUMS. Each unit shall be entitled to one vote. Whenever any condominium unit is owned of record by two or more persons or entities jointly, the vote of that condominium unit may be exercised by any one of the co-owners. However, in the event of a protest by a co-owner to the vote of another co-owner, no one co-owner shall be entitled to vote without the approval of all other co-owners of that condominium unit. A personal representative, guardian or trustee may vote at any meeting of the Association with respect to any condominium unit owned by him in such capacity, whether or not the same shall have been transferred to his name, as long as he provides evidence to the satisfaction of the Association of his capacity to act with regard to said condominium unit. The calling and conducting of meetings of the Association of unit owners and the exercise of voting rights shall be controlled by Articles II and III of the Bylaws.

Section 3. Majority of Owners. As used in these Bylaws, the term "majority of owners" shall mean those owners holding over 50% of the voting rights allocated to the unit owners in accordance with the Declaration and Section 2 above. "Majority of owners present" shall mean owners holding over 50% of the votes present at any legal meeting.

Section 4. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a "majority of voting owners" as defined in Section 3 of this Article, shall constitute a quorum; provided, however, the quorum at any adjourned meeting, as described in Article III, Section 8, shall be reduced to 25% of the outstanding votes in the Condominium.

Section 5. Proxies; Ballots. Votes may be cast in person, by proxy, or by written ballot. Proxies must be filed with the secretary before or during the appointed meeting. The proxies may require the holder to cast a vote for or against any special proposal set out in the notice calling the meeting. In the sole discretion of the Board, a meeting of the Association may be by ballot, rather than at a formal gathering. Ballots for such meeting must be properly executed and returned in sufficient quantity to constitute a quorum and/or to pass the proposal specifically propounded on the ballot. Unless withdrawn, a proxy given to another person to vote at a specific meeting shall also be valid at an adjourned meeting called under the provisions of Article III, Section 8.

Section 6. Authority to Vote. All owners shall be entitled to vote, including those who have leased their premises to a third party. An owner's right to vote may not be revoked.

Section 7. Fiduciaries and Joint Owners. An executor, administrator, guardian or trustee may vote, in person, by proxy or ballot, at any meeting of the Association with respect to any unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name; provided that he or she shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee, holding such unit in such capacity. Whenever any

unit is owned by two or more persons jointly according to the records of the Association, the vote of the unit may be exercised by any one of the owners then present, in the absence of protest by a co-owner. In the event of 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 the unit shall be disregarded completely in determining the proportion of votes given with respect to such matter.

Section 8. Actions by Association; Legal Meeting. Except as otherwise provided in the Declaration, these Bylaws, the Act or the Oregon Nonprofit Corporation Act, decisions and resolution of the Association shall require approval by a majority of owners present at any legal meeting. A legal meeting is one duly called pursuant to these Bylaws where a quorum is present in person, by proxy or by ballot at a ballot meeting.

ARTICLE III.

ADMINISTRATION

Section 1. Association Responsibilities. The owners of the units constitute the members of the Association, which has the responsibility of administering the project, approving the annual budget, establishing and collecting monthly assessments and arranging for the operation, management and maintenance of the condominium, including negotiating and contracting with and supervising any person, persons or business entity with respect to such matters. The Association of unit owners shall be an Oregon nonprofit corporation.

Section 2. Place of Meetings Formal meetings of the Association shall be held at the principal office of the Condominium or such other suitable place convenient to the owners as may be designated by the Board.

Section 3. Turnover Meeting. The turnover meeting (which shall constitute the initial organizational meeting) shall be held not later than 90 days following the earlier of conveyance to persons other than Declarant of 75% of the number of units which Declarant has reserved the right to create or three years from the date of conveyance of the first unit to someone other than Declarant in the Condominium, whichever is earlier. the turnover meeting shall be called by notice from the declarant to all unit owners of the time, place and purpose thereof not less than seven nor more than 60 days before the meeting. If such meeting is not called by Declarant within the time specified, the meeting may be called and notice given by a unit owner.

At the turnover meeting, Declarant shall relinquish control of the administration of the Association and the unit owners shall assume such control and the unit owners shall elect a board of directors in accordance with the provisions of Article IV of these Bylaws. Additionally, Declarant shall deliver to the Association those items specified in the Oregon Condominium Act to be turned over by Declarant at the turnover meeting. In order to facilitate an orderly transition, during the three-month period following the turnover meeting, Declarant or an informed representative shall be available to meet with the board of directors on at least three mutually acceptable dates to review the documents delivered to the Association as required by the Act and referred to above.

Section 4. Transitional Committee. Unless the turnover meeting has been held, the Declarant shall call a meeting of the owners for the purpose of forming a transitional committee and according to the following provisions:

a. The Declarant shall call the meeting within 60 days of conveyance to persons other than the Declarant of 29 Units.

b. The Declarant shall give notice of the meeting in writing to each owner not less than seven (7) days and not more than 50 days prior to the meeting. The notice shall state the time and place of the meeting and shall state the purpose of the meeting.

c. The transitional committee shall be advisory only and shall consist of two (2) or more Members selected by owners other than the Declarant and may include not more than one (1) representative of the Declarant. They shall serve until the turnover meeting. The function of the committee shall be that of enabling ease of transition from control of the administration of the Association by the Declarant to control by the owners. The committee shall have access to the information, documents and records which the Declarant must turn over to the owners under ORS 100.210(5).

d. If the meeting required under this Section 4 is not called by the Declarant within the time specified, the meeting may be called and notice given by an owner.

e. If the Owners other than the Declarant do not select Members for the committee under Section 4.c. above, the Declarant shall have no further responsibility to form the committee.

Section 5. Annual Meetings. The first annual meeting of the Association shall be held in the calendar year following the calendar year in which the turnover meeting is held and shall be set by action of the Board. This meeting, at the discretion of the Board, may be changed from time to time, but must be held annually under the rules and regulations as set out in the Bylaws. At such meetings, new members of the Board shall be elected by the owners in accordance with the requirements of Section 6 of Article IV of these Bylaws, to replace those Directors whose terms have expired. The owners may also transact such other business of the Association as may properly come before them.

Section 6. Special Meetings. It shall be the duty of the chairperson to call a special meeting of the owners as directed by resolution of the Board or upon a petition signed by 10% or more of the owners having been presented to the secretary. All meetings called because of petition of unit owners shall be held at a formal gathering and not by ballot and shall be held within 60 days after receipt of the petition. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of all the owners of the units or as otherwise set out in these Bylaws.

Section 7. Notice of Meetings. It shall be the duty of the secretary to mail by first class or certified mail or to hand deliver a notice of each annual or special meeting, stating the purpose thereof and the time and place where it is to be held, to each owner of record at least

ten, but not more than 60 days prior to such meeting or the date when ballots for a ballot meeting are required to be returned. It shall be the duty of the secretary to hand deliver or mail by first class or certified mail written ballots for ballot meetings to each owner of record not less than 20 days before the date such ballots must be received by the Association in order to be counted. The mailing shall be to the owner's address last given the secretary in writing by the unit owner. If unit ownership is split or the unit has been sold on a contract, notice shall be sent to a single address of which the secretary has been notified in writing by such parties. If no address has been given the secretary in writing, then mailing to the Condominium unit shall be sufficient. The mailing of a notice in the manner provided in this section shall be considered notice served.

Section 8. Adjourned Meetings. If any gathering of owners is not a legal meeting because a quorum has not attended, the owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours nor more than 20 days from the time the original meeting was called. The Board may postpone the date for counting the ballots of a ballot meeting, in one or more postponements, for up to 90 days after the originally scheduled ballot return date if a quorum of ballots has not been returned and/or for matters on which a certain percentage approval is required and that vote has not been received nor have sufficient votes in opposition been received to negate such approval.

Section 9. Order of Business. The order of business at all meetings of the owners of units shall be as follows unless the Board sets a different agenda:

- a. Roll call.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of minutes of the preceding meeting.
- d. Reports of officers.
- e. Reports of committees.
- f. Election of inspectors of election.
- g. Election of Directors.
- h. Unfinished business.
- i. New business.

ARTICLE IV.

BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors (the "Board") composed of three (3) persons, each of whom must be a unit owner or the co-owner of a unit. An officer or employee of a corporation, or the trustee of a trust, or personal representative of an estate, or an employee of the trust or estate may serve on the Board, if the corporation, trust or estate owns a unit.

Section 2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the owners.

Section 3. Other Duties. In addition to duties imposed by these Bylaws or by resolutions of the Association, the Board shall have authority to carry out and be responsible for the following matters:

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

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

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

d. Establishing a budget for payment of all common expenses of the Association and the institution and maintenance of a system for such payment as may be reasonably necessary to prevent any misuse of Association funds.

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

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

g. Hire and fire personnel necessary for the maintenance and operation of the Condominium, the general common elements and the limited common elements, if any.

h. Causing the preparation and distribution of annual financial statements of the Condominium to each of the unit owners as more specifically provided in Article XII of these Bylaws.

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

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

k. Causing the Association to comply with ORS 100.480 relating to maintenance of documents delivered to the Association by Declarant and maintenance and distribution of financial statements. Also to maintain copies suitable for duplication of the

following: Declaration, Bylaws, Association rules and regulations and any amendments thereto, the most recent annual financial statement and the current operating budget of the Association.

Section 4. Management Agent. The Board may employ a management agent, to be compensated in an amount established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 3 of this article.

Section 5. Interim Directors. Upon the filing of the Declaration submitting the condominiums to the Oregon Condominium Act, Declarant shall appoint an interim board of three (3) directors (who need not be owners of the units), who shall serve until replaced by Declarant or their successors have been elected by the unit owners at the turnover meeting as hereinafter provided.

Section 6. Election and Term of Office. At the turnover meeting of the Association, the term of office of one director will be fixed for a term of three (3) years, one for a term of two (2) years and one for a term of one (1) year. At the expiration of the initial term of office of each respective director, a successor shall be elected to a term of three years. At the turnover meeting, upon agreement by vote of the owners, the Board may be elected by a single ballot with each owner permitted to vote for three nominees. In that event, the nominee receiving the highest number of votes shall be the three-year director, the nominee receiving the second highest number of votes shall be the two-year director and the nominee receiving the fewest number of votes shall be the one-year director. The Association may increase or decrease the number of directors and length of terms for which each is elected upon amendment of these Sections 5 and 6.

Section 7. Vacancies. Vacancies on the Board caused by any reason other than the removal of a director by a vote of the Association shall be filled for the balance of the term of each directorship by vote of a majority of the remaining Board, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected upon expiration of the term for which the person was elected by the Board to serve.

Section 8. Removal of Directors. At any legal annual or special meeting, other than a meeting by ballot, any one or more of the directors may be removed, with or without cause, by a majority vote and a successor may be then and there elected to fill the vacancy thus created. Any director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting. Any director who fails to attend three (3) successive meetings of the Board which have been properly called, or who has failed to attend more than one-third of the Board meetings during a 12-month period which have been properly called, may be removed by a majority of the Board remaining.

Section 9. Organizational Meeting. The first meeting of a newly elected Board shall be held within 10 days of election at such place as shall be fixed by the Board at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order to legally hold such meeting, provided that a majority of the newly elected directors are present.

Section 10. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings of the Board may be called by the chairperson on three (3) days' notice to each director, given personally or by mail, telephone, telegraph or other similarly reliable method, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting.

Section 11. Special Meetings. Special meetings of the Board may be called by the Chairperson or Secretary or on the written request of at least three directors. Special meetings of the Board may be called on three (3) days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting.

Section 12. Waiver of Notice to Directors. Before, at or after any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him or her of the time and place thereof. If all the directors are present at any meeting of the Board, no notice to directors shall be required and any business may be transacted at such meeting.

Section 13. Board Quorum. At all meetings of the Board, a majority of the existing directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Board Meetings Open to All Association Members. All meetings of the Board shall be open to all members of the Association, 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.

No Association member shall have a right to participate in the Board meetings unless the member is also a member of the Board. The Chairperson shall have authority to exclude any Association member who disrupts the proceedings at a meeting of the Board.

Section 15. Notice to Association Members of Board Meetings. For other than emergency meetings, notice of Board meetings shall be posted at a place on the Condominium property at least three (3) days prior to the meeting or notice shall otherwise be provided to each member of the Association reasonably calculated to inform each member of such meetings. The

posting of the notices shall be at a reasonable location which has been generally publicized to the unit owners.

Section 16. Telephonic Meetings. In the event of an emergency, telephonic meetings may be held by the Board. Such telephonic meetings shall be carried on by means of a "conference call" in which each director may speak with any of the other directors. The directors shall keep telephone numbers on file with the chairperson to be used for telephonic meetings. No notice to either directors or Association members shall be required for a telephonic meeting of the Board to be held for any emergency action; provided, however, no such telephonic meeting shall occur unless at least two-thirds of the Board participate in the same and after an attempt has been made to call each director at the telephone number maintained on file with the Board for such purpose.

Section 17. Compensation of Directors. No director shall be compensated in any manner, except for out-of-pocket expenses, unless such compensation is approved by vote of the unit owners.

ARTICLE V.

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a Chairperson, a Secretary and a Treasurer, all of whom shall be elected by the directors. The directors may appoint an Assistant Treasurer and an Assistant Secretary and any such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his or her successor elected at any regular or special meeting of the Board.

Section 4. Chairperson. The Chairperson shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. He or she shall have all of the general powers and duties which are usually vested in the office of president of an Association, including, but not limited to, the power to appoint committees from among the owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he or she shall have charge of such books and papers as the Board may direct; and he or she shall, in general, perform all the duties incident to the office of secretary.

Section 6. Treasurer. The Treasurer shall have responsibility for Association funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board.

Section 7. Directors as Officers. Any director may be an officer of the Association.

ARTICLE VI.

OBLIGATIONS OF THE OWNERS

Section 1. Assessments. All owners are obligated to pay annual assessments imposed by the Association to meet all the Condominium's common expenses, which shall include premiums for insurance required or permitted under Article VIII of these Bylaws. In the discretion of the Board, the annual assessment may be made payable, semiannually, quarterly or monthly. The annual assessment shall commence at the time of the first conveyance by Declarant to a unit owner. Prior to such time, Declarant shall pay all operating expenses of the Condominium. All of the reserve accounts set up pursuant to these Bylaws shall be funded by allocation and payment from the monthly assessment of unit owners. The assessment of all unit owners who may be benefited by expenditure of reserve funds may be increased as necessary, so the reserve fund in question can be maintained in an amount sufficient to meet the needs for which such fund was established.

Except as otherwise provided in the Declaration or these Bylaws, each unit will be liable for the common expense in equal proportion, excepting for fire and casualty insurance and the funding of the replacement reserves, which shall be apportioned among the units based on each unit's percentage ownership in the common elements.

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

Expense Items:

- a. Expenses of administration.
- b. Expenses of maintenance, repair or replacement of the common elements.
- c. Any deficit in common expenses for any prior period.
- d. Utilities for the common elements and other utilities with a common meter or commonly billed, such as water and sewer.
- e. At the discretion of the Board, the expense of basic cable television service to all units, together with maintenance and repair expenses for such system and service.

- f. Cost of insurance or bonds obtained in accordance with these Bylaws.
- g. The cost of any professional management if required by mortgagees or desired by the Board.
- h. Legal, accounting and other professional fees.
- i. Any other items properly chargeable as an expense of the Association.

Reserve Items:

a. A reserve account for the purpose of effecting replacements of structural elements, mechanical equipment and other common elements of the Condominium which will normally require replacement in more than three (3) years and less than 30 years. Payment into this account shall be deemed a contribution to capital improvement as and when made. Pursuant to provisions of the Act, Declarant has established a reserve account for replacement of such common elements. The reserve accounts for replacement shall be funded by assessment against the same units that are assessed for the maintenance of the items for which the reserve account is established. Accordingly, the reserve account for replacement of those general common elements and limited common elements, the maintenance of which is provided by assessment against all owners shall be created by assessment against all owners. The reserve account for replacement of those limited common elements, the maintenance of which is provided by assessment of less than all units shall be created by assessment only against the specific units responsible for the maintenance of such limited common elements.

The Board shall prepare a schedule of the common elements having a remaining useful life of more than three (3) and less than 30 years, together with the current replacement cost of such common elements. The amount of the periodic payments to the reserve account shall be adjusted at regular intervals to recognize changes in remaining useful lives and replacement costs over time. Except as otherwise provided in the Act, the reserve account shall be used only for replacement of common elements and shall be kept separate from accounts for maintenance.

b. In the discretion of the Board, a general operating reserve account by allocation and payment thereto monthly of an amount determined by the Board.

c. Other special reserve funds as may be set up by the directors by special assessments of the unit owners who benefit thereby as may be required by the Declaration or otherwise determined by the Association of unit owners to be appropriate.

Each reserve account shall be kept in an account with a safe and responsible depository, shall be accounted for separately and, if invested, the obligation or security shall be fully guaranteed as to principal by the United States of America or one of its agencies. Assessments paid into the reserve accounts are the property of the Association and are not refundable to sellers of units; provided, however, that nothing herein shall prevent sellers of units from treating their outstanding allocable share of reserve accounts as a separate or reimbursable item in a sales agreement. No unit owner shall have any individual rights in any of these reserves,

although it is understood that the value of their respective units may increase in proportion to each unit's right to receive repair, maintenance and replacement therefrom.

Section 2. Initial Assessment. The initial assessment to unit owners other than Declarant shall be determined by Declarant. The assessment shall thereafter be subject to review by the Board. Except as otherwise provided below, the assessment for all units shall be payable from the date the Declaration is recorded.

a. At the time of closing, each purchaser shall contribute a sum equal to one-sixth of the annual assessment, in respect to the unit being purchased, as a one-time contribution to the working capital of the Association. Within 60 days after conveyance by Declarant of the first unit in the Condominium, Declarant shall make such contribution in respect to all units in the Condominium that have not yet been conveyed to a purchaser. If Declarant has made such contribution, no further contribution shall be required to the Association, but each purchaser shall reimburse Declarant at the time of closing for the amount of the contribution made by Declarant in respect to the unit conveyed to the purchaser. In the further event that the assessments are reduced pursuant to the authority granted to Declarant herein, the initial deposit to the Association budget equal to one-sixth the annual assessment shall be based on the projected amount of such assessment after substantial or full occupancy of the units rather than on the reduced assessment.

b. If Declarant or any other person pays all of the operating expenses of the Condominium or subsidizes such expenses, the assessment shall be reduced by such amount, but shall not be reduced to a sum less than the total amount of the replacement reserve items. In respect to units not yet conveyed by Declarant, Declarant may accrue the replacement reserve items. At the time of conveyance of the unit for which the replacement reserve has been accrued, the accrued reserves must be paid to the Association.

Declarant, or such other person paying all operating expenses or subsidizing such expenses, shall give ten days' written notice to individual unit owners prior to the commencement of their obligation to pay the full assessment. Thereafter, each owner, including Declarant or such other person, shall pay the assessments to the Association. In the event Declarant has collected initial assessments from unit purchasers at closing and thereafter elects to pay or subsidize the operating expenses, thereby causing the assessment to be reduced, the one-time initial contribution collected from unit purchasers shall be held by Declarant in a separate Association account on the date unit owners are required to pay full assessments, the aggregate sums held in such separate account shall be deposited to the Association's general account to be used as working capital.

c. If the Association expenses are temporarily less than projected by Declarant because some or most of the units are not yet sold or occupied, Declarant shall have the authority to reduce temporarily the assessment to reflect the lower expenses of the project.

Section 3. Special Assessments. The Board shall have the power to levy special assessments against an owner or all owners in the following manner for the following purposes:

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

Section 4. Payment of Assessments. Subject to the provisions of Sections 2 and 3 of this Article VI, from the date the Declaration is recorded, Declarant shall:

- a. Pay assessments due for operating expenses on all unsold units; and
- b. Pay assessments due for reserves on all unsold units, or, at Declarant's option, pay or require the unit owner to pay all accrued reserve assessments against the unit at the time of the initial sale to the unit owner.

Section 5. Budget; Income Tax Returns; Determination of Fiscal Year.

- a. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board.
- b. The Board, in its sole discretion, shall determine the manner in which all necessary income tax returns are filed and of selecting any and all persons to prepare such tax returns. The Board shall cause to be filed annually the necessary income tax returns.
- c. At least 60 days before the beginning of each fiscal year, the Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the common elements and those parts of the units as to which it is the responsibility of the Association to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be common expenses by the Oregon Condominium Act, the Condominium instruments, or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and the rendering to the unit owners of all related services.

Such budget shall also include such reasonable amounts as the Board considers necessary to provide working capital and such general operating reserve accounts, contingency and other reserve accounts as the Board shall determine. The amount designated for replacement reserves

shall be adjusted annually to reflect current replacement cost and remaining useful life. At least 30 days before the beginning of each fiscal year, the Board shall send to each unit owner a copy of the budget in a reasonably itemized form that sets forth the amount of the common expenses and any special assessment payable by each unit owner. Such budget shall constitute the basis for determining each unit owner's assessment for the common expenses of the Condominium.

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

e. If the Board fails to timely adopt a budget for a new fiscal year, unit owners holding a majority of the votes of the entire Association, at any general or specially called meeting, may adopt such a budget, announce it to the unit owners and immediately commence assessments based on the newly adopted budget. Additionally, at any general or specially called meeting, unit owners holding a majority of the votes of the entire Association may amend any budget adopted by the Board. Thereafter, assessments to unit owners shall be based on the budget as so amended until a new budget is adopted in accordance with this Section 5.

Section 6. Default. Failure by an owner to pay any assessment of the Association shall be a default by such owner of his or her obligations pursuant to these Bylaws and the Oregon Condominium Act and, in addition to the Association's other remedies provided in the Declaration, these Bylaws shall entitle the Association to declare the balance of such owner's annual assessment otherwise being paid in installments to be immediately due and payable in full. Interest shall be charged on delinquent assessments at a rate as may be set by the Board, from time to time, not to exceed the lower of 18% per annum or the highest rate permitted by applicable law. Prior to the imposition of or change in the interest rate charged on delinquent assessments, the Board shall give 30 days' written notice to all owners.

In addition to the interest that may be charged on delinquent assessments, the Board, at its option, may impose a late penalty in respect to any assessment not paid with ten days from the due date. The penalty may not exceed the sum of 25% of the delinquent assessment, but shall be imposed only once on each regular or special assessment or installment of such assessments.

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

Condominium Act shall be deemed to be a default by the owner of any mortgage to which the owner is a party or to which the unit is subject.

Section 7. Maintenance and Repair.

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

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

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

Section 8. Right of Entry: Encroachments; Easements for Maintenance.

a. In case of an emergency originating in or threatening a unit, the owner shall grant the right of entry to the management agent or to any other person authorized by the Board or the Association, 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. If, in the process of such repair and maintenance by the Association, it is necessary to alter or damage any unit or common elements, such alterations or damages will be permitted without compensation, provided the unit and/or common elements are promptly restored to substantially their prior condition by the Association.

If any portion of the common elements encroaches on a unit, or a unit encroaches on any portion of the common elements, a valid easement for the encroachment and for the maintenance of the same, as long as it stands, shall exist. If the 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.

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

Failure by an owner (his or her family, invitees or lessees) to comply with the rules of conduct and restrictions set forth here or others promulgated by the Board shall be cause for the Board to deny or restrict the owner's right to use any common-element facility with respect to which the owner otherwise had a right to use.

Section 1. Use as Private Dwelling Only. Each of the non-commercial units will be occupied and as a residential unit or condominium hotel unit as defined in the Declaration by its owner or tenants, visitors and guests, and for no other purpose. Subject to complying with applicable local ordinances and other restrictions of record, an owner may use his or her unit as a "home office," provided clients, customers and employees do not regularly visit the "home office." Commercial units shall be used for the purposes identified in the definition of commercial unit in the Declaration. All common elements shall be used in a manner conducive to such purpose. No unit owner may lease less than the entire unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

Section 2. Restriction on Alteration to Unit. No owner shall make structural modifications or alterations in his or her unit or installations located therein without previously notifying the Association in writing by certified mail to the management agent, if any, or to the chairperson of the Board, if no management agent is employed. The Association shall have the obligation to answer within 30 days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration; provided, however, that nothing herein contained shall waive or limit an owner's obligation to comply with the provisions of ORS 100.535.

Section 3. Use of the Common Elements. No owner shall place or cause to be placed in the lobbies, patios, decks, ramps, vestibules, stairways and other common elements of the Condominium of a similar nature any furniture, packages or objects of any kind, except that suitable furniture may be placed on the decks and patios without the prior written consent of the Board. Such areas shall be used for no purpose other than what is normal.

Section 4. Pets. No owner may keep a pet in his or her unit. Any unit owner in violation of this provision who maintains any pet shall be deemed to have indemnified an agreed to hold the Association, each of its members and Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining the pet within the Condominium. Any unit owner found to have a pet upon any portion of the condominium must immediately remove the pet from the premises.

Section 5. Appearance of Condominium Building. No unit owner will cause anything to be hung, displayed or placed on the walls, doors, windows, walkways, ceilings of walkways or roof of the Condominium building or any other common element nor otherwise

change the appearance of any portion of the common elements without the prior written consent of the Board. Each unit owner shall provide draperies, miniblinds or other window coverings at all windows, which shall be lined with white materials sufficiently opaque so as not to disclose the color of the interior portion of the window coverings. No clothes lines or similar devices and no "For Sale" or "For Rent" signs will be allowed on any part of the Condominium property without the prior written consent of the Board, except that Declarant may post reasonable signs in reasonable places on the Condominium property advertising any unit for sale or for rent.

Section 6. Nuisances. No nuisances will be allowed on the Condominium property nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful possession and proper use of the property by its residents. Residents shall exercise extreme care about creating disturbances, making noises or using musical instruments, radios, televisions and amplifiers that may disturb other residents. All parts of the Condominium will be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. All such garbage and trash shall be placed inside disposal containers. No unit owner will permit any use of his or her unit or make any use of the common elements that will increase the cost of insurance on the Condominium property.

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

Section 7. Improper, Offensive or Unlawful Use. No improper, offensive or unlawful use will be made of the Condominium property nor any part of it; all valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction will be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium property will be carried out and paid for in the same manner as the responsibility for the maintenance and repair of the property concerned.

Section 8. Restriction on Exterior Installations. No owner, resident or lessee shall install wiring for electrical or telephone installation, exterior antennae, machines or air conditioning units, or similar devices on the exterior of the Condominium building or cause them to protrude through the walls or the roof of the Condominium except as authorized by the Board. No window guards, awnings or shades shall be installed without the prior consent of the Board.

Section 9. Parking. The common parking areas designated as general common elements in the Declaration are intended for use of automobiles of owners and guests. The directors may make such rules as may be necessary to govern the use of any general common-element parking areas by which all owners and other users shall be bound.

Section 10. Vehicle Restrictions. Vehicular traffic on the parking areas and driveways on Condominium property shall be limited to five miles per hour as a safety precaution. This speed limit shall apply to bicycles, motor scooters, motorcycles, automobiles and trucks. No recreational vehicles, campers, trailers, boats, boat trailers, vehicles in disrepair or similar things may be parked or kept on Condominium property without the prior written consent of the Board.

Section 11. Rules for Use of Common Elements. All general common elements, including but not limited to any common elevator, stairways, walkways, driveways, parking spaces and storage areas, are provided for the use of owners and their guests. Rules and regulations will be posted, setting out the hours the various facilities will be available for use, and the conditions attendant thereto. Compliance with such rules as determined by the Board is essential to the harmonious operation of the facilities.

Section 12. Additional Rules. Rules and regulations concerning other use of the Condominium property may be made and amended from time to time by the Association or the Board. Copies of such rules and regulations will be furnished to all unit owners and residents of the Condominium, on request.

Section 13. Project Development. The non-commercial portion of this condominium is as a result of a conditional use permit identified as "10-CUP-98, City of Newport, County of Lincoln, State of Oregon, Conditional Use Permit." Said permit is marked Exhibit 1, attached hereto and by this reference incorporated herein.

Section 14. Covenants, Conditions, Restrictions and Easements in Other Documents. In addition to the provisions of the Declaration and Bylaws and any rules or regulations promulgated thereunder, each unit owner in the condominium is subject to covenants, conditions, restrictions, easement, and assessments set forth in the following instruments recorded in the real property records of Lincoln County, Oregon:

a. Easement, including the terms and provisions thereof,
 Granted by: Newport Marine Oreg. Ltd., an Oregon limited partnership, Yaquina Development Corp., an Oregon corporation, Shore Properties Oreg. Ltd., an Oregon limited partnership, Clyde Hamstreet and Rhonda Hamstreet, dba Newport Marine Co.
 To: Newport Marine Oreg. Ltd., an Oregon limited partnership
 Recorded: February 20, 1979 Book: 97 Page: 1194

b. Agreement, including the terms and provisions thereof,
 Recorded: December 23, 1999 Book: 395 Page: 47
 Between: Association of Unit Owners of Embarcadero
 And: Newport Landing, LLC, an Oregon limited liability company, as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.

c. Grant of Easement and Reciprocal Easement, including the terms and provisions thereof,
 Recorded: December 23, 1999 Book: 395 Page: 66
 Between: Newport Landing, LLC, an Oregon limited liability company as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.

And: Association of Unit Owners of Embarcadero

d. The condominium is within the urban renewal boundaries or within the shared area of the City of Newport and is subject to the terms and provisions thereof.

e. Each unit owner in the Condominium is subject to and the Condominium and its unit owners shall enjoy the benefit of the covenants, conditions, restrictions, easements and rights set forth in that certain Special Warranty Deed described as follows:

Recorded: July 1, 1999 Book: 384 Page: 1636
 Between: Clyde A. Hamstreet and Newport Marine Co., an Oregon general partnership consisting of Clyde A. Hamstreet and Rhonda V. Hamstreet, general partners, formerly known as Newport Marine Oreg. Ltd., Grantor
 And: Newport Landing, LLC, an Oregon limited liability company, Grantee

Section 15. Commercial Units. Nothing herein above shall be so construed so as to limit the viable and customary operation of the commercial units for business purposes. This shall include, but not be limited to, the placement of signs identifying the business uses conducted in the commercial units on and about the common elements so long as said signage is aesthetically compatible to the condominium project as a whole and in conformance with the City of Newport's sign code. Commercial uses may be conducted at hours reasonable and prudent to the type of business in each commercial unit without limitation of the condominium association so long as said uses do not become a nuisance or annoyance to the non-commercial unit users.

ARTICLE VIII.

INSURANCE

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

Section 1. Types of Insurance Policies. For the benefit of the Association and the owners, the Board shall obtain and maintain at all times, and shall pay for out of the common expense funds, the following insurance to the extent available at reasonable cost:

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

interior surfaces of the perimeter walls, floors and ceilings of the individual Condominium units initially installed or replacement thereof, in accordance with the original Condominium plans and specifications, or installed by or at the expense of any unit owner or owners.

b. A policy or policies insuring the Association, its Board, the unit owners individually and the manager against any liability to the public or the owners of units and their invitees or tenants, incident to the ownership, supervision, control or use of the project. Limits of liability under such insurance shall be not less than \$1,000,000 per occurrence for bodily injuries and property damage liability. This limit and coverage shall be reviewed at least annually by the Board, which may increase the limit of and/or coverage, in its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsements wherein the rights of the named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

c. Workers' compensation insurance to the extent necessary to comply with any applicable laws.

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

Section 2. Insurance Companies Authorized. All policies shall be written by a company licensed to do business in Oregon and hold a "Commissioner's rating" of "A+" and a size rating of "AAA," or better, by Best's Insurance Reports, or as may be otherwise acceptable to all mortgagees and Directors.

Section 3. Authority to Adjust Losses. All losses under policies hereafter in force regarding the property shall be settled exclusively with the Board or its authorized representative; provided, however, that when a first mortgagee has been designated as a loss payee by a unit owner and the first mortgagee has requested the opportunity to exercise the rights provided by this section, the mortgagee shall be entitled to settle losses as to the mortgaged unit, provided that the loss which occurs is severable. Releases and proofs of loss shall be executed by at least two Directors.

Section 4. Value of Owner Improvements. Each owner must inform the Board of the value of improvements made to his or her unit in excess of \$1,000 so that the Board may make any desired adjustments in insurance coverage. Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the Board pursuant to Article VII.

Section 5. Provisions in Insurance Policies. The Board shall make every effort to secure insurance policies that will provide the following:

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

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

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

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

Section 6. Reconstruction Costs. If the Association is required or elects to reconstruct any of the common elements or units that have been damaged or destroyed, all affected unit owners (i.e., owners whose units or limited common elements have been damaged or destroyed) shall contribute to the Association all amounts received by them from property loss insurance policies to the Association to help pay for the repairs. To the extent such insurance proceeds are unavailable or unpaid when needed, the Association shall assess any owner the amount of the Association's "deductible" under its policy to pay the cost of repairing or reconstructing such owner's unit or limited common elements. The assessment shall be both a personal obligation of the owner and a lien against the owner's unit in the same manner as any other Association assessment.

Section 7. Insurance Deductible/Owner and Tenant Insurance. The Board shall determine the amount of the deductible for property loss insurance policies, as well as other insurance policies required to be procured by the Association under this Article VIII. In determining the deductible under the policies, the Board, among other factors, shall take into consideration the availability, cost and loss experience of the Association. In this regard, as in other Board responsibilities, the Board members shall exercise their reasonable business judgment.

The Association shall have no responsibility to procure or assist in procuring property loss insurance for any owner or tenant for (a) damage to a unit or limited common elements not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not normally covered by fire and property loss insurance policies with extended coverage endorsements); or (b) for any damage or loss to the owner's or tenant's personal property. Owners shall be responsible for purchasing insurance policies insuring their units and appurtenant limited common elements for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage. Tenants shall be responsible for insuring their own personal property for any loss or damage. The Board shall notify all owners of the amount of the deductible under the Association policies. to the extent reasonably practicable, the Board shall give at least 30 days' a notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies owners and tenants of all units shall procure and maintain comprehensive liability policies having combined limits of not less than \$50,000 for each occurrence. Such insurance shall provide coverage for, but not limited to, the negligent acts of the owner and tenant and their guests or

other occupants of the unit for damage to the general and limited common elements and other units and the personal property of others located therein.

Section 8. Review of Insurance Policies. At least annually, the Board shall review all insurance carried by the Association of unit owners, which review shall include a consultation with a representative of the insurance carrier writing the master policy.

ARTICLE IX.

DAMAGE AND DESTRUCTION

Section 1. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty or any other damage and destruction, the insurance proceeds of the master policy, if sufficient to reconstruct the buildings damaged or destroyed, shall be applied to such reconstruction.

Section 2. Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to or destruction of the buildings shall be promptly repaired and restored by the manager or the Board, using the proceeds of insurance, if any, on the buildings for that purpose and all the unit owners shall be liable for assessment for any deficiency for the reconstruction, the deficiency to take into consideration as the owner's contribution any individual policy insurance proceeds provided by such owner; provided, however, that if three-fourths or more in value of all the buildings are destroyed or substantially damaged and if the owners of at least 60% of the units so vote, and on the approval of holders of at least 51% of the mortgages on units in the Condominium, the manager or Board shall record with the county recorder a notice setting forth such facts, and on the recording of such notice:

a. The Condominium property shall be deemed to be owned in common by the owners.

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

c. Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interests of the owners in the project.

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

Section 3. Architectural Changes After Damage or Destruction. Reconstruction of the damaged or destroyed building as used in this article means restoring the buildings to

substantially the same condition in which they existed before the fire, casualty or disaster and shall be performed substantially in accordance with the Declaration and the original plans and specifications unless other action is approved by the holders of at least 51% of the mortgages on units in the Condominium. Such reconstruction shall be accomplished under the direction of the manager or the Board. Notwithstanding all other provisions hereof, the owners may, by an affirmative vote of sufficient owners to amend these Bylaws, cause an amendment to be made to the Condominium documents so as to facilitate architectural changes that the owners affected thereby and the Association deem desirable if, and only if, the partial or total destruction of the Condominium, or any buildings thereof, by fire, casualty or any other disaster is so great as to require the substantial reconstruction of the whole of the Condominium, or the buildings, and on approval by the holders of at least 51% of the mortgagees in the Condominium; provided, however, that any such amendment of such Condominium documents shall be valid only on (1) compliance with all applicable provisions of the Oregon Condominium Act; (2) approval by the Oregon Real Estate commissioner; (3) recording thereof with the recording officer of Lincoln County; and (4) recording with that recording officer of the approval thereof of each mortgagee and each other lienholder of record having a lien against any part of the project or building affected by such amendment.

Section 4. Reallocation of Percentage Interest. In the event of a partial destruction of the Condominium buildings or units therein, the unit owners may not reallocate percentage interest in the common elements without the prior approval of the mortgagees of all the remaining units, whether existing in whole or in part. Any such reallocation shall also comply with the Oregon Condominium Act and other provisions of the Declaration, any applicable supplemental Condominium Declaration and Bylaws.

ARTICLE X.

CONDEMNATION

The Board shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the common elements of the Condominium and shall assist any unit owner whose unit or a part thereof is the subject of any condemnation or eminent domain proceeding; provided, however, that nothing in this or any document or agreement relating to the Condominium shall be construed to give a unit owner or any party priority over the rights of the first mortgagees of any Condominium units in the case of a distribution to the unit owner of any such condemnation awards for losses to or a taking of a unit and/or the common elements. In the event of a taking or acquisition of part or all of the common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, for the use and benefit of the unit owners and their mortgage holders as their interest may appear. The Board shall distribute the proceeds of any such award or settlement on a reasonable and equitable basis among the unit owners.

ARTICLE XI.**AMENDMENTS TO BYLAWS**

These Bylaws may be amended by the owners holding a majority of the total voting rights allocated to the units in a duly constituted meeting or ballot meeting called for such purpose, and no amendment shall take effect unless approved by owners holding a majority of the voting rights as otherwise set forth in the Declaration and any supplemental Condominium Declaration. Any amendments adopted hereby shall be reduced to writing, certified by the chairperson and secretary of the Association to be the amendment adopted by the Association, and the certified amendment shall be recorded in the Deed Records of Lincoln County, Oregon; provided, however, that no amendment of these Bylaws reducing or eliminating the right of any first mortgagee shall be made without the prior written consent of the first mortgagee, and provided further that no amendment of these Bylaws may be made without the consent of Declarant as long as Declarant owns any unit in the condominium, but no such consent shall be required after conveyance to owners other than Declarant of 75% of the units in the Condominium or three years after the first conveyance of a unit in the Condominium, whichever is earlier. Amendments to the Bylaws as it pertains to commercial units are restricted in the Declaration. ANY AMENDMENTS TO THESE BYLAWS MADE WITHIN FIVE YEARS OF THE RECORDING DATE HEREOF MUST BE APPROVED BY THE OREGON REAL ESTATE COMMISSIONER PRIOR TO RECORDING.

ARTICLE XII.**RECORDS AND AUDITS**

Section 1. General Records. The Board and the manager agent or manager, if any, shall keep detailed records of the actions of the Board and the managing agent or manager, minutes of the meetings of the Board and minutes of the meetings of the Association. The Board shall maintain a list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units.

Section 2. Records of Receipts and Expenditures. The Board or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for examination by the unit owners and mortgagees at convenient hours on weekdays.

Section 3. Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. The account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which the assessment comes due, the amounts paid on the account and the balance due on the assessments.

Section 4. Payment of Common Expenses. The Board shall authorize the treasurer, the management agent or another specified party to pay all legitimate expenses of the

Association. The payments shall be made pursuant to the payment system instituted by the Board as described in Article IV, Section 3.d. of these Bylaws.

Section 5. Reports and Audits. The Board shall prepare or cause to be prepared an annual report of the receipts and expenditures of the Association and a balance sheet and income and expense statement setting forth the financial condition of the Association as at the end of each year. The report shall be prepared according to generally accepted accounting procedures and shall be distributed to all unit owners and to all mortgagees of units within 90 days after the end of each fiscal year. At any time any owner or mortgagee may, at his or her own expense, cause an audit or inspection to be made of the books and records of the Association.

Section 6. Notice of Sale, Mortgage, Rental or Lease. Immediately upon the sale, mortgage, rental or lease of any unit, the unit owner shall promptly inform the secretary or manager of the name and address of such vendee, mortgagee, lessee or tenant.

Section 7. Annual Report.; The Board shall cause an annual report, including any amendments, to be filed with the Oregon Real Estate Agency pursuant to ORS 100.250.

ARTICLE XIII.

COMPLIANCE

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

ARTICLE XIV.

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

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

opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that the person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right of contribution over and against all other directors, officers, employees or agents and members of the Association who participated with or benefited from the acts that created the liability.

ARTICLE XV.

ASSESSMENT COLLECTION COSTS; SUITS AND ACTIONS

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

ARTICLE XVI.

MISCELLANEOUS

Section 1. Notices. All notices to the Association or to the Board shall be sent in care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time. All notices to any unit owner shall be sent to such address as may have been designated by him or her from time to time, in writing, to the Board, or if no address has been designated, then to the owner's unit.

Section 2. Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may occur.

Section 3. Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used here, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

It is hereby certified that these Bylaws have been adopted by Bayfront, L.L.C., an Oregon limited liability company, Declarant of "The Landing at Newport" Condominiums and

will be recorded in the Deed Records of Lincoln County, together with the Declaration, after the Declaration and Bylaws are approved by the assessor that county.

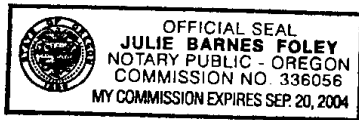
DATED this 16th day of ^{October}~~June~~, 2000.

BAYFRONT, L.L.C., an Oregon
limited liability company

By: *Robert P. Wright*
Robert P. Wright, Manager

STATE OF OREGON)
) ss.
County of Lincoln)

On the 16th day of ^{October}~~June~~, 2000, the above-named Robert P. Wright in his capacity as Manager of Bayfront, L.L.C. personally appeared and acknowledged the foregoing instrument to be the company's voluntary act and deed.



Julie Barnes Foley
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9-20-04

BEFORE THE PLANNING COMMISSION OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON

IN THE MATTER OF PLANNING COMMISSION FILE 10-CUP-98)
APPLICATION FOR A CONDITIONAL USE PERMIT) FINAL ORDER
AS SUBMITTED BY WRIGHT & ASSOC. AND MROCZEK)
COASTAL PROPERTIES)

ORDER approving a request for a conditional use permit to allow a 54-unit condominium/motel in the City of Newport within a W-2/Water Related zoning district.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request for a conditional use permit, with a public hearing a matter of record of the Planning Commission on; and
- 3.) At the public hearing on said application, the Planning Commission received evidence and recommendations from the applicant, interested persons, and Planning Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, granted the request for a conditional use permit.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A" (applicant's findings) and Exhibit "B" (staff report), support the approval of the request for a conditional use permit with the following conditions:

- 1. There shall be an agreement between the Embarcadero Unit Owners Association and the applicant that will address the needs of the Embarcadero (an easement of the applicant's property for access to Docks D & E, reciprocal easements for driveways, utility easements, construction of new restrooms to replace the ones lost, access to Docks D and E over the fuel docks and provide a mechanism to allow the Embarcadero and marina owners use of the applicant's parking). The applicant shall submit a letter from the Embarcadero Unit Owners Association advising that an agreement has been reached. Such agreement shall be reviewed by the City Attorney.

EXHIBIT 7
PAGE 1

2. Signage shall be subject to review and approval by the Planning Department for its conformance to standards reflective of the unique and historic character of the Bay Front. Signs shall be made of wood or a material that simulates wood. Said sign(s) shall not be internally illuminated and shall conform to standards consistent with the purpose and intent of the Sign Ordinance (No. 1330, as amended).

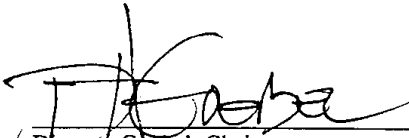
3. Consistent with Section 2-5-3.025/"Time Limit on a Conditional Use Permit of the Zoning Ordinance (No. 1308, as amended), in the event the proposed use is not established within 18 months after the date the final order is signed, this approval shall become void.

4. Any agreement made as a result of the first condition shall be recorded on the applicant's property, shall run with the land and shall be a perpetual encumbrance on that property.

5. The project shall be built in substantial conformance to the colored plans presented at the hearing and labeled Exhibit C, save and except for refinement of exterior building surfaces and aesthetic design differences as explained by applicant.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a conditional use permit is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 8 day of MAY, 1999.


Dietmar Goebel, Chairman
Newport Planning Commission

Attest:

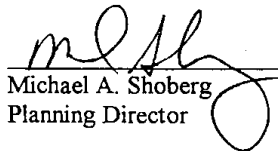

Michael A. Shoberg
Planning Director

Exhibit "A"
Findings of Fact

Nature of the Request

The applicants requested conditional use approval to allow a 54-unit condominium/motel in the City of Newport within a W-2/"Water-related" zoning district. This is a conditional use request in the City of Newport Zoning Ordinance.

Initially, the applicants requested a height variance for the condominiums and a variance to allow a residential use on the ground floor of a building within the W-2/"Water Related" zone. However, both variance requests were withdrawn by the applicants' agent prior to the hearing. As a result the applicants request was simply for the above-described conditional use request for the 54-unit condominium/motel.

Relevant Criteria

NZO 2-2-1.040.(20) Water-dependent and Water-related Uses.

NZO 2-3-5. Table of Standards.

NZO 2-3-6. Parking, Loading & Access Requirements.

(48) Motel.

NZO 2-3-6.020. Parking Requirements for Uses Not Specified.

NZO 2-3-6.025. Disabled Person Requirements.

NZO 2-3-6.030. Compact Spaces.

NZO 2-4-1. Residential Uses in Non-Residential Zoning Districts.

NZO 2-4-5. Landscaping Requirement.

NZO 2-5-3.015. Conditional Uses. Type I Decisions.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision:

1. The City of Newport Comprehensive Plan designates the subject property as "Shoreland".
2. The site is zoned W-2/"Water Related".
3. The subject property is located adjacent to the Embarcadero Resort on the bay front on Bay Boulevard.

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4. The site is bordered by the Embarcadero marina and Yaquina Bay to the southwest; the Embarcadero Resort Hotel to the east; Englund Marine and port docks to the west; and residential uses to the north.
5. The subject property is situated in a developed location that is flat and paved. There is little vegetation.
6. All public utilities are available to the property, subject to certain extensions of some utilities.
7. There are currently a bait shop/charter boat rental office, cafe', boardwalk, and the Nautamatic Marine Facility on the subject property.
8. The current City of Newport Zoning Ordinance (No. 1308 as amended) is by reference incorporated into the record herein.
9. The staff report is by reference incorporated into the record herein.
10. The application is by reference incorporated into the record herein.
11. The application includes the following:

a. Project Description: Applicants wish to operate the proposed development primarily as a condominium/motel. The applicants plan to build two high quality, three-story buildings with a total of 54 condominium/motel units. Additionally, there will be one manager's unit, an office for the condominiums, and a charter boat office/bait shop/store. The charter boat operation will be relocated on-site. The fuel dock will be properly decommissioned. Nautamatic Marine will be relocated off-site. The Boardwalk Café will close permanently or relocate off-site.

All 54 condominium/motel units will be handicapped accessible via elevators, wide walks, and ramps. These handicapped accessible units will complement the existing Embarcadero units which are not designed for handicapped access. Of the 54 proposed units, 15 will be "A" units and designed with 2 bedrooms and 1 bath (864 sq. ft. each); and 39 will be "B" units with 1 bedroom and 1 bath (765 sq. ft. each). The manager's unit will have 2 bedrooms and 2 baths (1,047 sq. ft). The rental office will be on the first floor and will be 483 sq. ft. Covenants, codes and restrictions are not available at this time but will be recorded for the final project.

In terms of visual layout, the project is designed with three floors and a basement. The basement floor will hold parking beneath the condominium units and the storage area for the charter boat office. The first floor is designed to hold a variety of uses including the existing boardwalk, the relocated charter boat office/store, the

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condominium rental office, an open plaza, decks, and condominium/motel units. The second floor has the manager's unit above the office and condominiums. The third floor will hold condominiums only. The existing boardwalk will continue to be retained and owned and managed by the Embarcadero Homeowner's Association.

Up to 15 of the condominiums will be used as private residences. These will all be on the second and third floors. The remaining units will be managed in a condominium/motel rental pool.

b. Access: The subject property will be accessed directly from Bay Boulevard.

c. Lot Coverage: The projected lot coverage from structures will only be 47%. The property will be well-landscaped, similar to that shown in the colored renderings entered as Exhibit C.

d. Parking: Parking will be available adjacent to and below the condominiums. Parking will meet requirements for a condominium/motel with 15 residences and 39 commercial condominiums. There are 65 parking stalls provided of which 4 will be for handicapped accessible use, 18 will be compact stalls and the remaining regular stalls. The NZO off-street parking requirement for a motel use is 55 spaces including one for the manager. Two spaces will also be required for the charter boat office/bait store. The parking requirement for the residential condominiums is 1.5 spaces per unit.

f. Building Height: The variance requested for the condominiums was withdrawn. As a result, they will be built within the 35' height limitation stated in the City of Newport Zoning Ordinance.

g. Application Materials: The applicants submitted written narrative with a series of exhibits including a site plan, illustrated site plan/rendering, A list of names and addresses of property owners within the 200 foot notification area was also submitted.

12. A public hearing was held before the City of Newport Planning Commission on February 8, 1999. Deliberations were held on the conditional use request by the Planning Commission on February 22, 1999. All interested parties were given an opportunity to testify.
13. Commissioner Michael Shulz excused himself from the public hearing and deliberations because he had a conflict of interest due to his ownership of one of the boat slips in the Embarcadero Marina.

14. Mr. Michael Shoberg, Planning Director, City of Newport, stated the applicable criteria for the request and outlined the rights of people participating in the public hearing. Mr. Shoberg gave an oral summary of the staff report for the request. He then asked the Planning Commission for any questions.
15. The applicants and their representatives presented testimony on behalf of the request. Mr. Kurt Carstens, 407 N. Coast Hwy. Newport, Oregon, agent for the applicant, described the project request in detail and how the proposal complied with the applicable criteria. He explained the history of the property and how it relates to the current request. Mr. Carstens reminded the Planning Commission of their recent approval of the draft Bay Front Plan and explained how the applicants' proposal coincided with elements of that plan particularly allowing the Embarcadero area to site other than water-related uses. Mr. Carstens explained the decline in fishing and the resultant change in the character and uses of the bay front. The decline in fishing results in less need for water-dependent (W-1) and water-related land (W-2).
16. The applicants' representative explained the design and concept of the proposed hotel and condominiums with respect to the site's suitability for the proposed use and compatibility with surrounding land uses. A history of the site including the Embarcadero development was explained. Mr. Carstens emphasized each of the applicable criteria and explained why the proposed project was in compliance.

Mr. Carstens explained that he and the applicants had met with representatives of the Embarcadero to solve some of the concerns which had been raised. As a result, the applicants will, at their expense, build on Embarcadero property, new restrooms, garbage area, and oil recycling area to be owned and used by the Embarcadero and the moorage owners.
17. The Planning Commission questioned the proposed density of the project and how it was calculated. Ms. Dawn Pavitt, 407 N. Coast Hwy. Newport, Oregon, explained that the fuel dock was not included in any density calculations. The density was calculated based on the 45,000+ square feet shown on the site plan.

At the meeting on February 8, 1999 the Planning Commission questioned whether or not the proposed project would meet the densities listed in the NZO "Table A" for motels and residences in the R-4 zone. However, Mr. Michael Shoberg, Planning Director reviewed the matter, and recommended to the Planning Commission in a memorandum that was reviewed at the February 22, 1999 meeting that those density requirements do not apply to commercial uses in the W-2 zone.
18. Other proponents spoke in favor of the proposal including Ms. Rhonda Hamstreet, one of the owners of the subject property, and co-developer of the Embarcadero

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Resort. She gave some history about the Embarcadero development and the prospectus agreement signed by every purchaser of a unit or boat slip which acknowledges that the subject property might be sold at some time and not be available for long-term Embarcadero parking. Ms. Hamstreet also testified about the local economic need for the project with the decline of the salmon harvest.

19. Letters evidencing support for the project are included in the record.
20. Opponents of the project then spoke about their concerns regarding the proposal. Those concerns included:
 - a. The proposed design does not consider the effects of high winds.
 - b. The project is within and subject to Estuarine Management Unit 5.
 - c. There is no legal access to the underground parking.
 - d. The height variance is not necessary and should not be allowed.
 - e. There is a shortage of W-2 property and it should be retained for strictly water-related uses.
 - f. The density limitations for the R-4 zone should be observed for the W-2 zone.
 - g. The separated yard buffer needs to be designed in to the project.
 - h. Loading and unloading areas should be designated on-site.
 - i. A variance should not be allowed for street-level residential condominiums.
 - j. The view obstruction should be considered.
 - k. Access should be re-aligned to be directly across from John Moore Road.
 - l. Residences are not allowed in the W-2 zone.
 - m. Policy 7 - Comprehensive Plan policies are not review criteria.
 - n. Handicap accessibility is not designed to code.
 - o. An easement is necessary for access to Docks D and E.
 - p. Parking for the charter office should be six rather than two spaces.
21. The applicants' representative testified that opposition testimony on record is supposition testimony and that no factual evidence had been submitted demonstrating that the proposed use is incompatible with existing and projected uses on surrounding lands or does not meet the applicable criteria. Mr. Carstens explained that the property is not within Management Unit 5 because that controls in-water development for the estuary, not upland development. Mr. Carstens also explained the parking calculation in detail. Some discussion occurred between the Commissioners and Mr. Carstens regarding required landscaping and the location of the necessary separated yard buffer.

Planning Commissioners asked staff, the applicant, applicants' agent and the opponents a variety of questions about the proposed project. Additional testimony is of record in the minutes for the Planning Commission.

22. Rebuttal was offered to the opposition's concerns by the applicants' agent and planning staff as follows:

a. The proposed design does not consider the effects of high winds.

This will be addressed in final design and be reviewed by the city's building official.

b. The project is within and subject to Estuarine Management Unit 5.

Much discussion and evidence was submitted regarding this concern. The applicant and the Planning Director testified that the intent of the Yaquina Bay Estuary Plan was to manage in-water development such as dolphins, piers and pilings - not upland development.

c. There is no legal access to the underground parking.

There is direct access from the subject property to Bay Boulevard with easements which provide access to the underground parking area. A copy of the recorded easements were submitted to the record.

d. The height variance is not necessary and should not be allowed.

The request for a height variance was withdrawn.

e. There is a shortage of W-2 property and it should be retained for strictly water-related uses.

The applicants' submitted into the record the draft Bay Front Plan which had been recently approved by the Planning Commission. It supports rezoning the Embarcadero property from W-2 to C-2 because of the surplus W-2 land. Additional testimony was given by bay front operators regarding the poor salmon harvest and the impact on businesses, causing a surplus of W-2 land.

f. The density limitations for the R-4 zone should be observed for the W-2 zone.

Both staff and the applicant submitted information stating that the density requirements in the R-4 zone do not apply to W-2 zoned property in commercial use. There is no density limit to motel units in the non-residential zones. Density is regulated in those non-residential zones by parking requirements.

g. The separated yard buffer needs to be designed in to the project.

The applicant stated that he would provide the required 10' wide separated yard buffer.

h. Loading and unloading areas should be designated on-site.

The Planning Commission has previously determined that there is no requirement necessary for a separate loading/unloading space for motels.

i. A variance should not be allowed for street-level residential condominiums.

The variance request was withdrawn.

j. The view obstruction should be considered.

The request for a height variance was withdrawn. There are no protected views within the city of Newport. The applicant proposes to build within the 35' height limit.

k. Access should be re-aligned to be directly across from John Moore Road.

Todd Mobley, Traffic Engineer, assessed this suggestion and recommended the intersection remain unchanged.

l. Residences are not allowed in the W-2 zone.

Residences are conditionally allowed in the W-2 zone per NZO 2-2-1.040 (18) and NZO 2-2-1.035 (Group 88)(881).

m. Policy 7 - Comprehensive Plan policies are not review criteria.

The City Council has determined that Comprehensive Plan policies cannot be used as review criteria.

n. Handicap accessibility is not designed to code.

The building official will review the plans for compliance with handicapped accessible standards.

o. An easement is necessary for access to Docks D and E.

The applicants will sign an agreement with the representatives of the Embarcadero unit owners which will provide for access to Docks D and E.

p. Parking for the charter office/ bait shop should be six rather than two spaces.

The office space/bait shop is actually only 483 square feet. The remaining 483 square feet is storage. It is not reasonable to require double-counting of the parking requirements for the same space.

23. After applicants' rebuttal, the Planning Commission decided to leave the record open for 7 days to allow the opponents time to address the new evidence. The applicants would then be allowed to rebut those arguments at the Planning Commission meeting on February 22, 1999.
24. Rebuttal information was submitted by Mr. Ullrey and Mr. Arakawa in opposition to the proposal and by Mr. Carstens in support. The topics covered are included in the

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above-described list of issues (Point 20). Mr. Shoberg, City Planning Director, also wrote a memorandum regarding the inapplicability of the density criteria in the R-4 zone to this project in the W-2 zone.

25. The Planning Commission then closed the public hearing and deliberated.

Findings and Conclusions

The Commission finds:

1. The subject property is land zoned W-2 where condominium motels and residences are conditionally allowed.
2. The applicants have provided sufficient parking for the proposed development. However, since parking could be a problem, any agreement between the Embarcadero and the applicants should include the right for the Embarcadero and marina users to use the parking associated with the Villa by the Bay project. A specific issue raised was the parking for the charter office/bait shop. An opponent calculated that the number of parking spaces needed for that facility was six because of the office use ($950 \pm$ square feet divided by 600 square feet, the parking ratio for offices equals two) and the retail use ($950 \pm$ square feet divided by 300 square feet, the parking ratio for retail, equals four). As explained in the staff memo, this is double counting the parking requirement and is an error in calculation. The actual parking required is two based on the office calculations.
3. An issue concerning the buildings' ability to handle wind loads and the effects of wind on the surrounding property was raised. The Uniform Building Code (UBC) deals with wind loads and the project will be reviewed by the City's plans examiner to make sure the structure complies with those requirements. There was no evidence in the record that would indicate that the proposed development would have any unusual wind patterns as a result of construction. The impact from wind is therefore a moot point.
4. The subject property is not in Management Unit 5 (MU5). The Comprehensive Plan, the Port Plan, as referenced in the Comprehensive Plan and the Zoning Ordinance all deal with development within the boundaries of various management units. Those documents contain descriptions of the various units and prescribe procedural requirements for development within the units. An argument was raised that the subject property is in MU5 and therefore subject to the requirements contained in the Zoning Ordinance. After input from staff and the applicant, the Commission determines that the property is not in MU5 for the following reasons:

A. The management unit program deals with estuary development. Since the entire project is on upland and not in the water, the MU5 does not apply.

B. The Comprehensive Plan and the Port Plan refer to various portions of the Bay that do include uplands but only in very specific instances. The description referred to in one of the opponent's letters states that MU5 consists of the area along the north shore of the bay from the bridge to McLean Point. That referral goes on to state that the unit is used extensively for shallow and medium draft navigation, moorage of small and large boats, and recreation.

Those definitions obviously refer to the estuary in that it refers to areas along the north shore of the bay, not the uplands adjacent to the bay and lists a number of uses that imply water use such as moorage and navigation.

C. A reference was made that the Port Plan, a part of the Comprehensive Plan by reference, included the subject property because, again, the definitions included the Embarcadero property. This is not correct. The sections of the Port Plan that the opponent referred to described that portion of the bay and adjacent uplands bayward of Bay Boulevard between Port Dock 5 and the Embarcadero and from the Embarcadero to McLean Point. The description does not include the subject property and the Embarcadero property. The maps associated with those descriptions clearly exclude those properties.

5. Access to parking on the subject property is from a public street as required by ordinance. The ordinance does not require that all parking be available from a street so an easement to access the underground parking does comply with the requirement.
6. All variance requests have been withdrawn so any objection to the variances is moot.
7. A shortage of W-2/"Water-Related" property was raised but no supporting data was included in that objection. Considering the amount of property located on the adjacent property which is owned by the Port of Newport terminal area (over 40 acres), and considering the amount of property that has been used for water-dependent development in the past few years (only the fish meal plant which used about 2 acres), it does not appear that there is a shortage of water-related or dependent property. This does not include additional land in South Beach where exact acreage is unknown at this time.

8. Density limitations do apply to the residential portion of the project (15 residential units at 1,250 square feet of lot per unit for a total of 18,750 square feet) but does not apply to the motel/hotel portion of the project. The density limitation of one motel/hotel unit per 750 square feet only applies to R-4/High Density Multi-Family Residential zoned land so, since the property is zoned W-2/"Water-Related", those density requirements are moot. The only limitation on the number of motel/hotel units is development limitations such as setbacks, height, lot coverage and parking. The plan submitted complies with all of those requirements so the density issue has been addressed.
9. Separated yard buffer along the Bay Boulevard of 10 feet will be provided since no variance to the standard was requested.
10. The Zoning Ordinance requires that uses that normally require the interurban transport of goods must have a loading and unloading space. The City does not require such a space for motels and hotels so that requirement does not apply.
11. The building will meet height requirement so view protection is not an issue.
12. The applicants supplied a report from a traffic engineer with Lancaster Engineering stating that realigning the driveway with John Moore Road was not a good idea, so that will not be a condition of approval.
13. Residences in a W-2/"Water-Related" zone are allowed per Section 2-2-1.040(20) of the Newport Zoning Ordinance.
14. Comprehensive Plan goals and policies are not review criteria based on an interpretation of the City Council in the South Shore project annexation. Therefore, any objection to the project because of a Comprehensive Plan policy is not valid.
15. Handicap accessibility is a UBC issue and will be addressed during plan review. The applicant has supplied the required handicapped parking stalls.

Case File: #10-CUP-98.
Date Filed: November 17, 1998.
Hearing Date: December 14, 1998/Planning Commission

PLANNING STAFF REPORT

- A. **APPLICANT:** Wright & Associates Development Company and Mroczek Coastal Properties, LLC.(Kurt Carstens, Authorized Agent).
- B. **REQUEST:** Consideration of the following land use actions in a W-2/"Water Related Multi-Family Residential" zoning district: (1) Approval of a conditional use permit to allow for the construction and use of a 54-unit condominium/motel complex, as provided by Section 2-2-1.040(18) and Section 2-5-3.015 of the Zoning Ordinance; (2) approval of a variance per Section 2-5-2.025 of the Zoning Ordinance, allowing the height of the proposed building to exceed the standard 35-foot building height limitation by 3.5 feet; and (3) approval of a variance per Section 2-5-2.025 of the Zoning Ordinance, allowing for the use of a residential unit on the ground floor in the W-2 zone.
- C. **LOCATION:** West and southwest of the Embarcadero on SE Bay Boulevard (Lincoln County Assessor's Tax Map 11-11-9CB, Tax Lots 103, 104, and 80233).
- D. **LOT SIZE:** 65,495 ± square feet.
- F. **STAFF REPORT**

1. **REPORT OF FACT**

- a. **Plan Designation:** Shoreland.
- b. **Zone Designation:** W-2/"Water Related."
- c. **Surrounding Land Uses:** To the east is the Embarcadero Resort Hotel; to the southwest and south are the Yaquina Bay and marina; to the west is the Englund Marine Supply Store; and to the north (across SE Bay Boulevard) are residential uses.
- d. **Topography and Vegetation:** The subject property is flat with very little vegetation.
- e. **Existing Structures:** Bait shop, Boardwalk Café, Nautamatic Marine Facility, fuel dock and the boardwalk.
- f. **Utilities:** All are available to the site.

EXHIBIT 1
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- g. **Development Constraints:** Portions of the subject property are within an area designated by the Federal Emergency Management Agency (FEMA) as an "A2" zone with base flood elevation of 9 feet, which requires certain development limitations and standards.
- h. **Past Land Use Actions:** None known.

2. **Explanation of the Request:** See Nature of the Request below (under "Staff Analysis" and page 1 of the Applicant's Findings (Exhibit "A")).

3. **Evaluation of the Request:**

- a. **Agency Comments:** (All affected city departments and public utilities were notified on November 19, 1998). To date, we received only one response, which was a "no comment" response from the Public Works/Engineering Department.
- b. **Applicable Criteria (Section 2-5-3.015 & Section 2-5-2.025):**

Conditional Use Permit: The public facilities can adequately accommodate the proposed use; the request complies with any special requirements of the underlying or overlay zone; the proposed use does not have an adverse impact, or impacts can be ameliorated through conditions; and the proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

Variance: That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulties; that granting the variance will not be materially injurious to the neighborhood in which the property is located; that the request is the minimum variance necessary to alleviate the practical difficulty; that the request is not in conflict with the intent and purpose of this Ordinance, the Comprehensive Plan, or any other applicable ordinance or plan.

In evaluating a particular request, the Planning Commission shall consider the following, together with any other relevant facts or circumstances:

- (1) Relevant factors, over which the applicant has no control and are not self-imposed, to be considered in determining whether a practical difficulty exists include:

EXHIBIT 1
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(a) Physical circumstances (i.e., lot size, lot shape, topography, etc.) related to the piece of property involved.

(b) Whether a use similar to like properties can be made of the property without the variance.

(c) The private burden to be borne by the applicant if the ordinance is literally applied.

(2) Relevant factors to be considered in determining whether or not development consistent with the request is injurious include:

(a) The physical impacts if the variance is granted (such as noise, traffic, and the increased potential for drainage, erosion, and landslide hazards) on the surrounding neighborhood.

c. Staff Analysis:

Nature of the Request:

The applicants propose to develop a 54-unit condominium/motel complex in a W-2 zone. Pursuant to Section 2-2-1.040(18)/"Water-dependent and Water-related Uses" of the Zoning Ordinance, uses permitted outright in a C-2/"Tourist Commercial" zone (such as motels and hotels) require approved conditional use permits to be located in a W-2 zone.

Also, pursuant to Section 2-3-1.005/"Height Limitations" and Table "A" of the Zoning Ordinance, the maximum building height in the W-2 zone is 35 feet. The applicants wish to construct a building that will exceed the height limitation by 3.5 feet. Consequently, a height variance is required for the proposed structure.

Furthermore, pursuant to Section 2-2-1.040(20) of the Zoning Ordinance, residences may be allowed as a conditional use on floors other than the ground floor in W-2 zones. However, the applicants are seeking a variance to be allowed to locate a residence on the ground floor of the proposed building.

Analysis:

The applicants have furnished detailed findings of fact (Exhibit "A") meticulously addressing the criteria which have been established in the Zoning Ordinance for approving the requested land use actions. Pages 1 and 2 of the applicant's findings (Exhibit "A") describe the proposed development in details.

EXHIBIT 1
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The Planning Commission must determine whether the request meets the following standards for approving proposed land use actions:

Conditional Use Permit

- (1) The public facilities can adequately accommodate the proposed use.

Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All those facilities are available to the site. The Public Works/Engineering Department has been notified about the proposed action. But, at the time of this report, we have received only a "no comment" response from that department, and, there is no indication that the existing public facilities cannot adequately accommodate the proposed use.

- (2) The request complies with any special requirements of the underlying or overlay zone.

Page 3 of the applicant's findings (Exhibit "A") have addressed this criterion.

The Bayfront contains a mix of water-dependent, water-related and tourist commercial uses and the Newport Comprehensive Plan acknowledge (on page 230) the existence of conflicts or potential for conflicts between tourist-commercial businesses and water-related or water-dependent businesses as they compete for available space and other use conflicts, such as traffic and parking

The main issues regarding any development on the Bayfront relate to availability of parking, circulation, and signing.

Parking

The parking requirement for the proposed 54-unit motel use is 55 parking spaces (at the rate of one space per unit plus one space for the manager). The parking requirement for the proposed 483-square-foot charter boat office/bait store is two spaces. Therefore, the total required on-site parking for the entire project is 57 spaces. However, the applicants propose to provide 65 parking spaces on the basement floor the condominium units -- exceeding the required parking by nine spaces.

Signing

The Bayfront is considered historic and unique, thereby, requiring the preservation and enhancement of its characteristics [See Section 2-2-1.020(W-2/"Water-Related")(B) of the Zoning Ordinance]. Signing is an important issue in maintaining the uniqueness and scenic quality of the area.

The city's policy regarding signing for commercial use on the Bayfront has been to review and approve sign plans, on a case-by-case basis, for their conformance to standards reflective of the unique and historic character of the Bayfront. Consequently, a condition of approval has been recommended below to that effect.

Portions of the subject property are within an area designated by the Federal Emergency Management Agency (FEMA) as in the "A2"-zone, which requires certain building restrictions to ensure that the lowest habitable floor elevation is above the specified elevations shown on the Flood Insurance Rate Map (FIRM).

However, the reviews of construction plans to assure compliance with those standards are ministerial in nature and are therefore more appropriate at the time of building permit application.

- (3) The proposed use does not have an adverse impact, or impacts can be ameliorated through conditions.

As defined in the Zoning Ordinance, "impacts" are the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. This criterion relates to the issue of whether or not the proposed use has potential for such adverse impacts, and, if there are potentials for such impacts, whether the Planning Commission may want to attach conditions to ameliorate those adverse impacts.

See pages 3 through 4 of the applicant's findings (Exhibit "A") for the applicant's arguments which meticulously address this criterion.

In any case, notices were mailed to affected property owners within 200 feet of the subject property and to affected city departments and public utilities on November 19, 1998, and, at the time of this report, we have received two letters from affected property owners Donald S. Moir and Peter L. Powers, both of whom expressed opposition to the request. (See Exhibit "C" for Moir's letter dated November 23, 1998, and Powers' letter dated December 1, 1998).

The letters raised issues such as strict compliance to established zoning standards, view protection, geologic problems, preservation of the existing boardwalk, traffic safety and inadequacy of parking, for the proposed use.

However, as indicated above, the applicants propose to install 65 parking spaces, which exceed the required parking spaces by nine spaces. About 52 of the spaces will be located on the basement floor beneath the condominium units, and about 13 of the spaces will be located in the proposed parking lot adjacent

to the right-of-way of SE Bay Boulevard.

- (4) The proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

Currently, the city does not have design criteria or guidelines in this zoning district in terms of color, material and form. Therefore, the building size and height are the main concern.

Pages 4 and 5 of the applicants' findings (Exhibit "A") describe how the proposed use is consistent with the overall development character of the neighborhood, especially with the Embarcadero Resort complex, which is adjacent to the proposed site.

The Zoning Ordinance states that in a W-2 zoning district, maximum building height is 35 feet and the lot coverage is between 85% and 90%. The proposed lot coverage for this development is only 47%.

However, the average building height for the proposed building is 38.5 feet, which exceeds the maximum height limit in the W-2 zone by 3.5 feet. Therefore, the applicants are requesting a height variance for the structure.

Furthermore, as indicated above, the applicants are also seeking a variance to be allowed to locate a residence on the ground floor of the proposed building.

Variance

In order to grant the two variances, the Planning Commission must review the application to determine whether they meet the following criteria:

1. That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulties.

This criterion relates to conditions inherent in the property that would result in practical difficulties or unreasonable hardship if a strict or literal interpretation and enforcement of the specified requirement are applied.

The applicants' arguments addressing this criterion can be found on page 5 of the applicant's findings of fact (Exhibit "A").

2. That granting the variance will not be materially injurious to the neighborhood in which the property is located.

Usually, the burden is on the applicant to prove that granting the variance will not be materially injurious to the neighborhood in which the subject property is located.

See pages 5 and 6 of the applicant's findings (Exhibit "A") for the arguments addressing this criterion.

In any event, notices of the proposed action were sent on November 19, 1998, to affected property owners within 200 feet of the subject property, affected public utilities within Lincoln County, and affected state agencies and city departments. The notice contained the criteria for which the request for the variance is to be assessed. As indicated above, at the time of this report, we have received letters from two affected property owners expressing opposition to the request.

3. That the request is the minimum variance necessary to alleviate the practical difficulty.

The burden is on the applicant to demonstrate that without the requested variance, there is no other alternative for him to build the proposed structure.

See page 6 of the applicant's findings (Exhibit "A") for the arguments addressing this criterion.

4. That the request is not in conflict with the intent and purpose of this Ordinance, the Comprehensive Plan, or any other applicable ordinance or plan.

The Comprehensive Plan designation for the subject property is "Shoreland" and the zoning designation is W-2/"Water Related." Hotels and motels are permitted in the W-2 zone as conditional uses. Also, residences on floors other than ground floors are permitted as conditional uses.

On page 6 of Exhibit "A," the applicants have addressed the issues pertaining to the Comprehensive and Zoning Ordinance designations for the subject property. Therefore, if the Planning Commission concurs with the applicants' findings on these issues, and the request meets the rest of the criteria established for granting a variance, then the request will be consistent with the Comprehensive Plan's goals and policies.

In evaluating a particular request, the Planning Commission shall consider the following, together with other relevant facts or circumstances:

EXHIBIT 1
PAGE 19

(1) Relevant factors, over which the applicant has no control and are not self-imposed, to be considered in determining whether a practical difficulty exists include:

(a) Physical circumstances (i.e., lot size, lot shape, topography, etc.) related to the piece of property involved.

This criterion relates to physical circumstances that are inherent to the land of which the applicant has no control over.

(b) Whether a use similar to like properties can be made of the property without the variance.

This criterion relates to the issue of whether the variance is justified because there are special physical conditions inherent to the subject property, which is distinguishable from the other properties, but, deprive it of its full utilization as enjoyed by the other similar properties in the city.

(c) The private burden to be borne by the applicant if the ordinance is literally applied.

The burden is on the applicant to prove that if the ordinance is literally applied, it would result in unreasonable hardship.

(2) Relevant factors to be considered in determining whether or not development consistent with the request is injurious include:

(a) The physical impacts if the variance is granted (such as noise, traffic, and the increased potential for drainage, erosion, and landslide hazards) on the surrounding neighborhood.

This criterion relates to physical impact on the neighborhood as the result of the requested variances, and, the applicants have meticulously addressed this criterion on pages 3 and 4 of Exhibit "A."

4. **Conclusion:** If the Planning Commission finds that the applicants have met the criteria established in the Zoning Ordinance for granting the requested approvals, then you should adopt the applicant's findings (Exhibit "A") and approve the request. As always, you could attach any reasonable conditions of approval which you believe are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If, on the other hand, you find that the request does not comply with the criteria, then you should make findings for denial.

EXHIBIT 1
PAGE 22

A final order reflecting your decision will be brought back to you at your next meeting.

G. **STAFF RECOMMENDATION:** If you decide to approve the request, you may want to consider attaching any reasonable conditions of approval which you believe are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan, such as the recommended conditions of approval:

- > Signage shall be subject to review and approval by the Planning Department for its conformance to standards reflective of the unique and historic character of the Bayfront. Signs shall be made of wood or a material that simulates wood. Said sign(s) shall not be internally illuminated and shall conform to standards consistent with the purpose and intent of the Sign Ordinance (No. 1330, as amended).
- > Consistent with Section 2-5-3.025/"Time Limit on a Conditional Use Permit" of the Zoning Ordinance (No. 1308, as amended), in the event the proposed use is not established within eighteen (18) months after the date the final order is signed, this approval shall become void.
- > Consistent with Section 2-5-2.025(G)/"Time Limit on a Permit for a Variance" of the Zoning Ordinance (No. 1308, as amended), authorization of a Type I Variance shall be void after 18 months unless substantial construction has taken place.

Victor Mettle
Code Administrator/Planner
City of Newport
December 7, 1998

STATE OF OREGON } ss.
 County of Lincoln
 I, Dana W. Jenkins, County Clerk, in and for said county, do hereby
 certify that the within instrument was received for record, and
 recorded in the Book of Records of said county at Newport, Oregon.
 Book 414 Page 2079
 WITNESS my hand and seal of said office affixed.

[Signature]
 DANA W. JENKINS, Lincoln County Clerk

Doc : 6238467
 Rect: 107416 261.00
 02/05/2001 04:31:57pm




EXHIBIT 1
PAGE 21

WHEN RECORDED PLEASE RETURN TO:

Harry E. McCoy II
 Ballard Spahr Andrews & Ingersoll, LLP
 One Utah Center, Suite 600
 201 South Main Street
 Salt Lake City, UT 84111

**FIRST AMENDMENT TO
 DECLARATION OF CONDOMINIUM OWNERSHIP
 FOR
 THE LANDING AT NEWPORT CONDOMINIUMS**

This First Amendment to Declaration of Condominium for The Landing at Newport Condominiums ("First Amendment") is dated as of JUNE 28, 2001.

A. The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation ("Association") is the association of condominium unit owners at The Landing at Newport Condominiums located in Lincoln County, Oregon (the "Condominium") located on the real property described in Exhibit "A" attached hereto.

B. The Condominium has been subjected to a Declaration of Condominium Ownership for The Landing at Newport Condominiums, recorded February 5, 2001 as Doc. No. 6238466, Rect. No. 107416, in Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Declaration") and a Plat recorded February 5, 2001 in Book 1, at Pages 147-147G, Condominium Plat Records of Lincoln County, Oregon (the "Plat"). Capitalized terms used herein and not otherwise defined shall have the meaning attributed to them in the Declaration.

C. The Association, and Mr. Salem A. AlJoaib to the extent he is the individual owner of Commercial Unit B-4 and Residential Unit 309, desire to amend the Declaration and the Plat (1) to permit the use of the Condominium for time sharing, (2) to amend the boundary lines of Commercial Unit B-4 and to reclassify it as general common elements, (3) to amend the boundary lines of Residential Unit 309, (4) to reclassify Commercial Unit B-1 as general common elements and (5) to reclassify Commercial Unit B-3 as general common elements.

D. Pursuant to Section 12.1 of the Declaration, the Association has obtained the affirmative votes of Unit Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the voting rights as otherwise set forth in the Declaration in favor of adopting the provisions of this First Amendment. Pursuant to Section 12.2 of the Declaration, Declarant hereby consents to the adoption of this First Amendment by placing its signature below. In addition, pursuant to Section 16.9 of the Declaration, the Association has obtained the affirmative unanimous vote of all Owners of Commercial Units in order to revise and reclassify the Commercial Units as described herein and as depicted on the Amended Plat, which is incorporated herein by this reference ("Amended Plat"). The Association hereby acknowledges that there are no Mortgages on the Units within the Condominium, and accordingly, this First

Amendment is not subject to the approval of any Mortgagee pursuant to Section 11.7 of the Declaration.

E. Mr. Salem A. AlJoaib and Declarant are the only Owners of Units within the Condominium. Mr. Salem A. AlJoaib holds fee title to Residential Unit 309 and Commercial Unit B-4, each of which is located in Building B. Pursuant to ORS 100.135(4) of the Oregon Condominium Act, Mr. Salem A. AlJoaib and Declarant, by placing their signatures below, hereby evidence their unanimous consent to this First Amendment and the Amended Plat, and hereby specifically consent to the amendment of the boundary lines of Residential Unit 309 as evidenced on the Amended Plat. Moreover, by placing his signature below, Mr. Salem A. AlJoaib hereby releases and quitclaims that 159 square foot portion of Commercial Unit B-4 as shown on the Amended Plat to the Association to be reclassified as general common elements, and by placing his signature below, the Chairperson and Secretary of the Association hereby accepts such transfer and reclassification of a portion of Commercial Unit B-4 on behalf of the Association.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Section 2.0 of the Declaration described the land submitted to the Oregon Condominium Act by reference to an attached Exhibit "A." However, Exhibit "A" to the Declaration was not attached when the Declaration was recorded on February 5, 2001 in the Official Records of Lincoln County, Oregon. Therefore, to correct this mistake, Exhibit "A" to the Declaration setting forth the legal description of the land Declarant submitted and hereby submits to the Oregon Condominium Act is described on Exhibit "A" attached to this First Amendment and by this reference incorporated herein.

2. Exhibit "B" to the Declaration, setting forth the Unit descriptions, locations, square footage and undivided ownership in the general common elements, is hereby replaced by Exhibit "B" attached to this First Amendment. Ownership interests and votes of all Units shall be as set forth in Exhibit "B" attached hereto and by this reference incorporated herein.

3. The following term is added as a new Section 1.13 as follows:

1.13 "Unit Owner(s)" or "Owner(s)" means any person or entity or combination thereof, including Declarant, at any timing owning a Unit, or any interest therein or any portion thereof. The term "Unit Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes). Unless the context provides or requires otherwise, the lowercase terms "owner(s)" or "unit owner(s)" or "Unit owner(s)" as used throughout this Declaration, the Bylaws and the other Condominium governing documents shall each have the same meaning as the defined term described in this Section 1.13.

4. Section 3.3 describing the buildings and Units within the Condominium is amended and restated as follows:

3.3 Building Description and Unit Designation. The land submitted by this Declaration has two buildings thereon in which 55 Units are located. 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. Building A contains 27 Units. Building B contains 26 Units, one Residential Unit and one Commercial Unit. The development will have one three-bedroom, one bath Residential Unit, 14 two-bedroom, one bath Units, 39 one-bedroom, one bath Units, and one Commercial Unit. The designation, location, area and square feet of each Unit are as designated on the attached and incorporated "Exhibit B" and on the Plat Amendment.

5. Section 3.4 describing the allocation of an undivided interest in the general common elements is amended and restated as follows:

3.4 Allocation of an Undivided Interest in General Common Elements. An undivided interest in the common elements is allocated to each Unit according to the schedule attached as "Exhibit B" and incorporated by this reference.

The allocation to each Unit of an undivided interest in the general common elements was determined by allocating a 1/55th undivided fractional interest in the general common elements to each Unit.

The allocation of an equal undivided interest in the common elements reflects each Unit Owner's equal right to use and enjoy the common elements. Each Unit's undivided interest shall be deemed to be conveyed or encumbered with conveyance of the Unit, even though the description in the instrument of conveyance or encumbrance may refer only to title in the Unit.

6. Section 4.1. defining the general common elements is amended and restated as follows:

4.1 Definition of General Common Elements. The general common elements consist of the limited common elements and all portions of the Condominium not part of a Unit, including, but not limited to the following:

7. Section 4.1.2 describing a portion of the general common elements is amended and restated as follows:

4.1.2 The lobby, office area, manager's unit (quarters), storage area located on the basement floor of Building B, workout area located on the second floor of Building B, storage area located on the third floor of Building B, entry, sidewalks, including sidewalks in the public right-of-way, walkways (and handrails adjacent and pertaining to walkways), stairways, driveways, underground parking garage and parking areas, the handrails, privacy walls and the ceiling/roof bordering limited common elements hereinafter described;

8. Section 6.0 describing voting rights is amended and restated as follows:

6.0 Voting. At any meeting of the Association, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in this Section 6. For all purposes of this Declaration, each Unit Owner shall be entitled to fifty-two (52) votes for each whole Unit owned. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration. The term "majority" or "majority vote of Unit Owners" shall mean the Unit Owners of more than fifty percent (50%) of the voting rights allocated to the Units by this Declaration. Articles II and III of the Bylaws shall control the calling and conducting of meetings of the Association and the exercise of voting rights.

9. Section 7.1 generally describing use of the property is amended and restated as follows:

7.1 General. The Condominium is subject to a conditional use permit identified as "10-CUP-98, City of Newport, County of Lincoln, State of Oregon, Conditional Use Permit." As a result thereof, Declarant reserves the right, in its sole and exclusive discretion, to designate up to fifteen (15) Units as Residential Units, to dedicate any or all of the Units to a shared equity time share program, or to designate any or all of the Units as Condominium Hotel Units, as it shall determine in its sole and exclusive discretion. At the time of the initial sale of a Unit within the Condominium, each deed of conveyance shall indicate the type of Unit conveyed. The Commercial Unit may be used for the purposes set forth in Section 1.5 above. The common elements shall be used for the furnishing of service and facilities for the enjoyment and benefit of the Unit Owners. Additional restrictions and regulations may be set forth in the Bylaws and rules and regulations.

10. Section 13.0 describing subdivision of the Condominium is amended and restated as follows:

13.0 Subdivision. So long as Declarant owns a Unit within the Condominium, Declarant reserves the right to submit the non-commercial Units it owns to a shared equity time share program, as it shall determine in its sole and exclusive discretion. Except for submitting Units to a shared equity time share program, no Unit may be subdivided into divisions of any nature.

11. The Unit Owners' approval of the Association's granting of easements as described in the second sentence of Section 14.1 is deleted and such sentence is amended and restated as follows:

"The granting of any such interest shall be executed by the chairperson and secretary of the Association and acknowledged in the manner provided for acknowledgement of such instruments by such officers."

12. A new Section 15.9 describing the shared equity interest program is added as follows:

15.9 Shared Equity Program. For purposes of this Section 15.9, the following definitions shall apply:

- A. "Shared Equity Program" means a time share program whereby a purchaser receives the right, in perpetuity or for a term of years, to the recurrent exclusive use of occupancy of one or more of the Units within the Condominium annually or on some other periodic basis in accordance with the Shared Equity Declaration.
- B. "Shared Equity Association" means an association of time share owners as set forth in the Shared Equity Declaration.
- C. "Shared Equity Unit(s)" means the Units encumbered by the Shared Equity Declaration.
- D. "Shared Equity Declaration" means a Declaration of Covenants, Conditions and Restrictions and Time Share Instrument recorded against one or more of the Units, as such Shared Equity Declaration may be amended from time to time.

15.9.1 Cooperation with Shared Equity Association. By recording a Shared Equity Declaration against some or all of the Units, the Declarant may create a shared equity time share project within the Condominium, pursuant to the terms of which the Shared Equity Association will represent the interests of Unit Owners who are also time share owners and will prepare budgets and levy and collect assessments. The annual assessments levied and collected by the Shared Equity Association against and from its members will include the annual assessments due to the Association hereunder. In addition, the Shared Equity Association will also distribute Association voting and meeting information, notices of any special or remedial assessments levied by the Association, and such other information as may be distributable by the Association to Unit Owners. Special or remedial assessments levied by the Association will also be levied and collected against time share owners by the Shared Equity Association. In order to facilitate the flow of information and the collection of assessments and other amounts due to the Association hereunder from Unit Owners who are also time share owners, the Association shall provide the Shared Equity Association with a copy of all notices, bills, documents or other information distributed to any Unit Owner under the terms of this Declaration, and shall cooperate to the greatest extent possible with the Shared Equity Association in order to manage, maintain, operate, repair and restore the Condominium in the best interests of all Unit Owners. Without limiting the generality of any of the powers of the Association set forth in this Declaration, the Association shall have the power and authority to cooperate and contract with the Shared Equity Association for any of the Association's powers hereunder and to perform the duties and exercise the powers of the Shared Equity Association, to the extent permitted pursuant to the Shared Equity Declaration.

15.9.2 Shared Equity Association Easement. The Shared Equity Association shall have, and is hereby granted, a non-exclusive easement in, over and upon the common elements for the purpose of carrying out its duties and obligations with respect to the Shared Equity Declaration.

15.9.3 Declarant's Easement. The Declarant, for itself, its successors and assigns, is hereby expressly granted the right to submit all or some of the Units which it owns from time to time in the Condominium to one or more plans of interval ownership set forth in a Shared Equity Declaration. Such reservation also includes the reservation of an easement for the use by any Shared Equity Association, shared with the Association, to those portions of the common elements within the Condominium necessary or desirable for the efficient administration of the Shared Equity Program and for the performance of the duties required of the Shared Equity Association or their managing agent under the Shared Equity Declaration.

15.9.4 Applicability. The provisions of the Shared Equity Declaration shall relate only to those Units Declarant submits to the Shared Equity Program, and shall govern the use of the Units and the rights, duties and obligations of time share owners so long as a Unit remains subject to the Shared Equity Declaration. The right to submit a Unit to a Shared Equity Declaration shall extend only to Declarant, its successors and assigns, and shall specifically not be available to third party purchasers of Units in the Condominium, their successors or assigns, except with the prior written consent of Declarant. Submission of a Unit to a Shared Equity Declaration shall not be subject to the prior consent of any Unit Owner or Mortgagee except the first Mortgagee of record of any such Unit to be submitted. The Shared Equity Declaration shall at all times be subject and subordinate to this Declaration and any amendments hereto.

13. This First Amendment shall be considered supplemental to the Declaration and the Plat. Except as expressly amended by the foregoing, the Declaration shall remain in full force and effect and shall not be canceled, suspended or otherwise abrogated or changed by the recording of this First Amendment.

14. The Plat is hereby amended by the concurrent filing of the Amended Plat and shall be the plat governing the Condominium.

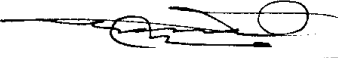
15. Mr. Salem A. AlJoab releases and quitclaims to The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation, all right, title and interest in and to that 159 square foot portion of Commercial Unit B-4 as shown on the Amended Plat. By placing his signature below, the Chairperson and Secretary of the Association certifies that this First Amendment is being adopted in accordance with the Declaration and the provisions of ORS 100.135(1)(b) and accepts Mr. Salem A. AlJoab's conveyance and transfer of that 159 square foot portion of Commercial Unit B-4 as shown on the Amended Plat and the reclassification of the same as general common elements.

16. This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Association, Declarant and Mr. Salem A. AlJoab have affixed their duly authorized signature as of the date first above written.


Association:

THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION, an Oregon nonprofit
corporation


By 
SALEM A. ALJOAIB, Chairperson/Secretary

Declarant:

BAYFRONT, L.L.C., an Oregon limited liability company

By 
Its *manager*

Owner of Residential Unit 309:

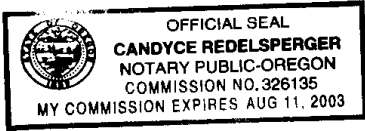

SALEM A. ALJOAIB

STATE OF OREGON)

:ss.

COUNTY OF Multnomah)

On the 28 day of June, 2001, the above-named SALEM A. ALJOAIB, in his capacity as Chairperson and Secretary of THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, an Oregon nonprofit corporation, personally appeared and acknowledged the foregoing instrument to be the corporation's voluntary act and deed.



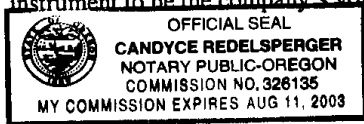
Candyce Redelsperger
NOTARY PUBLIC
My Commission Expires: 8-11-03

STATE OF OREGON)

:ss.

COUNTY OF Multnomah)

On the 28 day of June, 2001, the above-named Salem A. Aljoaib, in his capacity as Manager of BAYFRONT, L.L.C., an Oregon limited liability company, personally appeared and acknowledged the foregoing instrument to be the company's voluntary act and deed.



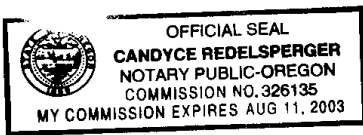
Candyce Redelsperger
NOTARY PUBLIC
My Commission Expires: 8-11-03

STATE OF OREGON)

:ss.

COUNTY OF Multnomah)

On the 28 day of June, 2001, the above-named SALEM A. ALJOAIB personally appeared and acknowledged the foregoing instrument.



Candyce Redelsperger
NOTARY PUBLIC
My Commission Expires: 8-11-03

REAL ESTATE COMMISSIONER APPROVAL

The foregoing First Amendment is approved pursuant to ORS 100.110 on this 28 day of June, 2001, and in accordance with ORS 100.110(7), this approval shall automatically expire if this First Amendment is not recorded with two (2) years from this date.

Scott W. Taylor
REAL ESTATE COMMISSIONER

Bllh
By: Brian Demarco

STATE OF OREGON)
 :ss.
COUNTY OF _____)

On the _____ day of _____, 2001, the above-named _____, in his/her capacity as _____, personally appeared and acknowledge the foregoing instrument to be the Real Estate Commissioner's voluntary act and deed.

NOTARY PUBLIC
My Commission Expires: _____

LINCOLN COUNTY ASSESSOR APPROVAL

The foregoing First Amendment is approved pursuant to ORS 100.110(2) on this 29th day of June, 2001.

LINCOLN COUNTY ASSESSOR

By: Rob Thomas by c/b

STATE OF OREGON)
)
) :ss.
COUNTY OF LINCOLN)

On the 29th day of JUNE, 2001, the above-named Person in his/her capacity as County Assessor personally appeared and acknowledge the foregoing instrument to be the Lincoln County Assessor's voluntary act and deed.

Ann M. Denison
NOTARY PUBLIC
My Commission Expires: DECEMBER 10, 2002

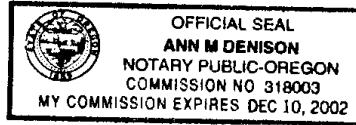


Exhibit "A"**Condominium Legal Description**

Beginning at the Initial Point, said point being 20.74 feet South and 893.25 feet West of the NE Corner of Government Lot 4 of said Section 9 in the City of Newport, County of Lincoln and State of Oregon, said point being S 88°40'11" W, 893.49 feet from said Northeast Corner of Government Lot 4, T11S, R11W, W.M., in Lincoln County, Oregon; thence North 31°48'00" East, along the Easterly boundary of a tract as described in Book 274, Page 277, Lincoln County Deed records, to the centerline of County Road No. 515, a distance of 37.00 feet; thence South 71°46'28" East, along said centerline, a distance of 124.42 feet; thence continuing along said centerline South 75°38'24" East, a distance of 2.19 feet; thence South 29°48'31" West, along the Westerly boundary of a tract of land as described in microfilm 208-1052, Lincoln County Film Records, a distance of 116.07 feet; thence South 60°11'29" East, along the South boundary of the above described tract, a distance of 204.00 feet; thence S 29°48'31" West, a distance of 71.02 feet; thence North 60°11'29" West, a distance of 232.00 feet; thence South 29°48'31 West, a distance of 90.48 feet; thence North 60°11'29" West, to the Easterly boundary of tract described in Book 274, Page 277, Deed Records, a distance of 104.76 feet; thence North 31°48'00" East, along said Easterly boundary, a distance of 215.16 feet to the Initial Point, excepting any portion within public street, as shown.

Revised Exhibit "B"

ALLOCATION OF AN UNDIVIDED INTEREST
IN COMMON ELEMENTS

<u>Unit Designation</u>	<u>Unit Location</u>	<u>Area in Sq. Ft.</u>	<u>Allocation of Undivided Ownership in General Common Elements</u>
101	Building B	800 sq. ft.	1/55th
102	Building B	716 sq. ft.	1/55th
103	Building B	716 sq. ft.	1/55th
104	Building B	716 sq. ft.	1/55th
105	Building B	716 sq. ft.	1/55th
106	Building B	716 sq. ft.	1/55th
107	Building B	716 sq. ft.	1/55th
108	Building B	716 sq. ft.	1/55th
109	Building B	800 sq. ft.	1/55th
110	Building A	800 sq. ft.	1/55th
111	Building A	716 sq. ft.	1/55th
112	Building A	716 sq. ft.	1/55th
113	Building A	800 sq. ft.	1/55th
114	Building A	716 sq. ft.	1/55th
115	Building A	716 sq. ft.	1/55th
116	Building A	716 sq. ft.	1/55th
117	Building A	716 sq. ft.	1/55th
118	Building A	800 sq. ft.	1/55th
201	Building B	800 sq. ft.	1/55th
202	Building B	716 sq. ft.	1/55th
203	Building B	716 sq. ft.	1/55th
204	Building B	716 sq. ft.	1/55th
205	Building B	716 sq. ft.	1/55th
206	Building B	716 sq. ft.	1/55th
207	Building B	716 sq. ft.	1/55th
208	Building B	716 sq. ft.	1/55th
209	Building B	800 sq. ft.	1/55th
210	Building A	800 sq. ft.	1/55th
211	Building A	716 sq. ft.	1/55th
212	Building A	716 sq. ft.	1/55th
213	Building A	800 sq. ft.	1/55th
214	Building A	716 sq. ft.	1/55th
215	Building A	716 sq. ft.	1/55th
216	Building A	716 sq. ft.	1/55th
217	Building A	716 sq. ft.	1/55th

218	Building A	800 sq. ft.	1/55th
301	Building B	800 sq. ft.	1/55th
302	Building B	716 sq. ft.	1/55th
303	Building B	716 sq. ft.	1/55th
304	Building B	716 sq. ft.	1/55th
305	Building B	716 sq. ft.	1/55th
306	Building B	716 sq. ft.	1/55th
307	Building B	716 sq. ft.	1/55th
308	Building B	716 sq. ft.	1/55th
309	Building B	1148 sq. ft.	1/55th
310	Building A	800 sq. ft.	1/55th
311	Building A	716 sq. ft.	1/55th
312	Building A	716 sq. ft.	1/55th
313	Building A	800 sq. ft.	1/55th
314	Building A	716 sq. ft.	1/55th
315	Building A	716 sq. ft.	1/55th
316	Building A	716 sq. ft.	1/55th
317	Building A	716 sq. ft.	1/55th
318	Building A	800 sq. ft.	1/55th
Commercial Unit			
B-2	West End of Building B	507 sq. ft.	1/55th

WHEN RECORDED, PLEASE RETURN TO:

Harry E. McCoy II
Ballard Spahr Andrews & Ingersoll, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, UT 84111

**FIRST AMENDMENT TO BYLAWS OF
THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION**

This First Amendment to Bylaws of The Landing at Newport Condominiums Unit Owners Association ("First Amendment") is dated as of JUNE 28, 2001.

A. The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation ("Association") is the association of condominium unit owners at The Landing at Newport Condominiums located in Lincoln County, Oregon (the "Condominium") located on the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. The Association adopted Bylaws dated ~~OCTOBER 16, 2001~~²⁰⁰⁰, recorded February 5, 2001 as Doc. No. 6238466, Rect. No. 107416, in Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Bylaws"). Capitalized terms used herein and not otherwise defined shall have the meaning attributed to them in the Bylaws.

C. The Association desires to further amend the Bylaws to permit the use of the Condominium for timesharing.

D. Pursuant to Article XI of the Bylaws, the Association has obtained the affirmative votes of Unit Owners holding a majority of the voting rights as otherwise set forth in the Declaration of Condominium Ownership for The Landing at Newport Condominiums, recorded February 5, 2001 as Doc. No. 6238466, Rect. No. 107416, in Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Declaration").

NOW, THEREFORE, the Bylaws are hereby amended as follows:

1. Article II, Section 1 describing membership in the Association is hereby amended and restated as follows:

Section 1. Membership in the Association. The Association shall consist of all of the Unit Owners acting as a group in accordance with the Act, pursuant to the Declaration and these Bylaws. Upon recordation of a conveyance of a Unit, or any portion thereof or interest therein, the grantee named in the conveyance shall automatically be a member of The Landing at Newport Condominiums Unit Owners Association (the "Association") and shall remain a member of the Association until the person's ownership ceases for any reason. For all purposes of the Declaration and the administration of the property, Unit ownership, including any portion thereof or interest

therein, shall be determined from the records maintained by the Association. Notwithstanding the foregoing, Declarant shall be the Unit Owner of all previously unsold Units, although Declarant has not filed with the Association a deed with respect to such Units.

2. Article II, Section 2 describing composition of voting rights in the Association is hereby amended and restated as follows:

Section 2. Composition of Voting Rights. The Association shall be composed of all Unit Owners within The Landing at Newport CONDOMINIUMS. Each Unit Owner, including Declarant, shall be entitled to fifty-two (52) votes for each whole Unit owned. Whenever two or more persons or entities jointly own any whole Unit, any one of the co-owners may exercise the votes appurtenant to such Unit. However, in the event of a protest by a co-owner to the vote of another co-owner, no one co-owner shall be entitled to vote without the approval of all other co-owners of that whole Unit. A personal representative, guardian or trustee may vote at any meeting of the Association with respect to any whole Unit owned by him or her in such capacity, whether or not the same shall have been transferred to his or her name, as long as he or she provides evidence to the satisfaction of the Association of his or her capacity to act with regard to said Unit, or portion thereof or interest therein. Articles II and III of these Bylaws shall control the calling and conduct of meetings of the Association and the exercise of voting rights.

3. Article II, Section 6 describing the authority to vote in the Association is hereby amended and restated as follows:

Section 6. Authority to Vote. All Unit Owners who own Commercial Units, Condominium Hotel Units and Residential Units shall be entitled to vote, including those who have leased their Units to a third party. The Chairperson of the board of directors of the Shared Equity Association ("Shared Equity Chairperson") shall represent the Unit Owners of Units within the Condominium dedicated to the Shared Equity Program at all Association meetings. On all Association matters requiring a membership vote, the Shared Equity Chairperson shall be entitled to cast that number of votes collectively attributable to all Units within the Condominium dedicated to the Shared Equity Program as set forth in the Shared Equity Declaration, after first submitting such matters to the appropriate Unit Owners for vote in the manner provided in the Shared Equity Declaration and the Shared Equity Association's governing documents.

a. The Shared Equity Chairperson shall be elected pursuant to the terms and conditions of the Shared Equity Declaration and the Shared Equity Association's other governing documents.

b. Until such time as the Shared Equity Association is organized, the Unit Owners of timeshare interests within such Shared Equity Program may personally cast the votes attributable to his or her respective interest on any issue requiring a vote of the Unit Owners under the Declaration, these Bylaws, or the Articles.

c. The votes allocable to the Units within the Shared Equity Program under the Declaration shall be cast in approximately the same percentages as the votes of the Units Owners of such Units. For example, if seventy-five percent (75%) of the voting rights cast by the Unit Owners of Units within the Shared Equity Program vote in favor of an order of business proposed to be acted upon by the Association, then the Shared Equity Chairperson shall cast seventy-five percent (75%) of the votes in the Association attributable to all Units within the Shared Equity Program he or she represents in favor of such proposal, and shall cast the other twenty-five percent (25%) of such votes against such proposal. The Shared Equity Chairperson shall round the Association votes so as to approximate the vote of the Unit Owners he or she represents as closely as possible, and fractional votes shall not be allowed.

d. Any Shared Equity Chairperson elected by the Unit Owners of Units within the Shared Equity Program he or she represents may be removed, with or without cause, by the vote of such Unit Owners holding a majority of the votes entitled to be cast for the election of such Shared Equity Chairperson. Any Shared Equity Chairperson whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Shared Equity Chairperson, a successor shall be elected by the unrepresented Unit Owners to fill the vacancy for the remainder of the term of such Shared Equity Chairperson.

e. Any Shared Equity Chairperson elected by the Unit Owners of Units within the Shared Equity Program he or she represents who has three (3) consecutive unexcused absences from Association or Board of Directors meetings, or who has failed to attend more than one-third of the Association and Board of Directors meetings during a 12-month period which have been properly called, or who is more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the Board of Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board of Directors to fill the vacancy for the remainder of the term.

f. In the event of the death, disability, or resignation of a Shared Equity Chairperson, the Board of Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Unit Owners of Units within the Shared Equity Program entitled to fill such representative position may elect a successor for the remainder of the term. Any Shared Equity Chairperson appointed by the Board of Directors shall be selected from among the Unit Owners(s) within the Shared Equity Association represented by the Shared Equity Chairperson who vacated the position.

4. Article III, Section 1 describing the Association's duties is amended and restated as follows:

Section 1. Association Responsibilities. The Association shall be an Oregon nonprofit corporation. The Association shall have the responsibility of administering the

Condominium, approving the annual budget, establishing and collecting monthly common assessments and arranging for the operation, management and maintenance of the Condominium, including negotiating and contracting with and supervising any person, persons or business entity with respect to such matters and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The Board of Directors or a manager shall perform the foregoing responsibilities as more particularly set forth in these Bylaws. Except as otherwise provided in the Declaration, a separate Shared Equity Association shall be formed for timeshare owners which association will represent the interests of Unit Owners who are also timeshare owners as further described in the Declaration, as amended.

5. Article VII, Section 1 describing uses of Units within the Condominium is amended and restated as follows:

Section 1. Use as Private Dwelling Only. The Unit owner, and his or her tenants, visitors and guests, shall occupy and use each of the non-commercial Units only as Residential Units, Condominium Hotel Units or shared equity timeshare Units, as each Unit is described in the Declaration. Subject to complying with applicable local ordinances and other restrictions of record, a Unit Owner may use his or her Residential Unit as a "home office," provided clients, customers and employees do not regularly visit the "home office." Commercial Units shall be used for the purposes identified in the definition of Commercial Unit in the Declaration. All common elements shall be used in a manner conducive to such purpose. No Unit Owner may lease less than his or her entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and these Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

6. Article VII, Section 2 describing restrictions on alterations to Units within the Condominium is hereby amended and restated as follows:

Section 2. Restriction on Alteration to Unit. No Unit Owner who is also a timeshare owner under the Shared Equity Declaration may make structural modification or alterations in his or her Unit or installations located therein. Notwithstanding the foregoing restriction, no Unit Owner who owns a Commercial Unit, a Condominium Hotel Unit or a Residential Unit, shall make structural modifications or alterations in his or her Unit or installations located therein without previously notifying the Association in writing by certified mail to the management agent, if any, or to the chairperson of the Board, if no management agent is employed. The Association shall have the obligation to answer within thirty (30) days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration; provided, however, that nothing herein contained shall waive or limit a Unit Owner's obligation to comply with the provisions of ORS 100.535.

7. Article VII, Section 5 describing restrictions on the appearance of the Condominium is hereby amended and restated as follows:

Section 5. Appearance of Condominium Building. No Owner shall alter the interior or exterior appearance of the Condominium in any manner whatsoever. No Unit Owner who owns a Commercial Unit or Condominium Hotel Unit will cause anything to be hung, displayed or placed on the walls, doors, windows, walkways, ceilings of walkways or roof of the Condominium building or any other common element nor otherwise change the appearance of any portion of the common elements without the prior written consent of the Board. Each Unit Owner who owns a Commercial Unit, Condominium Hotel Unit or Residential Unit shall provide draperies, miniblinds or other window coverings at all windows, which shall be lined with white materials sufficiently opaque so as not to disclose the color of the interior portion of the window coverings. No clothes lines or similar devices and no "For Sale" or "For Rent" signs will be allowed on any part of the Condominium without the prior written consent of the Board, except that Declarant may post reasonable signs in reasonable places on the Condominium advertising any shared equity timeshare program within the Condominium or any Unit for sale or for rent.


8. By placing their signatures below, the Chairperson and Secretary of the Association certify that this First Amendment is being adopted in accordance with Article XI of the Bylaws and the provisions of ORS 100.410(2).

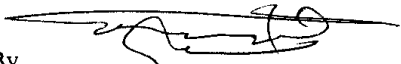
9. This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

IN WITNESS WHEREOF, the Association and Declarant have affixed their duly authorized signature as of the date first above written.

Association:


The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation

By 
_____, Chairperson

By 
_____, Secretary

Declarant:

Bayfront, L.L.C., an Oregon limited liability company

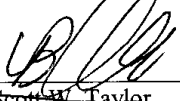
By 
Its managing EV



REAL ESTATE COMMISSIONER APPROVAL

The foregoing First Amendment is approved pursuant to ORS 100.410 on this 28 day of June, 2001, and in accordance with ORS 100.110(7), this approval shall automatically expire if this First Amendment is not recorded with two (2) years from this date.

Scott W. Taylor
REAL ESTATE COMMISSIONER



Scott W. Taylor
By Brian De Marco

STATE OF OREGON)
 :ss.
COUNTY OF _____)

On the _____ day of _____, 2001, the above-named _____, in his/her capacity as _____, personally appeared and acknowledge the foregoing instrument to be the Real Estate Commissioner's voluntary act and deed.

NOTARY PUBLIC
My Commission Expires: _____

Exhibit "A"

Condominium Legal Description

Beginning at the Initial Point, said point being 20.74 feet South and 893.25 feet West of the NE Corner of Government Lot 4 of said Section 9 in the City of Newport, County of Lincoln and State of Oregon, said point being S 88°40'11" W, 893.49 feet from said Northeast Corner of Government Lot 4, T11S, R11W, W.M., in Lincoln County, Oregon; thence North 31°48'00" East, along the Easterly boundary of a tract as described in Book 274, Page 277, Lincoln County Deed records, to the centerline of County Road No. 515, a distance of 37.00 feet; thence South 71°46'28" East, along said centerline, a distance of 124.42 feet; thence continuing along said centerline South 75°38'24" East, a distance of 2.19 feet; thence South 29°48'31" West, along the Westerly boundary of a tract of land as described in microfilm 208-1052, Lincoln County Film Records, a distance of 116.07 feet; thence South 60°11'29" East, along the South boundary of the above described tract, a distance of 204.00 feet; thence S 29°48'31" West, a distance of 71.02 feet; thence North 60°11'29" West, a distance of 232.00 feet; thence South 29°48'31 West, a distance of 90.48 feet; thence North 60°11'29" West, to the Easterly boundary of tract described in Book 274, Page 277, Deed Records, a distance of 104.76 feet; thence North 31°48'00" East, along said Easterly boundary, a distance of 215.16 feet to the Initial Point, excepting any portion within public street, as shown.

STATE OF OREGON } ss.
County of Lincoln }
I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.
Book 424 Page 1907
WITNESS my hand and seal of said office affixed.

Dana W. Jenkins
DANA W. JENKINS, Lincoln County Clerk



Doc : 6245357
Rect: 110831 126.00
06/29/2001 02:38:19pm

WHEN RECORDED PLEASE RETURN TO:
Thomas R. Rask, III
520 S.W. Yamhill St., Suite 600
Portland, OR 97204-1329

Recorded by First American
Title Insurance Co.
Order # 02-1043

**SECOND AMENDMENT TO DECLARATION OF THE LANDING AT
NEWPORT CONDOMINIUMS**

This Second Amendment to Declaration of Condominium for The Landing at Newport Condominiums ("Second Amendment") is dated as of September 19, 2002.

A. The Landing at Newport Condominiums Unit Owners Association, an Oregon corporation ("Association") is the association of condominium unit owners at The Landing at Newport Condominiums located in Lincoln County, (the "Condominium") located on the real property described in Exhibit "A" attached hereto.

B. The Condominium has been subjected to a Declaration of Condominium Ownership for the Landing at Newport Condominiums, recorded February 5, 2001, as Doc. No. 6238466, Rect. No. 107416, Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Declaration") and a Plat recorded February 5, 2001 in Book 1, at Pages 147-147G, Condominium Plat Records of Lincoln County, Oregon (the "Plat") and a First Amendment to Declaration of Condominium ownership recorded June 29, 2001 in Book 424, Page 1907, Microfilm Records of Lincoln County, Oregon. Capitalized terms used herein and not otherwise defined shall have the meaning attributed to them in the Declaration.

C. The Association, and Mr. Salem A. Aljoaib to the extent he is the individual owner of Commercial Unit B-4 and Residential Unit 309, desire to amend the Declaration and the Plat (1) to terminate the use of the Condominium for time sharing, (2) to amend the definition of "Condominium Hotel Unit"; and (3) to amend Section 7.1 to clarify the use restriction on the units.

D. Pursuant to Section 12.1 of the Declaration, the Association has obtained the votes affirmative of Unit Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the voting rights as otherwise set forth in the Declaration in favor of Declarant hereby consents to the adoption of this Second Amendment by placing its signature below.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Section 15.9 establishing the Shared Equity Program is deleted.
2. Section 1.7 defining Condominium Hotel Unit is amended to add the following language: **"The Use of the Condominium Hotel Unit can only be used as allowed under the conditional use permit 10-CUP-98 and the owner of the Condominium Hotel Unit shall be subject to a use restriction which restricts the use the property to less than 30 days consecutive occupancy"**.
3. Section 7.1 generally describing use of the property is amended and restated as follows:

7.1 General. The Condominium is subject to a conditional use permit identified as "10-CUP-98, City of Newport, County of Lincoln, State of Oregon, Conditional Use Permit," As a result thereof, Declarant reserves the right, in its sole and exclusive discretion, to designate up to fifteen (15) Units as Residential Units, or to designate any or all of the Units as Condominium Hotel Unit, as it shall determine in its sole and exclusive discretion. At the time of the initial sale of a Unit within the Condominium, each deed of conveyance shall indicate the type of Unit conveyed. The Commercial Unit may be used for the purposes set forth in Section 1.5 above. The common elements shall be used for the furnishing of service and facilities for the enjoyment and benefit of the Unit Owners. Additional restrictions and regulations may be set forth in the Bylaws and rules and regulations. **The Use of the Condominium Hotel Unit can only be used as allowed under the conditional use permit 10-CUP-98 and the owner of the Condominium Hotel Unit shall be subject to a use restriction which restricts the use the property to less than 30 days consecutive occupancy.**


4. This Second Amendment shall be considered supplemental to the Declaration and the Plat. Except as expressly amended by the foregoing, the Declaration shall remain in full force and effect and shall not be canceled, suspended or otherwise abrogated or changed by the recording of this Second Amendment.
5. This Second Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall

constitute one and the same instrument.

IN WITNESS WHEREOF, the Association, and Declarant affixed their duly authorized signature as of the date first above written.


Association:

THE LANDING AT NEWPORT
CONDOMINIUMS UNIT OWNERS
ASSOCIATION, an Oregon nonprofit
corporation

By: 
Salem A. Aljoaib, Chairperson/Secretary

Declarant:

BAYFRONT, L.L.C., an Oregon limited
liability company

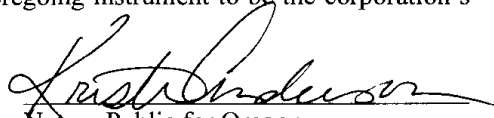
By: 
Salem A. Aljoaib, Manager

Owner of Residential Unit 309:


Salem A. Aljoaib

STATE OF OREGON)
) ss.
County of Multnomah)

On the 19 day of September, 2002, the above-named Salem A. Aljoaib, in his capacity as Chairperson and Secretary of THE LANDING AT NEWPORT CONDOMINIUMS UNIT OWNERS ASSOCIATION, an Oregon nonprofit corporation, personally appeared and acknowledged the foregoing instrument to be the corporation's voluntary act and deed.


Notary Public for Oregon



STATE OF OREGON)
) ss.
County of Multnomah)

On the 19 day of September 2002, the above-named Salem A. Aljoaib, in his capacity as Manager of BAYFRONT, LLC, an Oregon limited liability company, personally appeared and acknowledged the foregoing instrument to be the corporation's voluntary act and deed.



Kristi Anderson
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of Multnomah)

On the 19 day of September 2002, the above-named Salem A. Aljoaib personally appeared and acknowledged the foregoing instrument to be the corporation's voluntary act and deed.



Kristi Anderson
Notary Public for Oregon

REAL ESTATE COMMISSIONER APPROVAL

The foregoing Second Amendment to Declaration of The Landing at Newport Condominiums is approved pursuant to ORS 100.110 on this 4th day of October, 2002, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Second Amendment is not recorded within two (2) years from this date.

SCOTT W. TAYLOR
REAL ESTATE COMMISSIONER

Brian Demarco

Brian Demarco

LINCOLN COUNTY ASSESSOR APPROVAL

The foregoing Second Amendment to Declaration of The Landing at Newport Condominiums is approved this day of September, 2002.

LINCOLN COUNTY ASSESSOR

By: *Rob Thomas Lynch*

STATE OF OREGON)
) ss.
County of Lincoln)

On the 9th day of ~~September~~ October, 2002, the above-named _____ in his/her capacity as County Assessor, personally appeared and acknowledged the foregoing instrument to be the Lincoln County Assessor's voluntary act and deed.

April Casella

Notary Public for Oregon



EXHIBIT "A"

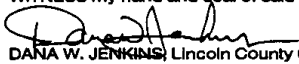
THE LANDING AT NEWPORT CONDOMINIUMS, in Lincoln County, Oregon, together with the undivided interest in the general and limited common elements appurtenant thereto, as more fully set forth and described in the Declaration of Unit Ownership recorded February 5, 2001, in Book 414, Page 2062, Microfilm Records of Lincoln County, Oregon.

STATE OF OREGON } ss.
County of Lincoln

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.

Book 460 Page 1835

WITNESS my hand and seal of said office affixed.



DANA W. JENKINS, Lincoln County Clerk

Doc : 6268684
Rect: 122315 51.00
10/09/2002 04:02:06pm



H/c

WHEN RECORDED, PLEASE RETURN TO:
Thomas R. Rask, III
520 S.W. Yamhill St., Suite 600
Portland, OR 97204-1329

Recorded by First American
Title Insurance Co.
Order # 02-1043

**SECOND AMENDMENT TO BYLAWS OF THE LANDING AT NEWPORT
CONDOMINIUMS UNIT OWNERS ASSOCIATION**

This Second Amendment to Bylaws of The Landing at Newport Condominiums Unit Owners Association ("Second Amendment") is dated as of September 19, 2002.

A. The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation ("Association") is the association of condominium unit owners at The Landing at Newport Condominiums located in Lincoln County, Oregon (the "Condominium") located on the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. The Association adopted Bylaws dated October 16, 2002 recorded February 5, 2001 as Doc. No. 6238466, Rect. No. 107416, in Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Bylaws"). Capitalized terms used herein and not otherwise defined shall have the meaning attributed to them in the Bylaws.

C. The Association desires to further amend the Bylaws to terminate the use of the Condominium for timesharing.

D. Pursuant to Article XI of the Bylaws, the Association has obtained the affirmative votes of Unit Owners holding a majority of the voting rights as otherwise set forth in the Declaration of Condominium Ownership for The Landing at Newport Condominiums, recorded February 5, 2001 as Doc. No. 6238466, Rect. No. 107416, in Book 414, at Page 2062 of the Official Records of Lincoln County, Oregon (the "Declaration").

NOW, THEREFORE, the Bylaws are hereby amended as follows:

1. Article II, Section 6 describing membership in the Association is hereby amended and restated as follows:

Section 6. Authority to Vote. All Unit Owners who own Commercial Units, Condominium Hotel Units and Residential Units shall be entitled to vote, including those who have leased their Units to a third party.

2. Article III, Section 1 describing the Association's duties is amended and restated as follows:

Section 1. Association Responsibilities. The Association shall be an Oregon nonprofit corporation. The Association shall have the responsibility of administering the Condominium, approving the annual budget, establishing and collecting monthly common assessments and arranging for the operation, management and maintenance of the Condominium, including negotiating and contracting with and supervising any person, persons or business entity with respect to such matters and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The Board of Directors or a manager shall perform the foregoing responsibilities as more particularly set forth in these Bylaws.

3. Article VII, Section 1 describing uses of Units within the Condominium is amended and restated as follows:

Section 1. Use as Private Dwelling Only. The Unit owner, and his or her tenants, visitors and guests, shall occupy and use each of the non-commercial Units only as Residential Units, Condominium Hotel Units, as each Unit is described in the Declaration. Subject to complying with applicable local ordinances and other restrictions of record, a Unit Owner may use his or her Residential Unit as a "home office," provided clients, customers and employees do not regularly visit the "home office." Commercial Units shall be used for the purposes identified in the definition of Commercial Unit in the Declaration. All common elements shall be used in a manner conducive to such purpose. No Unit Owner may lease less than his or her entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and these Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

IN NO EVENT SHALL ANY USE OF THE CONDOMINIUM HOTEL UNIT VIOLATE CONDITIONAL USE PERMIT 10-CUP-98 RESTRICTING THE USE OF

A CONDOMINIUM HOTEL UNIT TO NO MORE THAN 30 DAYS CONSECUTIVE OCCUPANCY.

4. Article VII, Section 2 describing restrictions on alterations to Units within the Condominium is hereby amended and restated as follows:

Section 2. Restriction on Alteration to Unit. No Unit Owner who owns a Commercial Unit, a Condominium Hotel Unit or a Residential Unit, shall make structural modifications or alterations in his or her Unit or installations located therein without previously notifying the Association in writing by certified mail to the management agent, if any, or to the chairperson of the Board, if no management agent is employed. The Association shall have the obligation to answer within thirty (30) days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration; provided, however, that nothing herein contained shall waive or limit a Unit Owner's obligation to comply with the provisions of ORS 100.535.

5. Article VII, Section 4, describing the disallowance of pets within the Units within the condominium is amended and restated as follows:

Section 4. Pets. An Owner may keep a pet in his or her Unit. The Association may, from time to time, establish rules and regulations concerning the types of pets allowed in a Unit pursuant to Section 12, Article VII of the Bylaws of The Landing at Newport Condominiums. Any Unit Owner who maintains a pet shall be deemed to have indemnified and agreed to hold the Association, each of its Members and Declarant, free and harmless from any loss, claim or liability of any kind or character whatsoever arising by reason of the Owner keeping or maintaining the pet within the condominium.

6. By placing their signatures below, the Chairperson and Secretary of the Association certify that this Second Amendment is being adopted in accordance with Article XI of the Bylaws and the provisions of ORS 100.410(2).

7. This Second Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

IN WITNESS WHEREOF, the Association and Declarant have affixed their duly authorized signature as of the date first above written.

Association:

[Signature]

By: _____

Salem A. Aljoaib,
Chairperson/Secretary

Declarant: Bayfront, L.L.C.

[Signature]

By: _____

Salem A. Aljoaib,
Manager

STATE OF OREGON, County of Multnomah) ss.

On the 19 day of September, 2002, the above-named **Salem A. Aljoaib**, in his capacity as Chairperson and Secretary of The Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation, personally appeared and acknowledged the foregoing instrument to be the corporation's voluntary act and deed.



[Signature]
Notary Public for Oregon

STATE OF OREGON, County of Multnomah) ss.

On the 19 day of September, 2002, the above-named **Salem A. Aljoaib**, in his capacity as Manager of Bayfront, LLC, an Oregon limited liability company, personally appeared and acknowledged the foregoing instrument to be the company's voluntary act and deed.



[Signature]
Notary Public for Oregon

This Second Amendment to the Bylaws of The Landing at Newport Condominium Unit Owners Association is hereby approved this 4th day of October, 2002.

Scott W. Taylor
Real Estate Commissioner Approval:

By: *[Signature]*
Mr. Brian Demarco

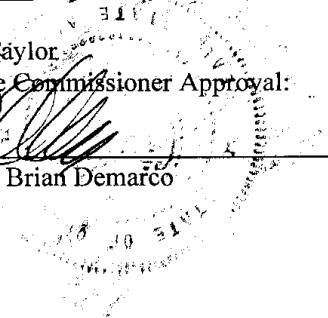
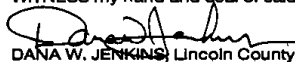


EXHIBIT "A"

THE LANDING AT NEWPORT CONDOMINIUMS, in Lincoln County, Oregon, together with the undivided interest in the general and limited common elements appurtenant thereto, as more fully set forth and described in the Declaration of Unit Ownership recorded February 5, 2001, in Book 414, Page 2062, Microfilm Records of Lincoln County, Oregon.

STATE OF OREGON } ss.
County of Lincoln
I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon.
Book 460 Page 1841
WITNESS my hand and seal of said office affixed.

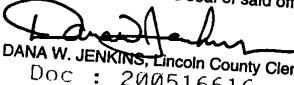

DANA W. JENKINS, Lincoln County Clerk




Doc : 6268685
Rect: 122315 46.00
10/09/2002 04:02:06pm

After Recording Return to:
Vial Fotheringham LLP
7000 SW Varns Street
Portland, OR 97223
503-684-4111

STATE OF OREGON } ss.
County of Lincoln } 30 Pages
I, Dana W. Jenkins, County Clerk, in and for said county, do hereby
certify that the within instrument was received for record, and
recorded in the Book of Records of said county at Newport, Oregon,
WITNESS my hand and seal of said office affixed.


DANA W. JENKINS, Lincoln County Clerk
Doc : 200516616
Rect: 508539 171.00
10/17/2005 04:41:44pm



**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS
AND
PLAT AMENDMENT**

This Amended and Restated Declaration of Condominium Ownership for "The Landing at Newport" Condominiums and Plat Amendment (Amended and Restated Declaration and Plat Amendment") is made this 8th day of August, 2005 by The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation ("Association").

RECITALS

A. "The Landing at Newport" Condominiums (the "Condominium") is a condominium located in the City of Newport, Lincoln County, Oregon, established pursuant to the following documents recorded in the Records of Lincoln County, Oregon:

Declaration of Condominium Ownership for "The Landing at Newport" Condominiums recorded February 5, 2001 as Document No. 6238466 (the "Declaration")
Bylaws of The Landing at Newport Condominiums Unit Owners Association recorded as Exhibit C to the Declaration (the "Bylaws")
Plat of "The Landing at Newport" Condominiums recorded February 5, 2001 in Book 1, Page 147, Plat Records

B. The Declaration and Plat were amended by the following documents recorded in the Records of Lincoln County, Oregon:

First Amendment to Declaration of Condominium Ownership for The Landing at Newport Condominiums recorded June 29, 2001 in Book 424, Page 1907
Second Amendment to Declaration of the Landing at Newport Condominiums recorded October 9, 2002 as Document No. 6268684
Plat Amendment The Landing at Newport Condominiums recorded June 29, 2001 in Book 1, Page 153, Plat Records ("1st Plat Amendment").

C. Association is The Landing at Newport Condominiums Unit Owners Association formed pursuant to the Declaration, Bylaws and articles of incorporation filed June 18, 2001 in the office of the Oregon Corporation Division.

D. Amended and Restated Bylaws of The Landing at Newport Condominiums Unit Owners Association are being recorded concurrently with this Declaration.

E. The unit owners wish to reclassify that portion of the general common elements designated on 1st Plat Amendment as "G.C.E. B-3" as a unit to be designated "Unit 219" and to convey Unit 219 together with its allocation of interest in the common elements to the Association.

F. The unit owners and Alan J. Newell and Hilda Newell, the owners of Unit 309, wish to combine that portion of the general common elements designated on 1st Plat Amendment as "G.C.E. B-4" and a portion of Unit 309 together to create a new Unit to be designated "Unit 319 together with its allocation of interest in the common elements."

G. The unit owners wish to convey their interest in Unit 319 to Alan J. Newell and Hilda Newell, as tenants by the entirety.

H. The unit owners wish to change the method of determining the allocation of interest in the common elements and method of determining liability for common expenses and to make related and additional changes to the Declaration and amendments thereto.

I. ORS 100.135(5)(a) provides that an amendment that changes the boundary of the property or a unit shall be approved by all unit owners. The amendment shall constitute a conveyance and shall include words of conveyance. In addition to the certification required under subsection (1)(b) of such section, an amendment to the boundary of a unit must also be executed by the owners of all affected units.

J. ORS 100.115(9)(a) requires that a change to the boundary of a unit to be made by a plat amendment which must be accompanied by an amendment to the declaration authorizing the plat amendment.

K. The units owners wish to amend and restate the Declaration (including amendments set forth in Recital B above) in its entirety and to amend the Plat (including Plat Amendment) for the purposes described in these recitals.

NOW, THEREFORE, pursuant to Section 12 of the Declaration and ORS 100.135 and 100.115(9)(a), with the consent and approval of all owners and the joinder of Alan J. Newell and Hilda Newell as evidenced by executed Unit Owner Execution, Consent and Approval of Amended and Restated Declaration of Condominium Ownership for The Landing at Newport Condominiums and Plat Amendment attached hereto, and the consent of mortgagees to the extent required under Section 11 of the Declaration, the Association and unit owners agree as follows:

1. **Plat Amendment.** “The Landing at Newport Condominiums Plat Amendment #2 shall be recorded concurrently with this Amended and Restated Declaration to reflect the following changes in the units and general common elements:

1.1 That portion of the general common elements designated on 1st Plat Amendment as “G.C.E. B-3” is hereby reclassified as Unit 219 as shown on Plat Amendment #2.

1.2 That portion of the general common elements designated on the 1st Plat Amendment as “G.C.E. B-4” and a portion of Unit 309 are hereby combined to create Unit 319 as shown on Plat Amendment #2.

2. **Conveyance of Newly Created Units.** Pursuant to ORS 100.135(5), the Association, on behalf of the unit owners, hereby conveys:

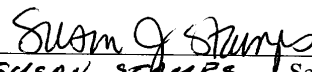
2.1 Unit 219 together with its interest in the common elements as specified in the Declaration to The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation.

2.2 The interest of the unit owners in Unit 319 together with its interest in the common elements to Alan J. Newell and Hilda Newell, as tenants by the entirety.

3. **Amended and Restated Declaration.** The Declaration and the amendments set forth in Recital B above are amended and restated in their entirety and replaced by attached Amended and Restated Declaration of Condominium Ownership for “The Landing at Newport” Condominiums.

**THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION, INC., an Oregon
nonprofit corporation**

By: 
STEVEN HANSON, Chairperson

By: 
SUSAN STAMPS, Secretary

GOVERNMENTAL APPROVALS

The foregoing Amended and Restated Declaration of Condominium Ownership for "The Land at Newport Condominiums" and Plat Amendment is approved pursuant to ORS 100.110 this 17TH day of October, 2005.

LINCOLN COUNTY ASSESSOR AND TAX COLLECTOR

By: Rob Thomas by ceh - Assessor
Linda Fitzgibbon - Tax Collector

The foregoing Amended and Restated Declaration of Condominium Ownership for "The Land at Newport Condominiums" and Plat Amendment is approved pursuant to ORS 100.110 this 23rd day of August, 2005 and in accordance with ORS 100.110(7), this approval shall automatically expire if this instrument is not recorded within two (2) years from this date.

**SCOTT W. TAYLOR
REAL ESTATE COMMISSIONER**

By: Brian DeMarco
Brian DeMarco

**UNIT OWNER
EXECUTION, CONSENT AND APPROVAL
OF
AMENDED AND RESTATED DECLARATION
OF CONDOMINIUM OWNERSHIP FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS
AND
PLAT AMENDMENT**

The undersigned owner(s) of Unit No. 309 of "THE LANDING AT NEWPORT" CONDOMINIUMS, Lincoln County, Oregon, pursuant to ORS 100.135 and ORS 65.211, hereby joins in, approves and consents to the foregoing Amended and Restated Declaration of Condominium Ownership for "The Landing at Newport" Condominiums and Plat Amendment to be effective upon recording in the Records of Lincoln County, Oregon.

DATED August 13, 2005.

OWNER(S):

[Signature]

[Signature]

ATTACHMENT TO
AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR "THE LANDING AT NEWPORT" CONDOMINIUMS
AND PLAT AMENDMENT

AMENDED AND RESTATED
DECLARATION OF
CONDOMINIUM OWNERSHIP
FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS

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“THE LANDING AT NEWPORT” CONDOMINIUMS**

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**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 9 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 unit 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”** 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 twenty-seven (27) units and Building B contains thirty (30) 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 unit is 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 Expenses and Profits.**

(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 cause 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.** A 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 intending to limit in any manner 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 is 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" 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 Exempt 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 assess or charges resulting from a pro-rata reallocation of such assessment 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 hold 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 Records.** The Association shall make available to unit owners, 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 of 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 mortgagees 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 their 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 substantially to 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.

13.4 **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 collect 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.

**EXHIBIT A
LEGAL DESCRIPTION**

PROPERTY DESCRIBED IN SURVEYOR'S CERTIFICATE OF THE FOLLOWING PLATS
RECORDED IN PLAT RECORDS OF LINCOLN COUNTY, OREGON:

PLAT OF "THE LANDING AT NEWPORT"
CONDOMINIUMS RECORDED FEBRUARY 5,
2001 IN BOOK 1, PAGE 147.

PLAT AMENDMENT "THE LANDING AT
NEWPORT" CONDOMINIUMS RECORDED
JUNE 29, 2001 IN BOOK 1, PAGE 153.

EXHIBIT B

**UNIT TYPE, AREA OF UNITS &
ALLOCATION OF AN UNDIVIDED INTEREST
IN COMMON ELEMENTS**

UNIT DESIGNATION	UNIT TYPE	UNIT LOCATION	AREA IN SQUARE FEET	PERCENTAGE INTEREST IN COMMON ELEMENTS
101	Residential	Bldg B	800	1.9302
102	Residential	Bldg B	716	1.7275
103	Residential	Bldg B	716	1.7275
104	Residential	Bldg B	716	1.7275
105	Residential	Bldg B	716	1.7275
106	Residential	Bldg B	716	1.7275
107	Residential	Bldg B	716	1.7275
108	Residential	Bldg B	716	1.7275
109	Residential	Bldg B	800	1.9302
110	Residential	Bldg A	800	1.9302
111	Residential	Bldg A	716	1.7275
112	Residential	Bldg A	716	1.7275
113	Residential	Bldg A	800	1.9302
114	Residential	Bldg A	716	1.7275
115	Residential	Bldg A	716	1.7275
116	Residential	Bldg A	716	1.7275
117	Residential	Bldg A	716	1.7275
118	Residential	Bldg A	800	1.9302
201	Residential	Bldg B	800	1.9302
202	Residential	Bldg B	716	1.7275
203	Residential	Bldg B	716	1.7275

204	Residential	Bldg B	716	1.7275
205	Residential	Bldg B	716	1.7275
206	Residential	Bldg B	716	1.7275
207	Residential	Bldg B	716	1.7275
208	Residential	Bldg B	716	1.7275
209	Residential	Bldg B	800	1.9302
210	Residential	Bldg A	800	1.9302
211	Residential	Bldg A	716	1.7275
212	Residential	Bldg A	716	1.7275
213	Residential	Bldg A	800	1.9302
214	Residential	Bldg A	716	1.7275
215	Residential	Bldg A	716	1.7275
216	Residential	Bldg A	716	1.7275
217	Residential	Bldg A	716	1.7275
218	Residential	Bldg A	800	1.9302
219	Residential/ Commercial	Bldg B	507	1.2249
301	Residential	Bldg B	800	1.9302
302	Residential	Bldg B	716	1.7275
303	Residential	Bldg B	716	1.7275
304	Residential	Bldg B	716	1.7275
305	Residential	Bldg B	716	1.7275
306	Residential	Bldg B	716	1.7275
307	Residential	Bldg B	716	1.7275
308	Residential	Bldg B	716	1.7275
309	Residential	Bldg B	800	1.9302
310	Residential	Bldg A	800	1.9302
311	Residential	Bldg A	716	1.7275
312	Residential	Bldg A	716	1.7275

313	Residential	Bldg A	800	1.9302
314	Residential	Bldg A	716	1.7275
315	Residential	Bldg A	716	1.7275
316	Residential	Bldg A	716	1.7275
317	Residential	Bldg A	716	1.7275
318	Residential	Bldg A	800	1.9302
319	Residential	Bldg B	507	1.2248
B-2	Commercial	West End of Bldg B	507	1.2248
TOTAL			41445	100%

STATE OF OREGON } ss.
County of Lincoln

41 Pages

I, Dana W. Jenkins, County Clerk, in and for said county, do hereby certify that the within instrument was received for record, and recorded in the Book of Records of said county at Newport, Oregon. WITNESS my hand and seal of said office affixed.


DANA W. JENKINS, Lincoln County Clerk



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Rect: 508540 226.00
10/17/2005 04:42:49pm

WHEN RECORDED, RETURN TO:
VIAL • FOTHERINGHAM LLP
7000 S.W. Varns Street
Portland, Oregon 97223-8006
(503) 684-4111

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

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OF
THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION

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

These Amended and Restated Bylaws of The Landing at Newport Condominiums Unit Owners Association are made this 10 day of August, 2005 by The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation ("Association").

RECITALS

A. "The Landing at Newport" Condominiums (the "Condominium") is a condominium located in the City of Newport, Lincoln County, Oregon, established pursuant to the following documents recorded in the Records of Lincoln County, Oregon:

Declaration of Condominium Ownership for "The Landing at Newport" Condominiums recorded February 5, 2001 as Document No. 6238466 (the "Declaration").

Bylaws of The Landing at Newport Condominiums Unit Owners Association recorded as Exhibit C to the Declaration (the "Bylaws").

Plat of "The Landing at Newport" Condominiums recorded February 5, 2001 in Book 1, Page 147, Plat Records (the "Plat").

B. The Bylaws were amended by the following documents recorded in the Records of Lincoln County, Oregon:

First Amendment to Bylaws of The Landing at Newport Condominiums Unit Owners Association recorded June 29, 2001 in Book 424, Page 1920.

Second Amendment to Bylaws of the Landing at Newport Condominiums Unit Owners Association recorded October 9, 2002 in Book 460, Page 1841.

C. The Association and all unit owners of the Condominium wish to amend and restate the Bylaws in their entirety, including all amendments thereto, to conform to amendments to the Declaration and Plat being recorded concurrently with this document.

NOW, THEREFORE, pursuant to Article XI of the Bylaws and ORS 100.410, with the consent or approval of all owners and the consent of mortgagees to the extent required under Section 11 of the Declaration, Association hereby amends and restates in their entirety the Bylaws (including all previous amendments) which are replaced and superseded by these Amended and Restated Bylaws which read as set forth below.

ARTICLE I
PLAN OF CONDOMINIUM OWNERSHIP

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

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

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

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

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

II
ASSOCIATION MEMBERSHIP
AND VOTING

2.1 **Membership in Association.** The Association shall consist of all of the unit owners acting as a group in accordance with the Act, pursuant to the Declaration and these Bylaws. Upon recordation of a conveyance of a unit, or any portion thereof or interest therein, the grantee named in the conveyance shall automatically be a member of the Association and shall remain a member of the Association until the person’s ownership ceases for any reason. For all purposes of the Declaration and the administration of the property, unit ownership shall be determined from the records maintained by the Association.

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

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

2.4 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of a majority of voting owners as defined in Section 2.3 above, shall constitute a quorum. The quorum at any adjourned meeting, as described in Section 3.6 below, shall be reduced to twenty-five percent (25%) of the outstanding votes in the Condominium.

2.5 **Proxies; Absentee Ballots.**

(a) **Proxies.**

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

(2) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than a year after the date of execution. Unless withdrawn, a proxy given to another person to vote at a specific meeting shall also be valid at an adjourned meeting called under the provisions of Section 3.6 below.

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

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

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

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

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

2.7 **Fiduciaries and Joint Owners.**

(a) **Fiduciaries.** An executor, administrator, guardian or trustee may vote, in

person or by proxy at any meeting of the Association, including a meeting by written ballot held pursuant to Section 3.9 below, with respect to any unit owned or held by the person in such capacity, whether or not the same shall have been transferred to the person's name; provided that he or she shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee holding the unit in such capacity.

(b) **Joint Owners.** Whenever any unit is owned by two or more persons jointly according to the records of the Association, the vote of the unit may be exercised by any one of the owners then present, in the absence of protest by a co-owner. In the event of protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.8 **Actions by Association; Legal Meeting.** Except as otherwise provided in the Declaration, these Bylaws, the Act or the Oregon Nonprofit Corporation Act, decisions and resolutions of the Association shall require approval by a majority of owners present at any legal meeting. A legal meeting is one duly called pursuant to these Bylaws where a quorum is present in person, by proxy or by written ballot at a meeting held pursuant to Section 3.9 below.

ARTICLE III ADMINISTRATION; MEETINGS

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

3.2 **Place of Meetings.** Formal meetings of the Association shall be held at the principal office of the Condominium or such other suitable place convenient to the owners as many be designated by the Board.

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

3.4 **Special Meetings.**

(a) It shall be the duty of the chairperson to call a special meeting of the owners as directed by resolution of the Board or upon a petition signed by ten percent (10%) or more of the owners having been presented to the secretary. All meetings called because of petition of unit owner shall be held at a formal gathering and not by written ballot pursuant to Section 3.9 below and shall be held within sixty (60) days after receipt of the petition.

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

3.5 **Notice of Meetings.**

(a) **Notice of Formal Gatherings.** It shall be the duty of the secretary to mail by first class or certified mail, or electronic mail if directed by the owner, or to hand deliver notice of each annual or special meeting, stating the purpose thereof and the time and place where it is to be held, to each owner of record at least ten (10) days, but not more than sixty (60) days prior to the meeting or the date when ballots of a ballot meeting held pursuant to Section 3.9 below are required to be returned.

(b) **Mailing of Written Ballot Meetings.** It shall be the duty of the secretary to hand deliver or mail by first class or certified mail written ballots for a meeting by written ballot meeting held pursuant to Section 3.9 below to each owner of record not less than twenty (20) days before the date the ballots must be received by the Association in order to be counted.

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

3.6 **Adjourned Meetings.**

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

(b) **Written Ballot Meetings.** The Board may postpone the date for counting the ballots of a ballot meeting held pursuant to Section 3.9 below, in one or more postponements, for up to ninety (90) days after the originally scheduled ballot return date if a quorum of ballots has not

been returned or for matters on which a certain percentage approval is required and that vote has not been received nor have sufficient votes in opposition been received to negate the approval.

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

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

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

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

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

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

3.9 **Written Ballot in Lieu of a Meeting.**

(a) **Action By Written Ballot.** At the discretion of the Board of Directors, any

action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association, subject to the requirements of Subsection (d) of this section, delivers a written ballot to every owner that is entitled to vote on the matter in accordance with Section 3.5 above.

(b) Form and Effect of Ballot.

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

(2) A written ballot may not be revoked.

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

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

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

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

(B) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(C) A date certain on which all ballots must be returned to be counted.

(d) Secrecy Procedure.

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

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

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

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

(1) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(2) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds the required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and the required percentage has not been met.

(3) Except as provided in Paragraph (4) of this subsection, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

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

3.10 Action without a Meeting.

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

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

(c) Action taken under this section is effective when the last owner signs the consent, unless the consent specifies an earlier or later effective date. A consent signed under this

section has the effect of a meeting vote and may be described as such in any document.

ARTICLE IV
BOARD OF DIRECTORS

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

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

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

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

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

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

(d) Establishing a budget for payment of all common expenses of the Association and the institution and maintenance of a system for such payment as may be reasonably necessary to prevent any misuse of Association funds.

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

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

(g) Hiring and firing personnel necessary for the maintenance and operation of

the Condominium, the general common elements, and the limited common elements, if any.

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

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

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

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

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

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

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

4.7 **Removal of Directors.**

(a) At any legal, annual, or special meeting, other than a meeting by written ballot held pursuant to Section 3.9 above, any one or more of the directors may be removed, with or without cause, by a majority vote and a successor may be then and there elected to fill the vacancy thus created. Any director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

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

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

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

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

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

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

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

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

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

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

4.14 **Open Meetings; Executive Sessions.**

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

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

- (1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (2) Personnel matters, including salary negotiations and employee discipline;
- (3) The negotiation of contracts with third parties;
- (4) Collection of unpaid assessments; and
- (5) Any other matters permitted under ORS 100.420 as it may be amended from time to time.

(c) **Executive Session Procedure.**

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

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

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

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

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

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

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

ARTICLE V
OFFICERS

5.1 **Designation.** The principal officers of the Association shall be a chairperson, a secretary, and a treasurer, all of whom shall be elected by the directors. The directors may appoint an assistant treasurer and an assistant secretary and any such other officers as in their judgment may be necessary.

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

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

5.4 **Chairperson.** The chairperson shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The chairperson shall have all of the general powers and duties which are usually vested in the office of president of an Association.

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

5.6 **Treasurer.** The treasurer shall have responsibility for Association funds and securities

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

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

ARTICLE VI
OBLIGATIONS OF THE OWNERS

6.1 **Assessments.**

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

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

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

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

- (1) Expenses of administration.
- (2) Expenses of maintenance, repair or replacement of the common elements.
- (3) Any deficit in common expenses for any prior period.
- (4) Utilities for the common elements and other utilities with a common meter or commonly billed, such as water and sewer.
- (5) At the discretion of the Board, the expense of basic cable television service to all units, together with maintenance and repair expenses for such system and service.
- (6) Cost of insurance or bonds obtained in accordance with these Bylaws.

- (7) The cost of any professional management if required by mortgagees or desired by the Board.
- (8) Legal, accounting and other professional fees.
- (9) Any other items properly chargeable as an expense of the Association.

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

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

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

(b) Funding of Reserve Account.

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

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

(c) Determination of Reserve Account: Reserve Study.

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

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

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

(2) The reserve study shall include:

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

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

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

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

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

6.4 **Other Special Reserve Accounts.** Other special reserve funds as may be set up by the directors by special assessments of the unit owners who benefit thereby as may be required by the Declaration or otherwise determined by the Association of unit owners to be appropriate.

6.5 **Reserve Account Requirements.**

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

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

(c) Use of Reserve Fund.

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

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

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

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

6.6 **Initial Assessment.**

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

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

6.7 **Special Assessments.** The Board shall have the power to levy special assessments against an owner or all owners in the following manner for the following purposes:

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

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

(c) Upon vote of a majority of the Board, to make repairs or renovations to the common elements if sufficient funds are not available from the operating budget or replacement reserve accounts; or

(d) To make capital acquisitions, additions or improvements, by vote of at least seventy-five (75%) of all votes allocated to units in the Condominium.

6.8 **Budget.**

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

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

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

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

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

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

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

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

section.

6.9 **Fiscal Year; Income Tax Returns.**

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

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

6.10 **Default.**

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

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

(c) In addition to the interest that may be charged on delinquent assessments, the Board, at its option, may impose a late penalty in respect to any assessment not paid with ten (10) days from the due date. The penalty may not exceed the sum of twenty-five percent (25%) of the delinquent assessment, but shall be imposed only once on each regular or special assessment or installment of such assessments.

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

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

is a party or to which the unit is subject.

6.11 Maintenance and Repair.

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

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

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

ARTICLE VII
USE AND OCCUPANCY RESTRICTIONS
RULES OF CONDUCT

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

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

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

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

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

(d) If the unit owner fails to provide the tenant with copies of the documents

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

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

7.2 **Additions, Alterations or Improvements.**

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

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

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

(1) A unit owner shall make no repair or alteration or perform any other work on the unit which would jeopardize the soundness or safety of the property, reduce its value, impair any easement or hereditament, or increase the common expenses of the Association unless the consent of the Board of Directors and all other unit owners affected is first obtained.

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

7.3 **Use of Common Elements.**

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

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

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

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

7.5 Appearance of Condominium Buildings.

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

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

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

7.6 Nuisances.

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

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

(c) No owner shall hang garments, rags and similar items from the windows or

from any of the facades, decks or terraces of the Condominium, nor shall any owner hand or shake dust rags, mops and similar items from the windows or porches or terraces or clean such items by beating on an exterior part of the Condominium.

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

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

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

7.10 **Vehicle Restrictions.** Vehicular traffic on the parking areas and driveways on Condominium property shall be limited to five (5) miles per hour as a safety precaution. This speed limit shall apply to bicycles, motor scooters, motorcycles, automobiles and trucks. No recreational vehicles, campers, trailers, boats, boat trailers, vehicles in disrepair or similar things may be parked or kept on Condominium property without the prior written consent of the Board.

7.11 **Additional Rules.** Rules and regulations concerning other use of the Condominium property may be made and amended from time to time by the Association or the Board. Copies of such rules and regulations must be furnished to all unit owners and residents of the Condominium, on request.

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

- (a) Easement, including the terms-and provisions thereof,
Recorded: February 20, 1979 in Book 97, Page 1194
Granted by: Newport Marine Oreg. Ltd., an Oregon limited
partnership, Yaquia Development Corp., an Oregon

corporation, Shore Properties Oreg. Ltd., an Oregon limited partnership, Clyde Hamstreet and Rhonda Hamstreet, dba Newport Marine Co.
To: Newport Marine Oreg. Ltd., an Oregon limited partnership.

- (b) Agreement, including the terms and provisions thereof,
Recorded: December 23, 1999 in Book 395, Page 47
Between: Association of Unit Owners of Embarcadero
And: Newport Landing, LLC, an Oregon limited liability company, as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.
- (c) Grant of Easement and Reciprocal Easement, including the terms and provisions thereof,
Recorded: December 23, 1999 in Book 39, Page 66
Between: Newport Landing, LLC, an Oregon limited liability company as to one-half and Willamette Development No. 4, LLC, an Oregon limited liability company, as to one-half, as tenants in common.
And: Association of Unit Owners of Embarcadero.
- (d) The Condominium is within the urban renewal boundaries or within the shared area of the City of Newport and is subject to the terms and provisions thereof.
- (e) Each unit owner in the Condominium is subject to and the Condominium and its unit owners shall enjoy the benefit of the covenants, conditions, restrictions, easements and rights set forth in that certain Special Warranty Deed described as follows:
Recorded: July. 1, 1999 in Book 384, Page 16
Between: Clyde A. Hamstreet and Newport Marine Co., an Oregon general partnership consisting of Clyde A. Hamstreet and Rhonda V. Hamstreet, general partners, formerly known as Newport Marine Oreg. Ltd., Grantor.,
And: Newport Landing, LLC, an Oregon limited liability company, Grantee.

7.13 **Commercial Units.** Nothing in these Bylaws shall be so construed so as to limit the viable and customary operation of the commercial units for business purposes. This shall include, but not be limited to, the placement of signs identifying the business uses conducted in the commercial units on and about the common elements so long as said signage is aesthetically

compatible to the Condominium project as a whole and in conformance with the City of Newport's sign code. Commercial uses may be conducted at hours reasonable and prudent to the type of business in each commercial unit without limitation of the Association so long as the uses do not become a nuisance or annoyance to the non-commercial unit users.

ARTICLE VIII INSURANCE

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

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

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

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

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

(2) This limit and coverage shall be reviewed at least annually by the Board, which may increase the limit of and/or coverage, in its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsements wherein, the rights of the named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

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

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

8.3 **Authority to Adjust Losses.** All losses under policies hereafter in force regarding the property shall be settled exclusively with the Board or its authorized representative; provided, however, that when a first mortgagee has been designated as a loss payee by a unit owner and the first mortgagee has requested the opportunity to exercise the rights provided by this section, the mortgagee shall be entitled to settle losses as to the mortgaged unit, provided that the loss which occurs is severable. Releases and proofs of loss shall be executed by at least two (2) directors.

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

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

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

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

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

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

8.6 **Reconstruction Costs.**

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

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

8.7 Insurance Deductible; Owner and Tenant Insurance.

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

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

(1) Damage to a unit or limited common elements not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not normally covered by fire and property loss insurance policies with extended coverage endorsements); or

(2) For any damage or loss to the owner's or tenant's personal property. Owners shall be responsible for purchasing insurance policies insuring their units and appurtenant limited common elements for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage.

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

(d) The Board shall notify all owners of the amount of the deductible under the Association policies, to the extent reasonably practicable, the Board shall give at least thirty (30) days' notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies. Owners and tenants of all units shall procure and maintain comprehensive liability policies having combined limits of not less than \$50,000.00 for each occurrence. Such insurance shall provide coverage for, but not limited to, the negligent acts of the owner and tenant

and their guests or other occupants of the unit for damage to the general and limited common elements and other units and the personal property of others located therein.

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

**ARTICLE IX
DAMAGE AND DESTRUCTION**

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

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

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

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

(1) The Condominium property shall be deemed to be owned in common by the owners.

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

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

(4) The Condominium shall be subject to an action for partition at the suit of any owner. If a decree of partition orders the sale of the Condominium property, the net proceeds of sale, together with the net proceeds of the policies of insurance on the Condominium, if any,

shall be considered as one fund and shall be divided among all the owners in proportion to their respective undivided interests, after first paying, out of the respective shares of the owners, to the extent such share is sufficient for the purpose, all liens on the undivided interest in the project owned by each owner.

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

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

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

- (1) Compliance with all applicable provisions of the Act;
- (2) Approval by the Oregon Real Estate commissioner, if required by the

Act; and

- (3) Recording of the amendment, including the approval thereof of each mortgagee and each other lienholder of record having a lien against any part of the Condominium or building affected by the amendment, with the recording officer of Lincoln County, Oregon.

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

ARTICLE X
CONDEMNATION

10.1 The Board shall have the sole authority to negotiate with any public or private body or person having tie-power of eminent domain and to sue or defend in any litigation involving such

bodies or persons with respect to the common elements of the Condominium and shall assist any unit owner whose unit or a part thereof is the subject of any condemnation or eminent domain proceeding.

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

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

ARTICLE XI **AMENDMENTS TO BYLAWS**

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

11.2 **Adoption.** Amendments may be approved by the Association at a duly constituted meeting or written ballot in lieu of a meeting in accordance with Section 3.9 above conducted for such purpose or by action without a meeting under Section 3.10 above. A vote of a majority of the unit owners is required for approval of any amendment except:

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

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

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

(d) No amendment of these Bylaws shall be made without the consent of the

owners of Commercial Units to the extent required under 14.9 of the Declaration and Section 7.13 above.

11.3 **Execution; Recording; Approval.** An amendment shall not be effective until certified by the chairperson and secretary of the Association as being adopted in accordance with these Bylaws and ORS 100.410 and recorded as required by law. Any amendment adopted within five (5) years after the recording of these Bylaws shall be approved by the Real Estate Commissioner, to the extent required by the Act.

ARTICLE XII **RECORDS AND AUDITS**

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

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

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

12.4 **Payment of Common Expenses.** The Board shall authorize the treasurer, the management agent or another specified party to pay all legitimate expenses of the Association. The payments shall be made pursuant to the payment system instituted by the Board as described in Section 4.3(d) above.

12.5 **Reports and Audits.**

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

(b) At any time any owner or mortgagee may, at his or her own expense, cause

an audit or inspection to be made of the books and records of the Association.

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

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

12.8 **Inspection of Records by Unit Owners.**

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

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

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

(c) The Association, within ten (10) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section.

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

ARTICLE XIII
COMPLIANCE

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

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

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

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

14.3 Payment under this clause may be made, during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that the person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a director, officer, employee or agent shall have a right of contribution over and against all other directors, officers, employees or agents and members of the Association who participated with or benefited from the acts that created the liability.

ARTICLE XV
ASSESSMENT COLLECTION COSTS;
SUITS AND ACTIONS

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

ARTICLE XVI
MISCELLANEOUS

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

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

16.3 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used here, the singular shall include the plural, and the plural the singular, The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION, INC., an Oregon
nonprofit corporation

By: Steven Hanson
STEVEN HANSON, Chairperson

By: William J. Stamps
, Secretary

CERTIFICATION

The undersigned Chairperson and Secretary of The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation, hereby certify that the within Amended and Restated Bylaws of The Landing at Newport Condominiums Unit Owners Association have been approved by all unit owners as provided in Article XI of the Bylaws and ORS 100.410.

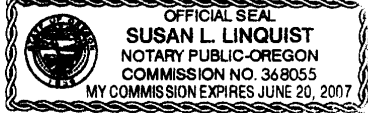
**THE LANDING AT NEWPORT CONDOMINIUMS
UNIT OWNERS ASSOCIATION, INC., an Oregon
nonprofit corporation**

By: Steven Hanson
STEVEN HANSON, Chairperson

By: Susan J Stamps
, Secretary

STATE OF OREGON)
County of Multnomah) ss

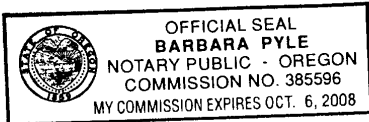
The foregoing instrument was acknowledged before me this 10 day of August, 2005, by STEVEN HANSON Chairperson, of The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation, on its behalf.



Susan L. Linquist
Notary Public for Oregon
My Commission Expires: June 20, 2007

STATE OF OREGON)
County of) ss

The foregoing instrument was acknowledged before me this 11 day of August, 2005, by Susan Stamps, Secretary, of The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation, on its behalf.

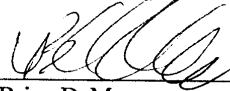


Barbara Pyle
Notary Public for Oregon
My Commission Expires: 10-6-08

GOVERNMENTAL APPROVAL

The foregoing Amended and Restated Bylaws of The Landing at Newport
Condominiums Unit Owners Association is approved pursuant to ORS 100.410 this 22nd day of
August 2005.

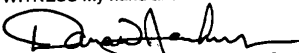
Scott W. Taylor
OREGON REAL ESTATE COMMISSIONER

By: 


Brian DeMarco

WTE ACCO 2007052
After Recording Return to:
Vial Fotheringham LLP
7000 SW Varns Street
Portland, OR 97223

STATE OF OREGON } ss. 5 Pages
County of Lincoln }
I, Dana W. Jenkins, County Clerk, in and for said county, do hereby
certify that the within instrument was received for record, and
recorded in the Book of Records of said county at Newport, Oregon.
WITNESS my hand and seal of said office affixed.


DANA W. JENKINS, Lincoln County Clerk

Doc : 200702015
Rect: 701165 46.00
02/06/2007 01:21:09pm



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

This Amendment to the Amended and Restated Bylaws of the Landing at Newport Condominiums Unit Owners Association is made this 1 day of December 2006 by the Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation ("Association").

RECITALS

A. "The Landing at Newport" Condominiums (the "Condominium") is a condominium located in the City of Newport, Lincoln County, Oregon, governed pursuant to the following documents recorded in the Records of Lincoln County, Oregon:

Amended and Restated Declaration of Condominium Ownership for "The Landing at Newport" Condominiums and Plat Amendment, recorded in the records of Lincoln County as document number 200516616.

Amended and Restated Bylaws of the Landing at Newport Condominiums Unit Owners Association ("Bylaws"), recorded in the records of Lincoln County as document number 200516617.

B. The Association and unit owners of the Condominium wish to amend the Bylaws to increase the number of directors of the Association.

NOW, THEREFORE, pursuant to Article XI of the Bylaws and ORS 100.410, with the consent or approval of all owners and the consent of mortgagees to the extent required under Section 11 of the Declaration, the Association hereby amends the Bylaws in the manner set forth below.

I. Section 4.1 of Article IV of the Bylaws is amended to read:

4.1 Number and Qualification

(a) **Number.** The affairs of the Association shall be governed by a Board of Directors composed of five (5) directors.

(b) **Qualification.** Each director must be a unit owner or the co-owner of a unit. However, multiple owners of the same unit may not serve as directors simultaneously. An officer or employee of a corporation, the members of a limited liability company, a partner of a partnership, the trustee of a trust, personal representative of an estate or an employee of the trust or estate may serve on the board, if the corporation, limited liability company, partnership, trust or estate owns a unit.

II. Section 4.5 of Article IV of the Bylaws is amended to read:

4.5 Election and Term of Office.

(a) **Terms.** Except as provided in Subsection (c) of this section, the term of three directors is three years and the term of two directors is two (2) years. The terms of the directors are staggered so that the term of one of the two (2) two-year directors expires annually. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected as provided in this article. For convenience of reference, the Board of Directors shall designate director positions by number, letter or other identification.

(b) **Election at Annual Meeting.** Except as provided in Subsection (c) of this section, at the annual meeting held under Section 3.3 above, owners shall elect directors to succeed directors whose terms expire.

(c) **2006 Appointed Directors.** Upon recording of the amendment to these Bylaws increasing the Board of Directors to five (5) members, the existing Board shall appoint two directors (the "Appointed Directors") to serve until the 2007 annual meeting. At the 2007 annual meeting, the owners shall elect two directors to succeed the Appointed Directors. One director shall be elected to serve until the 2008 annual meeting and one shall be elected to serve until the 2009 annual meeting. Thereafter, at the expiration of the initial term of office of each Appointed Director, his or her successor shall be elected to serve for a term of two (2) years.

(d) **Nomination.** The Board of Directors shall determine the method of nominating directors, which must include the right of an owner to nominate a director from the floor at any meeting at which an election of directors is held.

(e) **Manner of Election.** The Board of Directors shall determine the manner of election of directors. Election of directors shall be held by plurality. Cumulative voting is not permitted.

EXHIBIT "A"

Property Affected by Amendment

THE LANDING AT NEWPORT CONDOMINIUMS, in Lincoln County, Oregon, together with the undivided interests in the general and limited common elements appurtenant thereto, as more fully set forth and described in the Amended and Restated Declaration of Condominium Ownership recorded in the records of Lincoln County, Oregon, as document number 200516616.





00148921201800032050140143

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.



Dana W. Jenkins
Dana W. Jenkins, Lincoln County Clerk

WHEN RECORDED, RETURN TO:

Vial Fotheringham LLP
17355 SW Boones Ferry Rd., Suite A
Lake Oswego, Oregon 97035

GRANTOR: Landing at Newport Condominiums Unit Owners Association, an Oregon nonprofit corporation and Shery L. Whitehead
GRANTEE: Public and Shery L. Whitehead

**FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION
AND
PLAT AMENDMENT
FOR
"THE LANDING AT NEWPORT" CONDOMINIUMS
(Combining Units 212 and 213 by Third Plat Amendment)**

This First Amendment to Amended and Restated Declaration and Plat Amendment for "The Landing at Newport" Condominiums ("**First Amendment to Amended and Restated Declaration and Plat Amendment**") is made by The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation ("**Association**") and Shery L. Whitehead ("**Whitehead**").

RECITALS

A. "The Landing at Newport" Condominiums ("**Condominium**") is a condominium located in the City of Newport, Lincoln County, Oregon. The Condominium was created by the following documents recorded February 5, 2001, in the Records of Lincoln County, Oregon:

Declaration of Condominium Ownership for "The Landing at Newport" Condominiums ("**Declaration**") recorded in Book 414, Page 2079 as Document No. 6238466.

Bylaws of The Landing at Newport Condominiums Unit Owners Association ("**Bylaws**") recorded as Exhibit C to the Declaration.

Plat of "The Landing at Newport" Condominiums ("**Plat**") recorded in Book 1, Page 147, Plat Records.

B. The Plat was amended by the following documents recorded in the Records of Lincoln County, Oregon:

First Plat Amendment:

First Amendment to Declaration of Condominium Ownership for The Landing at Newport Condominiums recorded June 29, 2001. in Book 424, Page 1907.

Plat Amendment The Landing at Newport Condominiums recorded June 29, 2001, in Book 1, Page 153, Plat Records (“First Plat Amendment”).

Second Plat Amendment:

Amended and Restated Declaration of Condominium Ownership for “The Landing at Newport” Condominiums and Plat Amendment recorded October 17, 2005, as Document No. 200516616.

Plat of “The Landing at Newport” Condominiums (Book 1, Page 147) Plat Amendment #2 recorded October 17, 2005, in Plat Book 1 Page 168 (“Second Plat Amendment”).

C. The Condominium is currently governed by the following documents recorded in the Records of Lincoln County, Oregon:

Amended and Restated Declaration of Condominium Ownership for “The Landing at Newport” Condominiums and Plat Amendment (“**Amended and Restated Declaration and Plat Amendment**”) recorded October 17, 2005, as Document No. 20016616.

Amended and Restated Bylaws of The Landing at Newport Condominiums Unit Owners Association recorded October 17, 2005, as Document No. 200516617, as amended by Amendment to Amended and Restated Bylaws of The Landing at Newport Condominiums Unit Owners Association recorded February 6, 2007, as Document No. 200702015.

D. Association is The Landing at Newport Condominiums Unit Owners Association, Inc. formed pursuant to the Declaration and Bylaws and incorporated as an Oregon nonprofit corporation by Articles of Incorporation filed June 18, 2001, as Registry No. 025864-93 in the office of the Oregon Secretary of State, Corporation Division.

E. Whitehead is the owner of Units 212 and 213 by deed recorded November 2, 2016, as Document No. 2016-10455, Records of Lincoln County, Oregon. Units 212 and 213 are adjoining units as shown on the Plat.

F. Whitehead wishes to combine Units 212 and 213 into one residential unit to be designated Unit 212A.

G. Under ORS 100.130, the boundaries between adjoining units, including any intervening common elements, may be relocated or eliminated by an amendment to the declaration. The amendment must:

1. Identify the units involved, state any reallocations of common element interest, voting rights, common expense liability and right to common profits and contain words of conveyance.

2. Be executed by the owners and mortgagees or trust deed beneficiaries of the affected units and certified by the chairperson and secretary of the association in accordance with ORS 100.135(2)(b).

3. Be accompanied by a plat amendment showing the altered boundaries between the adjoining units in accordance with ORS 100.116.

H. Units 212 and 213 are currently subject to Trust Deed recorded November 2, 2016, as Document No. 2016-10456, Records of Lincoln County, Oregon wherein Shery L. Whitehead is Grantor, Western Title & Escrow Company is Trustee and Tom McGonagill and Bonita McGonagill, as tenants by the entirety, ("**McGonagills**") are the beneficiaries. In accordance with ORS 100.130, the execution, approval and consent of McGonagills is attached to this First Amendment to Amended and Restated Declaration and Plat Amendment.

I. Association and Whitehead wish to amend Amended and Restated Declaration and Plat Amendment and the Plat, as amended by the documents specified in Recital B above to reflect the changes described in these recitals.

J. *Third Amendment to Plat of "The Landing at Newport" Condominiums, originally recorded in Book 1, Page 147, Plat Records, as amended by Plat Amendment "The Landing at Newport" Condominiums, recorded June 29, 2001, in Book 1, Page 153, Plat Records, as amended by "The Landing at Newport" Condominiums Plat Amendment, recorded October 17, 2005, in Plat Book 1 Page 168 ("**Third Plat Amendment**")* is being recorded in the Records of Lincoln County, Oregon concurrently with this First Amendment to Amended and Restated Declaration and Plat Amendment. In accordance with ORS 100.116(5), this First Amendment to Amended and Restated Declaration and Plat Amendment authorizes Third Plat Amendment.

NOW, THEREFORE, pursuant to Article 12 of the Amended and Restated Declaration and Plat Amendment and ORS 100.116, 100.130 and 100.135, with the consent of McGonagills, the Board of Directors on behalf of the Association and Whitehead hereby amend Amended and Restated Declaration and Plat Amendment and Plat, as amended by the documents specified in Recital B above, and convey Unit 212A as set forth below.

I. DECLARATION AMENDMENTS. The Declaration is amended as follows:

A. Section 3.2 Section 3.2 of the Declaration is amended to read:

3.2 **General Description, Location, and Designation of Units.** The Condominium consists of three types of units. There are 54 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 unit are shown on the attached **Exhibit I**. The unit designation, dimensions, and location of each unit are shown on the Plat.

B. Exhibit B. **Exhibit B** to the Declaration is deleted and replaced with the attached **Exhibit I**.

C. References to Exhibit B. All references to **Exhibit B** are changed to **Exhibit I**

II. REALLOCATION OF INTERESTS.

A. Undivided Interests in Common Elements. Unit 212A has a 3.6577 percent undivided interest in the common elements as set forth in attached **Exhibit I**.

B. Voting. Unit 212A has one (1) vote in the affairs of the Association and for the purpose of the Declaration as provided in Section 6.3 of Amended and Restated Declaration and Plat Amendment.

C. Common Expenses and Profits. Common expenses and profits shall be allocated to Unit 212A in accordance with Section 6.2 of Amended and Restated Declaration and Plat Amendment.

D. Limited Common Elements. The decks immediately adjacent to Units 212 and 213 designated as limited common elements under Article 5 of Amended and Restated Declaration and Plat Amendment constitute limited common element the use of which is restricted to Unit 212A as shown on Third Plat Amendment.

III. PLAT AMENDMENTS. *Third Amendment to Plat of "The Landing at Newport" Condominiums, originally recorded in Book 1, Page 147, Plat Records, as amended by Plat Amendment "The Landing at Newport" Condominiums, recorded June 29, 2001, in Book 1, Page 153, Plat Records, as amended by "The Landing at Newport" Condominiums Plat Amendment, recorded October 17, 2005, in Plat Book 1 Page 168 ("Third Plat Amendment")* is being recorded in the Records of Lincoln County, Oregon concurrently with this First Amendment to Amended and Restated Declaration and Plat Amendment that authorizes Third Plat Amendment. Third Plat Amendment reflects the following amendments to the Plat:

A. The boundaries of Units 212 and 213 as shown on Pages 3 and 6 of the Plat (Book 1, Pages 147B and 147E) are amended as shown Sheet 1 of Third Plat Amendment.

B. The limited common element decks located adjacent to Units 112 and 113 as shown on Page 3 of the Plat (Book 1, Page 147B) pertain to Unit 212A as shown on Third Plat Amendment.

IV. CONVEYANCE OF COMBINED UNIT 212A. Pursuant to ORS 100.130, the Association, on behalf of the unit owners, and Whitehead hereby convey to Shery L. Whitehead Unit 212A together with the undivided interest in the common elements and limited common elements pertaining thereto as described in this First Amendment to Amended and Restated Declaration and Plat Amendment and as shown on Third Plat Amendment.

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Dated this 18 day of December, 2017.

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

an Oregon nonprofit corporation

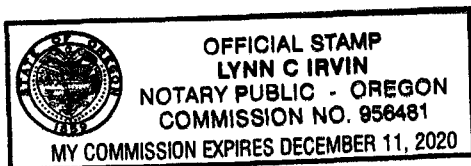
By: Joseph H. McClarnan

Joseph H. McClarnan, Chairperson

STATE OF OREGON)

County of Marion) ss.

The foregoing instrument was acknowledged before me this 18 day of December 2017, by Joseph H. McClarnan, Chairperson of The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation, on its behalf.



Lynn C. Irvin

Notary Public for Oregon

My Commission Expires: 12-11-2020

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

an Oregon nonprofit corporation

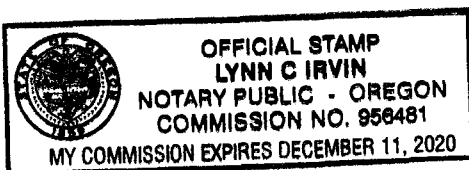
By: Rebecca L. Hillyer

Rebecca L. Hillyer, Secretary

STATE OF OREGON)

County of Marion) ss.

The foregoing instrument was acknowledged before me this 11 day of December, 2017, by Rebecca L. Hillyer, Secretary of The Landing at Newport Condominiums Unit Owners Association, Inc., an Oregon nonprofit corporation, on its behalf.



Lynn C. Irvin

Notary Public for Oregon

My Commission Expires: 12-11-2020

Dated this 9th day of ~~January~~ ^{March} 2018

OWNER

Shery L. Whitehead

Shery L. Whitehead

STATE OF OREGON)
)ss.
County of Lincoln)

The foregoing instrument was acknowledged before me this 9th day of ~~January~~ ^{March} 2018 by Shery L. Whitehead.

Notary Public for Oregon
My Commission Expires: _____

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See Attachment 



All-purpose Acknowledgment California only

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Humboldt

On 3/9/18 before me, Tanya Standley, Notary Public (insert name and title of the officer),

personally appeared Shery L. Whithead

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Notary Seal

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

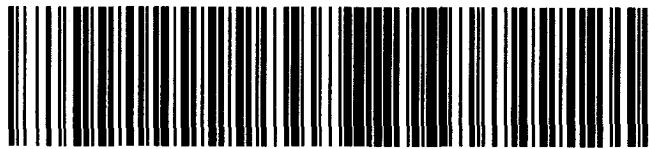
For Bank Purposes Only

Description of Attached Document

Type or Title of Document First Amendment

Document Date March 9, 2018 Number of Pages 1

Signer(s) Other Than Named Above N/A



FO01-000DSG5350CA-01

7.5

**MORTGAGEE
EXECUTION, APPROVAL AND CONSENT**

Tom McGonagill and Bonita McGonagill, as tenants by the entirety (**McGonagill**) are the owners and holders of Trust Deed recorded November 2, 2016, as Document No. 2016-10456, Records of Lincoln County recorded against Units 212 and 213 of The Landing at Newport Condominiums located in Lincoln County, Oregon. McGonagill hereby join in, approve and consent to this First Amendment to Amended and Restated Declaration and Plat Amendment for "The Landing at Newport" Condominiums (Combining Units 212 and 213 by Third Plat Amendment.

This 8th day of January, ~~2017~~ ²⁰¹⁸.

MORTGAGEE

[Signature]
Tom McGonagill

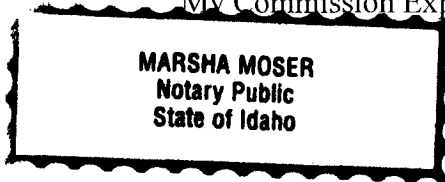
[Signature]
Bonita McGonagill

Idaho
STATE OF ~~OREGON~~)
County of Ada) ss.

The foregoing instrument was acknowledged before me this 8th day of Jan, ~~2017~~ ²⁰¹⁸, by Tom McGonagill.

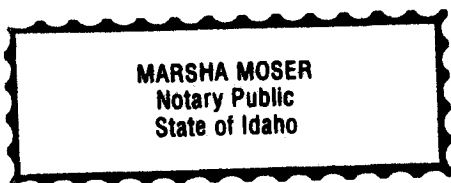
[Signature]
Notary Public for Oregon
My Commission Expires: 3-28-21

Idaho
STATE OF ~~OREGON~~)
County of Ada) ss.



²⁰¹⁸ The foregoing instrument was acknowledged before me this 8th day of Jan, ~~2017~~, by Bonita McGonagill.

[Signature]
Notary Public for Oregon
My Commission Expires: 3-28-21



GOVERNMENTAL APPROVALS

OREGON REAL ESTATE COMMISSIONER

This First Amendment to Amended and Restated Declaration and Plat Amendment for “The Landing at Newport” Condominiums is approved pursuant to ORS 100.110 this 27th day of March, 2018. In accordance with ORS 100.110(8), this approval automatically expires if this amendment is not recorded within one (1) year from this date.

**OREGON REAL ESTATE
COMMISSIONER**

By: 
Michael Hamfin

LINCOLN COUNTY ASSESSOR

The First Amendment to Amended and Restated Declaration and Plat Amendment for “The Landing at Newport” Condominiums is approved pursuant to ORS 100.110 this 3rd day of March, 2018.

LINCOLN COUNTY ASSESSOR


By: 

EXHIBIT I
UNIT TYPE, AREA OF UNITS &
ALLOCATION OF AN UNDIVIDED INTEREST
IN COMMON ELEMENTS

UNIT DESIGNATION	UNIT TYPE	UNIT LOCATION	AREA IN SQUARE FEET	PERCENTAGE INTEREST IN COMMON ELEMENTS
101	Residential	Bldg B	800	1.9302
102	Residential	Bldg B	716	1.7275
103	Residential	Bldg B	716	1.7275
104	Residential	Bldg B	716	1.7275
105	Residential	Bldg B	716	1.7275
106	Residential	Bldg B	716	1.7275
107	Residential	Bldg B	716	1.7275
108	Residential	Bldg B	716	1.7275
109	Residential	Bldg B	800	1.9302
110	Residential	Bldg A	800	1.9302
111	Residential	Bldg A	716	1.7275
112	Residential	Bldg A	716	1.7275
113	Residential	Bldg A	800	1.9302
114	Residential	Bldg A	716	1.7275
115	Residential	Bldg A	716	1.7275
116	Residential	Bldg A	716	1.7275
117	Residential	Bldg A	716	1.7275
118	Residential	Bldg A	800	1.9302
201	Residential	Bldg B	800	1.9302
202	Residential	Bldg B	716	1.7275
203	Residential	Bldg B	716	1.7275
204	Residential	Bldg B	716	1.7275
205	Residential	Bldg B	716	1.7275
206	Residential	Bldg B	716	1.7275

207	Residential	Bldg B	716	1.7275
208	Residential	Bldg B	716	1.7275
209	Residential	Bldg B	800	1.9302
210	Residential	Bldg A	800	1.9302
211	Residential	Bldg A	716	1.7275
212 A	Residential	Bldg A	1547*	3.6577
214	Residential	Bldg A	716	1.7275
215	Residential	Bldg A	716	1.7275
216	Residential	Bldg A	716	1.7275
217	Residential	Bldg A	716	1.7275
218	Residential	Bldg A	800	1.9302
219	Residential/ Commercial	Bldg B	507	1.2249
301	Residential	Bldg B	800	1.9302
302	Residential	Bldg B	716	1.7275
303	Residential	Bldg B	716	1.7275
304	Residential	Bldg B	716	1.7275
305	Residential	Bldg B	716	1.7275
306	Residential	Bldg B	716	1.7275
307	Residential	Bldg B	716	1.7275
308	Residential	Bldg B	716	1.7275
309	Residential	Bldg B	800	1.9302
310	Residential	Bldg A	800	1.9302
311	Residential	Bldg A	716	1.7275
312	Residential	Bldg A	716	1.7275
313	Residential	Bldg A	800	1.9302
314	Residential	Bldg A	716	1.7275
315	Residential	Bldg A	716	1.7275
316	Residential	Bldg A	716	1.7275
317	Residential	Bldg A	716	1.7275

318	Residential	Bldg A	800	1.9302
319	Residential	Bldg B	507	1.2248
B-2	Commercial	West End of Bldg B	507	1.2248
TOTAL			41445*	100%

* When Units 212 and 213 were combined, the removal of the intervening common element wall resulted in the area of Unit 212A exceeding the sum of the area of Unit 212 (716 Sq. ft) and Unit 213 (800 sq. ft): **1516 sq. ft.** However, pursuant to ORS 100.130, for the purpose of calculating the allocation of interest in the common elements of Unit 212A, the allocation of interest in the common elements of Unit 212A is calculated based on the initial sum of 1516 sq. ft, not 1547 sq. ft.