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**DECLARATION OF CONDOMINIUM OWNERSHIP**

**FOR**

**GARAJMAHAL CONDOMINIUM**

**Declarant: Forge Sustainable Investments, LLC**

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**DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
GARAJMAHAL CONDOMINIUM**

This Declaration, to be effective upon its recording in the official records of Deschutes County, Oregon, is made by Forge Sustainable Investments, LLC, an Oregon limited liability company (the "Declarant"), and submits to the provisions, restrictions, and limitations of the Oregon Condominium Act the Property described below and all improvements now existing or to be constructed on the Property, and to be known as the Garajmahal Condominium.

Declarant hereby declares on behalf of itself, its successors, grantees, and assigns, as well as 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:

**SECTION 1. DEFINITIONS.**

The definitions below shall be used throughout this Declaration and the Bylaws, unless the context requires otherwise. When a defined term is intended to have the meaning stated in this Section the term shall be spelled with an initial capital letter.

- 1.1. "Act" means the Oregon Condominium Act, as amended from time to time.
- 1.2. "Association" means the Garajmahal Condominium Owner Association.
- 1.3. "Association Property" means any real property or interest in real property acquired, held, or possessed by the Association.
- 1.4. "Board" means the Board of Directors of the Association.
- 1.5. "Bylaws" mean the Bylaws of the Association.
- 1.6. "Common Elements" means all portions of the Condominium other than Units.
- 1.7. "Condominium" means the Property, including any buildings, improvements, and structures on the Property; and any easements, rights, and appurtenances belonging to the Property, all of which is submitted to the provisions of ORS 100.005 to 100.625.
- 1.8. "Declarant" means Forge Sustainable Investments, LLC.
- 1.9. "Declaration" means this instrument and any amendment or supplement thereto.
- 1.10. "Eligible Mortgage Insurer or Guarantor" means an insurer or government guarantor of a first mortgage on a Unit who has requested notice of certain matters from the Association.
- 1.11. "Eligible Mortgagee" shall mean a holder of a first mortgage on a Unit who has requested notice of certain matters from the Association, but shall not include a contract vendor.
- 1.12. "General Common Elements" means all portions of the Condominium that are not part of a Unit or a Limited Common Element.
- 1.13. "Limited Common Element" means those Common Elements designated in this Declaration as reserved for the use of a certain Unit or number of Units to the exclusion of other Units. There are no Limited Common Elements in this Condominium.
- 1.14. "Mortgage" includes a mortgage, a deed of trust and a contract for the sale of real estate.

1.15. "Mortgagee" includes a mortgagee under a mortgage, a deed of trust beneficiary and a vendor under a contract for the sale of real estate.

1.16. "Owner" means the owner or owners of a Unit, but shall not include a Mortgagee unless in possession of a Unit.

1.17. "Parties" means, as the context requires, one or more individuals or entities subject to this Declaration, including the Declarant, the Association, the Board, the Board's officers and directors, and each and every Owner.

1.18. "Parking Space" means an area designated for parking Motor Vehicles.

1.19. "Plat" means the plat for the Condominium which is being recorded in the records of Deschutes County, Oregon, concurrently with this Declaration and any revisions of such plat subsequently recorded.

1.20. "Property" means the real property described on Exhibit A.

1.21. "Transitional Committee" means the committee provided for under ORS 100.205.

1.22. "Turnover Meeting" means the meeting at which Declarant relinquishes control of the administration of the Association as required by ORS 100.210.

1.23. "Unit" means those parts of the Condominium designated as such by Section 5.

## SECTION 2. INTERPRETATION.

2.1. **Liberal Construction.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Condominium under the provisions of the Act.

2.2. **No Fiduciary Standard.** In no event shall Declarant be deemed to be a fiduciary of the Association, an Owner, or both, or be held to a fiduciary standard with respect to activities hereunder. The forgoing language does not apply to fiduciary responsibilities of officers or directors that the Declarant may otherwise have.

2.3. **Original Owner of Units.** Declarant is the original Owner of all Units and will continue to be deemed the Owner of each Unit until conveyance or other documents changing the ownership of specifically described Unit or Units are filed of record.

2.4. **Captions and Exhibits.** The captions herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

2.5. **Construction.** All words will be construed to be of such gender or number as the circumstances require. All words will be construed to be in the singular or the plural as the circumstances require. Whenever the words *include* or *including* are used they will be deemed to be followed by the words *without limitation*.

## SECTION 3. NAME.

The Property shall be known as the Garajmahal Condominium.

## SECTION 4. PROPERTY DESCRIPTION.

The Property being submitted to the condominium form of ownership is located entirely in Deschutes County, Oregon, and is described on Exhibit A. A fee simple interest in the Property is being submitted to the condominium form of ownership. Each Owner shall hold fee simple title to Owner's Unit and an undivided percentage ownership interest in the Common Elements pertaining thereto when such Unit is conveyed to the

Owner by the Declarant or otherwise. Prior to such conveyance, Declarant shall hold fee simple title to all Units and the appertaining Common Elements.

## **SECTION 5. UNITS.**

**5.1. General Description of Buildings.** The Condominium is 3 buildings constructed with cement slab foundation, sheet metal siding, and sheet metal roofing, having 1 story and no basements. The buildings have a total of 61 Units.

**5.2. General Description, Location, and Designation of Units.** The individual Units, designated as Units 201 to 211, 301 to 316, and 402 to 434 are each 1 story having a 12-foot wide by 14-foot high overhead door, open space, natural gas Resnor ceiling heater and are serviced by electricity and natural gas. The location of each Unit is shown on the Plat, together with a description of each Unit's boundaries. The area of square footage for each Unit is shown on Exhibit B and is shown on the Plat.

**5.3. Boundaries of Units.** Each Unit shall be bounded by the interior surfaces of its perimeter and demising walls, floors, and ceilings and shall include both the interior surfaces so described (including unexposed face of the sheetrock or similar material and the underside of the finished floor) and the air spaces so encompassed except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the Condominium. Each Unit shall also include any glazing and screening of windows (only Units in 201, 211, 301 to 316, 401, 417, 418, and 434 have windows) and all utility service line including but not limited to power, light, gas, and heating within the boundaries of the Unit.

## **NOTICE**

**The square footage areas stated in this Declaration and the plat are based on the boundaries of the Units as described in this Declaration and may vary from the area of units calculated for other purposes.**

## **SECTION 6. COMMON ELEMENTS.**

Each Unit shall be entitled to an undivided percentage ownership interest in the Common Elements, as shown on the Plat and on Exhibit B. The undivided percentage ownership interest was determined by dividing the total square footage of each Unit by the total square footage of all Units within the Condominium. The square footage per Unit was measured as its perimeter and demising walls.

**6.1. Definition.** The General Common Elements shall consist of all parts of the Condominium other than the Units and include the following:

- (a) The land included in the Property, together with any rights or appurtenances related thereto;
- (b) The foundations, floor slabs, exterior walls, shear walls, windows (except glazing and screening), unit access doors (except glazing and screening), and roofs;
- (c) The walkways, sidewalks, driveways, recycling/trash areas, and landscaping;
- (d) Pipes, conduits, wires, and other utility installations up to entry into Units; and
- (e) The community restroom / lounge, and fire riser and electrical rooms; and

(f) All other elements of any building that are necessary or convenient to its existence, maintenance, and safety or that are normally in common use.

**6.2. Location.** The general location of the General Common Elements is shown on the Plat.

**6.3. Common Expenses and Profits.**

**6.3.1. Allocation.** The common profits of the Property shall be distributed to, and the common expenses of the Property shall be charged to, the Owners according to each Owner's allocated undivided interest in the Common Elements. The allocation for each Unit shall be determined by a percentage equal to the square footage for the individual Unit divided by the total square footage for all Units on the Property.

**6.3.2. Expenses.** Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair, replacement of the Common Elements, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the intentional act of an Owner or Owner's invitee, guest, tenant, employee, or independent contractor, shall be repaired by the Association at such Owner's cost and expense. The repair, maintenance and replacement of doors and door frames (including patio and deck doors), windows and window frames shall be the responsibility of the Association. Exterior painting shall be the responsibility of the Association. Common expenses shall be assessed and apportioned among the Owners as set forth in Section 6.3.1.

**6.3.3. No Waiver.** No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment by the Owner of the Owner's Unit, and remains liable until the Unit has a new owner whether by sale or other transfer, including but not limited to transfers by gift, foreclosure, or deed in lieu of foreclosure. An Owner may not claim an offset against an assessment for failure of the Association to perform its obligations.

**6.3.4. Commencement.** Except for assessments for reserves required by Section 12, Declarant elects to defer commencement of all common expense assessments. Declarant shall give not less than 10 days' written notice to all affected Owners prior to commencement of common expense assessments. Furthermore, Declarant shall defer payment of accrued assessments for reserves for each Unit until the date the Unit is conveyed, but not later than beyond the date of the Turnover Meeting provided for in the Bylaws or if a Turnover Meeting is not held, the date the Owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owed by Declarant for all reserve fund assessments.

**6.3.5. Capital Improvements.** The Association shall not make any assessment against Units owned by the Declarant for additional capital improvements without the written consent of the Declarant as long as Declarant owns more than two Units.

**6.3.6. Payment of Common Expenses.** The due date for payment of common expenses shall be established in the Bylaws.

**6.3.7. Default in Payment of Common Expenses.** If an Owner fails to timely pay an assessment of common expenses or any other charge owing pursuant to this Declaration, the Bylaws, or the Act, the Owner shall owe interest on the deficiency, from the due date until paid, at the statutory rate on judgments. The Owner shall also owe for any expense incurred by the Association to collect the deficiency, including but not limited to reasonable attorney's fees. The Board may also establish and impose charges



for late payments of assessments, if the charge imposed is based upon a resolution adopted by the Board that is delivered to each Unit, mailed to the mailing address of each Unit, or mailed to the mailing addresses designated by the Owners in writing. If the deficiency is not paid within thirty (30) days of its due date, the Board may declare any remaining installments of assessments for common expenses or any other charge for balance of the fiscal year immediately due and payable. The Board may also, in its discretion, record a notice of lien in the Deschutes County records regarding any deficiency, whether by acceleration or otherwise. In any proceeding brought regarding a deficiency, including but not limited to a suit to foreclose a lien, the Association shall have a claim for attorney's fees and costs incurred, whether at trial or upon appeal.

**6.3.8. Foreclosure of Liens for Unpaid Common Expenses.** In any action brought by the Association to foreclose a lien on a Unit because of unpaid assessments or charges, the Board, acting on behalf of the Association, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing any lien securing the same.

**6.3.9. Prior Mortgages; Liability of Subsequent Purchaser.** Any lien of the Association against a Unit for assessments or charges shall be subordinate to real property tax and assessment liens and any first Mortgage of record, unless there has been compliance with all requirements of ORS 100.450(7). Where the purchaser or Mortgagee of a Unit obtains title to the Unit as a result of foreclosure of a prior Mortgage or by deed in lieu of foreclosure, such purchaser or Mortgagee, his or her successors and assigns shall not be liable for any of the common expenses chargeable to such Unit which became due prior to the acquisition of title to such Unit by such purchaser or Mortgagee except to the extent provided in ORS 100.475(2); provided, in the case of a deed in lieu of foreclosure, that the Mortgagee complies with the requirements of ORS 100.465(1); and provided further, that any sale or transfer of a Unit pursuant to a foreclosure shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit from the lien of, any common expenses thereafter becoming due. In a voluntary conveyance of a Unit, the purchaser shall be jointly and severally liable with the Seller-Owner for all unpaid assessments against the Unit to the time of grant of conveyance, without prejudice to the purchaser's right to recover from the Seller the amounts paid or owed by the purchase therefor. Upon request of a prospective purchaser, the Board shall make and deliver a statement of the unpaid assessments against the Unit.

## **SECTION 7. VOTING RIGHTS.**

Voting rights within the Association shall be allocated as follows:

**7.1. Classes of Voting Membership.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to one vote per Unit.

Class B. The Class B member shall be Declarant and shall be entitled to three votes for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first: (i) when seventy-five percent (75%) of the Units have been sold

and conveyed to Owners other than Declarant; or (ii) three (3) years after the first Unit is conveyed to an Owner other than Declarant; or (iii) at such earlier time as Declarant may elect in writing to terminate its Class B membership.

**7.2. Joint Owners.** Whenever a Unit is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of the Unit may be exercised by any one of the Owners present in the absence of a protest by a co-Owner. In the event of a disagreement among co-Owners, the vote of the Unit shall be disregarded completely in determining the number of votes given with respect to a matter. A valid court order may establish the right of co-Owners' to vote; however, the Association will follow a court order only upon receipt of a certified copy of the order.

**7.3. Fiduciaries.** An executor, administrator, guardian or trustee may vote, in person or in proxy, at a meeting of the Association with respect to a Unit owned or held in a fiduciary capacity, whether or not the same has been transferred to the fiduciary, if the person satisfies the Secretary of the Association that the person is the executor, administrator, guardian or trustee holding the Unit in a fiduciary capacity.

## **SECTION 8. PERMISSIBLE USE.**

**8.1. Storage Purposes.** The Units shall be used only for storage and related purposes, by the Owner thereof, or by those utilizing the Unit pursuant to a lease or rental agreement with the Owner or otherwise under a grant of authority from the Owner. Any such use of the Units and the Common Areas shall be carried on in strict compliance with the permissible uses authorized by this Declaration, and no activity shall be carried on which would constitute a violation of any term or condition of this Declaration. Authorized Storage shall mean that type of storage of personal property that is incidental to the Permissible Uses of a Unit, provided that the property is not an improper storage of a "hazardous material" as defined under any applicable law of the State of Oregon or the United States, and further that the storage is not incidental to a Prohibited Use.

**8.2. Limitation on Common Areas.** Other than objects placed by the Declarant and the Association and except as permitted in this Section 8.2, no furniture or objects of any kind shall be placed or left by an Owner on any other part of the Common Elements. The common walkways and driveway shall be used only for normal passage. The provisions hereof shall not apply to the Declarant until such time as all Units have been initially sold and conveyed by the Declarant; however, the Declarant shall not use the Common Elements in such a manner as will unreasonably interfere with the use of the Units for purposes.

## **SECTION 9. AMENDING DECLARATION.**

**9.1. Approval.** An amendment to the Declaration may be proposed by a majority of the Board or by at least 30% of the Owners. Except as otherwise provided by the Declaration or the Act, an amendment is not effective unless it is approved by 75% of the Owners, the Real Estate Commissioner, and the Deschutes county assessor as required by the Act, and the amendment is certified by the Chairperson and Secretary of the Association as being adopted in accordance with the Declaration and the provisions of the Act and acknowledged in the manner provided for in acknowledgement of deeds.

**9.2. Boundaries.** Except as otherwise provided in the Declaration or the Act, an amendment that changes the boundaries of the Property or a Unit shall be approved by all Owners. Any such amendment shall constitute a conveyance and shall include words

of conveyance, and in addition to the certifications and acknowledgments required in Section 9.1, shall be executed by the Owners of all affected Units.

**9.3. Common Elements.** An amendment that adds Property owned by the Association to the Condominium as a Common Element shall constitute a conveyance and shall be approved by at least 75% of the Owners, contain words of conveyance, be executed and certified pursuant to Section 9.2, and be accompanied by a Plan amendment in accordance with the Act.

**9.4. Allocations.** Except as otherwise provided in the Act, an amendment may not change the allocation of undivided interests in the Common Elements, the exclusive use of Limited Common Elements, the method of determining liability for common expenses, the method for determining the right to common profits, or the method of determining voting rights of any Unit unless such amendment has been approved by the Owners of the affected Units.

**9.5. Declarant.** An amendment may not limit or diminish any right of the Declarant reserved in the Declaration without the consent of the Declarant; however, the Declarant may waive the Declarant's right of consent in writing delivered to the Association.

**9.6. Votes.** For purposes of voting on amendments, votes are totaled without regard to the weighted voting as provided in Section 7.1.

**9.7. Restated Declaration.** The Board, by resolution and without further approval of the Owners, may cause a restated declaration to be prepared and recorded to codify individual amendments that have been properly adopted.

## **SECTION 10. CONTRACTS AND LEASES.**

All contracts and leases regarding the Property or the Association that are entered into before the Turnover Meeting (including any management contract) shall be terminable without penalty by the Association or the Board upon not less than 30 days' written notice to the other party given not later than 60 days after the Turnover Meeting. A party to a contract or lease may make written request for affirmation by the Association or the Board. If the Association or the Board provides written affirmation to a party to a contract or lease, except as otherwise provided by the contract, lease, or Oregon law, neither the Association nor the Board shall have a right of termination.

## **SECTION 11. RESTRICTIONS ON ALIENATION.**

This Declaration and the Bylaws impose no restrictions on the alienation of any Unit.

## **SECTION 12. MAINTENANCE AND REPAIRS; RESERVE FUND.**

**12.1. Maintenance of Common Elements.** Except as otherwise provided in this Declaration or the Bylaws, the necessary work to inspect, maintain, repair, or replace the Common Elements in good condition and in accordance with the Maintenance Plan (as defined in the Bylaws) shall be the responsibility of the Association and shall be carried out as provided in the Bylaws. The Association is responsible for maintaining warranties in effect for all portions of the Common Elements and Association Property, if any, to the fullest extent possible. If the Mortgagee of any Unit determines that the Board is not providing adequate inspection, maintenance, repair, and replacement program for the Common Elements, such Mortgagee, at its option, may deliver a notice to the registered agent of the Association, as required pursuant to ORS 100.550, setting forth

the particular defect which it believes exists in the maintenance, repair, and replacement program. If the specified defect is not corrected within 60 days after receipt of such notice, then the Mortgagee, upon written notice to the registered agent that is exercising its proxy rights thereunder, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each Unit on which it holds a Mortgage on all business coming before such meeting, which proxy rights shall continue until the defect(s) described in the notice are corrected.

**12.2. Maintenance of Units.** All maintenance of and repairs to any Unit shall be made by the Owner of such Unit, who shall keep the same in good order, condition, and repair and shall do all redecorating, painting, and staining which at any time may be necessary to maintain the good appearance and condition of the Unit. In addition, each Owner of a Unit shall be responsible for the maintenance, repair, or replacement of interior doors and any plumbing, heating or air conditioning fixtures, telephones, water heaters, fans, lighting, fixtures and lamps, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in the Owner's Unit. Each Owner shall maintain the doors which provide the means of ingress and egress to and from the Owner's Unit (including the repair of any damage thereto), and the windows opening on to the Owner's Unit (including the repair or replacement of cracked or broken windows, but excluding exterior window washing, which shall be the responsibility of the Association), notwithstanding that such surfaces may be part of the Common Elements.

**12.3. Reserve Fund for Replacing Common Elements.** Declarant has conducted a reserve study as required by the Act and shall establish in the name of the Association a reserve fund for replacement of Common Elements which will normally require replacement in more than 1 and fewer than 30 years and for the painting of exterior painted surfaces of Common Elements. The reserve study assumes that the Association conducts normal, routine maintenance for the Common Elements reserved for and that the Association is required to perform pursuant to this Declaration, the Bylaws, or the Act. If the Association fails to perform required maintenance, the reserve fund may be inadequate at the time of the required replacement for one or more elements included in the reserve study.

## **SECTION 13. RIGHTS OF ACCESS AND USE.**

**13.1. In General.** Each Owner shall have a perpetual right of reasonable access and use to, through, over, and of each other Unit and the Common Elements as may be required for the support of such Owner's Unit; and for the installation, operation, repair, maintenance, and replacement of utilities and other systems serving such Owner's Units. The Owner shall use the foregoing rights only as necessary and shall exercise all due care in the exercise of such right and shall be responsible for and shall indemnify, defend, and hold harmless the other Owners from any harm or damage resulting from the exercise of the Owner's rights under this Section 13.1. The specific reference to or reservation of any rights of access and use in this Declaration does not limit or negate the general easement for Common Elements created by the Act.

**13.2. Water Intrusion and Mold Inspection.** The Board, acting on behalf of the Association, may authorize entry into any Unit or Limited Common Element to conduct a periodic or emergency inspection for water intrusion and/or the appearance of mold or mildew. Such inspection shall be made by an agent of the Association appointed by the Board and, except in case of emergency, shall occur at such time as is reasonably convenient to the Owner (or Owner's tenant) and the inspector. Nothing contained within

this Section 13.2 is intended to modify the maintenance and repair obligations of any party of provided in the Bylaws and this Declaration.

**13.3. Additional Rights Created by Association.** The Association, upon prior approval of Owners holding at least 75% of the voting power of the Association, may create on behalf of the Owners additional rights of access and use with respect to the Common Elements. Owner approval may be solicited by any means the Board determines is reasonable and need not be at a meeting of the Association. Nothing in this Section 13.3 shall be construed to enable the Association to revoke, alter, modify, or terminate any easements, rights of way, licenses, or similar interest of record on the date this Declaration is recorded.

**13.4. Right of Entry.** In addition to the rights granted to the Association elsewhere in this Declaration, the Bylaws, or by the Act, the Board, acting on behalf of the Association, or a managing agent, manager, or any other person authorized by the Board, shall have the right to enter without prior notice any Unit in the case of any emergency originating in or threatening such Unit or other Units or the Property or requiring repairs in such Unit to protect public safety, whether or not the Owner is present at the time. Each Owner shall also permit such persons to enter the Owner's Unit for the purpose of performing installations, alterations, maintenance, cleaning, or repairs to any Common Element, preventing damage to the Common Elements or another Unit, performing the Association's inspection and maintenance obligations, or inspecting the Unit to verify that the Owner is complying with the restrictions and requirements described in this Declaration, the Bylaws, and/or the Rules and Regulations, provided that requests for non-emergency entry are made in advance and that such entry is at a time reasonably convenient to the Owner. For a period of ten (10) years following recording of this Declaration, Declarant shall have a right to inspect the Common Elements of the Condominium and the Association's records regarding inspections and maintenance of the Condominium.

**13.5. Right of Access and Use for Declarant.** Declarant and Declarant's agents, successors, and assigns shall have a right of access and use to, through, over, and of the Common Elements for the purpose of (i) inspecting, maintaining, or repairing the Property and (ii) carrying out activities reasonable necessary for the sale of Units, until all Units have been conveyed to persons other than Declarant; provided, however, that Declarant shall restore the portions of the Property which it accesses or uses pursuant this Section 13.5 to substantially the same condition that existed prior to such access or use (except to the extent Declarant has constructed, repaired, or replaced improvements contemplated by this Section 13.5). The right of entry and inspection provided in this Section 13.5 shall not in any way obligate the Declarant or Declarant's agents, successors, and assigns to make such an inspection, and the decision on whether to inspect Units and the frequency of such inspections, if any, shall be solely within the discretion of the Declarant or its successors and assigns.

#### **SECTION 14. ENCROACHMENTS.**

**14.1. Encroachment.** 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 other movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection as long as the physical boundaries of the Units are in substantial

accord with the description of those boundaries that appear in the Declaration. There shall be a valid easement for the maintenance of the encroaching Units and Common Elements so long as the encroachment shall exist and, except as otherwise provided in Section 14.2, the rights and obligations of Owners shall not be altered in any way by the encroachment.

**14.2. Misconduct.** The easement described in Section 14.1 does not relieve an Owner of liability in case of willful misconduct of an Owner or relieve the Declarant or any contractor, subcontractor, or material supplier of liability for failure to adhere to the Plat.

**14.3. Marketability.** The encroachments described in 14.1 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

## **SECTION 15. NOTICES TO MORTGAGEES.**

The Association shall provide timely written notice of the following matters to any Eligible Mortgagee, or any Eligible Mortgage Insurer or a Guarantor, who makes a written request therefor to the Association:

**15.1. Loss.** Any condemnation or casualty loss that affects either a material portion of the Condominium or a Unit in which it holds an interest;

**15.2. Expenses.** Any delinquency of 60 days in the payment of common expenses assessed to a Unit in which it holds an interest;

**15.3. Insurance.** A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

**15.4. Mortgages.** Any proposed action that required the consent of a specified percentage of Mortgagees under this Declaration or the Bylaws.

## **SECTION 16. OPERATING ENTITY.**

Garajmahal Condominium Owner Association, an Oregon nonprofit corporation, has been organized to administer the operation and management of the Condominium and to undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and the Bylaws. The Bylaws, which have been adopted by the Declarant, are being recorded in the official records of Deschutes County concurrent with this Declaration. The Owner of each Unit shall automatically become a member of the Association upon such Owner's acquisition of an ownership interest in any Unit, and the membership of an Owner shall terminate automatically upon such Owner's being divested of all of such Owner's ownership interest in the Unit, regardless of the means by which such ownership interest is divested. Each Owner shall be entitled to vote in the manner prescribed in the Articles of Incorporation of the Association and Bylaws. Until the Turnover Meeting, the members of the Board need not be Owners. No person or entity holding any Mortgage, lien, or other encumbrance on any Unit shall be entitled, by virtue of such Mortgage, lien, or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership, except as specifically described in this Declaration. In the administration of the operation and management of the Condominium, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments, and to adopt, promulgate, and enforce Rules and Regulations in the manner provided herein and in the Bylaws. Acquisition of an ownership interest in a Unit by an Owner shall constitute appointment of the Association as that Owner's attorney-in-fact in connection with proceedings, negotiations, settlements, and agreements arising from condemnation,

destruction, liquidation, or termination of the Condominium, subject to the rights of the Owners described in the Bylaws and the Act.

#### **SECTION 17. MANAGING AGENTS.**

Subject to the rights of the Association to terminate any such agreement entered into prior to the Turnover Meeting without penalty or cause upon not less than 30 days' written notice given at any time, the Board shall have the authority, on behalf of the Association, to enter into a management agreement with respect to the Condominium for a term not to exceed 2 years. Any such management agreement shall be terminable by the Association upon not more than 90 days' or less than 30 days' written notice thereof. The Board may delegate to the managing agent or manager such duties and powers as the Board may authorize. In the absence of such appointment, the Board shall act as manager of the Condominium.

#### **SECTION 18. TAXATION OF UNITS.**

Each Unit, together with the undivided percentage interest in the Common Elements allocated to such Unit, shall be considered a parcel of real property subject to separate assessment and taxation by any taxing authority in a manner comparable to the taxation of other parcels of real property. The Common Elements shall not be considered a separate parcel for purposes of taxation.

#### **SECTION 19. CASUALTY.**

**19.1. Responsibility of Association.** The Association shall be responsible for repairing, reconstructing, or rebuilding all damage or destruction of the Common Elements by casualty and, to the extent of the Association's insurance coverage, all such damage or destruction to the Units. Each Owner shall be responsible for the repairing, reconstructing, or rebuilding of the Owner's Unit to the extent not covered by the Association's insurance and to the extent of any deductible under the Association's insurance. The Association shall rebuild and restore the damaged or destroyed portions of the Common Elements and, to the extent of the Association's insurance coverage, of the Units, so that the Property is rebuilt and restored to substantially the same condition in which it existed prior to such damage or destruction, unless Owners of at least 75% of the Units and 75% of all first Mortgagees of Units agree that the Property shall not be rebuilt or restored. The Association shall represent the Owners in any proceeding, negotiation, settlement, or agreement relating to the payment of proceeds under any insurance policies held by the Association. Any such proceeds shall be payable to the Association to the extent of its interest therein. If the Property is to be rebuilt and restored and the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of rebuilding and restoration, the difference between the amount of such proceeds and such cost may be charged to all Owners as a common expense. If the required number of Owners of the Units and first Mortgagees agree that the Property shall not be rebuilt and restored, the Property shall be considered removed from the provisions of the Act in accordance with ORS 100.605 thereof, and any proceeds resulting from such removal shall be distributed in accordance with ORS 100.615.

**19.2. Responsibility of Owner.** If, due to the act or neglect of an Owner, or of an Owner's family, pet, guest, servant, invitee, employee, or other authorized occupant or visitor of such Owner, damage is caused to a Common Element or to a Unit owned by another, maintenance, repair, or replacement is required which would otherwise be a

common expense, then such Owner shall pay for damage and such maintenance, repairs, and replacements as may be determined by the Association, to the extent not paid by the Association's insurance.

## **SECTION 20. CONDEMNATION.**

**20.1. Total Condemnation.** In the event of condemnation of the whole of the Condominium, the compensation to be paid to Owners shall be negotiated and finalized, and if required by representation in any proceeding, by the Association, subject to ratification of such compensation by the Owners of at least 75% of the Units at a special meeting called for that purpose. Compensation, less expenses incurred in obtaining the compensation, shall be paid to the Association and then distributed among the Owners of the Units in proportion to the Owner's percentage interests in profits and payable to any Mortgagee to the extent required to obtain a discharge of Mortgage. Notwithstanding the award for the condemnation of the whole Condominium, each Owner shall have the separate right to negotiate and finalize the Owner's personal compensation for improvements made to the Unit or Units, cost of moving, and other similar items personal to each Owner.

**20.2. Partial Condemnation.** In the event of a partial condemnation of the Condominium which includes some Units, each Owner whose Unit is condemned shall deal with the condemning authority with regard to compensation therefor, and the compensation for such Unit shall be paid to such Owner (or the Mortgagee of that Owner's Unit). The Association shall negotiate compensation relating to any Common Elements. Unless the Condominium is terminated within 30 days after the receipt of such compensation in accordance with the Act, the Condominium shall be reconstructed using the funds received for such reconstruction. Any moneys received by the Association for any such reconstruction shall be held in trust by the Association for the purpose of such reconstruction.

## **SECTION 21. FIDELITY BOND.**

The Board shall require that any person or entity, including employees of any professional manager, who handles or is responsible for Association funds, whether or not such person or entity receives compensation for services, shall furnish a fidelity bond as the Board deems adequate. Such bonds shall name the Association as the obligee and shall cover the maximum funds that may be in the custody of the Association or any manager at any time while such bonds are in force but, in any event, not less than the sum of 3 months of common expense assessments on all Units. Any such bond shall include a provision requiring not less than 10 day's written notice to the Association and any Mortgagee of a Unit requesting a copy thereof and each servicer on behalf of the Federal National Mortgage Association ("Fannie Mae") before cancellation or substantial modification of the bond for any reason. The premiums on such bonds may be paid by the Association.

## **SECTION 22. DISPUTE RESOLUTION.**

**22.1. Negotiated Resolution.** If a dispute or claim arises between one or more of the Parties, the Parties will seek a fair and prompt negotiated resolution and shall meet at least once to discuss and to seek a resolution.

**22.2. Mediation.** Prior to mediation of any dispute or claim, the Parties shall have endeavored to resolve the matter through the process set forth in Section 22.1 above.



All disputes or claims that are not resolved by such process shall be subject to mediation as a condition precedent to filing a lawsuit. The request for mediation may be made concurrently with the filing of a complaint in a court of competent jurisdiction, but in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties. All mediation shall be in accordance with the rules of procedure of any dispute resolution program available in Deschutes County, Oregon, and that is in substantial compliance with the standards and guidelines adopted under ORS 36.175.

**22.3. No Attorneys' Fees.** Except as specifically provided for in this Declaration or the Bylaws, no Party in mediation, litigation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith. Notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend or commit to expend in excess of \$5,000 for attorneys' fees and costs for any specific litigation or claim matter or enter into any contingent fee contract on any claim or series of related claims in excess of \$100,000 unless first approved by at least 75% of the outstanding votes of the Owners. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under the Declaration or the Bylaws; for actions initiated by the Association during Declarant's period of administrative control prior to the Turnover Meeting for actions challenging ad valorem taxation or condemnation proceedings; initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; actions to summarily abate and remove a structure or condition that violates this Declaration or the Bylaws; or for the defense of the Association or Board of an action or proceeding brought against that Association or the Board (except for non-mandatory counterclaims).

**22.4. Covenants Running with the Land.** The provisions of this Section 22 and Section 23 are intended to touch and concern the Condominium and shall be deemed covenants running with the land. Each and every term of this Section 22 and 23 shall, to the fullest extent allowed by law, bind each Owner, the Declarant, the Board, the Association, and subsequent owner or transferee of a Unit.

## **SECTION 23. WAIVER; TIME LIMITATION.**

**23.1. RELEASE AND WAIVER.** EXCEPT FOR ANY EXPRESS WARRANTY CLAIMS PURSUANT TO A UNIT SALES AGREEMENT BETWEEN DECLARANT AND A PURCHASER OF A UNIT, TO THE FULLEST EXTENT ALLOWED BY LAW, EACH PURCHASER OF A UNIT, THE ASSOCIATION AND ALL SUCCESSOR OWNERS AND OCCUPANTS, RELEASE AND WAIVE ANY CLAIM WHENEVER ARISING AGAINST DECLARANT OR ITS AGENTS, BROKERS, SUCCESSORS, EMPLOYEES, AFFILIATES, CONTRACTORS, REPRESENTATIVES, OFFICERS, DIRECTORS, AND MEMBERS OR AGAINST THE ASSOCIATION OR ANY BOARD MEMBER THEREOF (COLLECTIVELY THE "DECLARANT PARTIES"), RELATING TO OR ARISING FROM THE CONDITION OF THE CONDOMINIUM AT ANY TIME. THE WAIVER IS ABSOLUTE AND UNCONDITIONAL, AND THIS RELEASE AND WAIVER APPLIES WHETHER OR NOT THE PURCHASER HAD KNOWLEDGE OF ANY POTENTIAL CAUSE OF ACTION FOR SUCH CLAIMS. THE WAIVER APPLIES TO CLAIMS UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO

NEGLIGENCE, NEGLIGENCE PER SE, NEGLIGENT OR INTENTIONAL MISREPRESENTATION, DEFECTIVE CONSTRUCTION, BREACH OF CONTRACT, UNLAWFUL TRADE PRACTICE, BREACH OF FIDUCIARY DUTY, STRICT LIABILITY, NUISANCE, TRESPASS, OR ANY OTHER THEORY, WHETHER ARISING FROM STATUTE, CONTRACT, TORT, OR OTHERWISE. THIS WAIVER INCLUDES, WITHOUT LIMITATION, CLAIMS RELATING TO CONSTRUCTION DEFECTS, WATER INTRUSION, MOLD, MILDEW, FUNGUS, AND/OR ODORS IN THE UNIT OR COMMON ELEMENTS; PRODUCTS OR CONDITIONS IN THE UNIT OR COMMON ELEMENTS, INCLUDING FOR EXAMPLE CARBON MONOXIDE, RADON, OR CARPET GLUE; NOISE OR SOUND TRANSMISSION; LOSS OF USE; EMOTIONAL DISTRESS; INCIDENTAL OR CONSEQUENTIAL DAMAGES; ATTORNEYS' FEES AND COSTS; OR RELOCATION EXPENSES (TEMPORARY OR OTHERWISE). IT IS ACKNOWLEDGED THAT DECLARANT WOULD HAVE REQUIRED A SIGNIFICANTLY HIGHER PURCHASE PRICE FOR THE UNITS IF THE PURCHASER REFUSED TO PROVIDE THIS RELEASE AND WAIVER. THIS SECTION 23.1 SERVES AS NOTICE OF RECORD THAT THE RELEASE AND WAIVER SHALL BE BINDING UPON ALL SUCH PURCHASERS, ALL SUCCESSOR OWNERS OR OCCUPANTS OF THE UNIT, THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, PROPERTY MANAGERS, BROKERS, HEIRS, SUCCESSORS, ASSIGNS, GUESTS, AND INVITEES. CLAIMS OF THE ASSOCIATION ARE DERIVATIVE OF CLAIMS OF UNIT OWNERS AND THE ASSOCIATION SHALL BE BOUND BY THE WAIVER. THE WAIVER ACTS AS A COMPLETE BAR AND DEFENSE AGAINST ANY RELEASED OR WAIVED CLAIM.

**23.2. TIME LIMITATION ON ACTIONS.** THE FOREGOING RELEASES AND WAIVERS OF CLAIMS ARE INTENDED TO BE COMPREHENSIVE AND FINAL. TO THE EXTENT IT IS DETERMINED THAT ANY CLAIMS AGAINST ONE OR MORE OF THE DECLARANT PARTIES, UNDER ANY LEGAL THEORY, SURVIVES THE FOREGOING RELEASES AND WAIVERS FOR ANY REASON, SUCH CLAIM MUST BE BROUGHT ON OR BEFORE THE EARLIEST OF (A) THE EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATION, OR (B) WITHIN 180 DAYS AFTER THE DATE PURCHASER, PURCHASER'S SUCCESSORS, OR THE ASSOCIATION KNEW OR REASONABLY SHOULD HAVE KNOWN OF FACTS SUFFICIENT TO PUT IT ON NOTICE OF THE CLAIM, OR (C) WITH RESPECT TO THE UNIT BY NOT LATER THAN THE FIRST ANNIVERSARY OF THE CLOSING DATE OF THE SALE OF THE APPLICABLE UNIT FROM DECLARANT TO THE INITIAL PURCHASER, OR (D) WITH RESPECT TO THE COMMON ELEMENTS, ON THE LATER TO OCCUR OF (I) THE FIRST ANNIVERSARY OF THE DATE OF THE FIRST CONVEYANCE OF A UNIT IN THE CONDOMINIUM TO A UNIT OWNER OTHER THAN DECLARANT OR (II) THE FIRST ANNIVERSARY OF THE DATE OF COMPLETION OF CONSTRUCTION OR RENOVATION OF THE COMMON ELEMENT IN QUESTION. ANY AND ALL SUCH CLAIMS NOT BROUGHT WITHIN THIS TIME PERIOD WILL BE DEEMED TIME BARRED, REGARDLESS OF WHEN PURCHASER, PURCHASER'S SUCCESSORS, OR THE ASSOCIATION ACTUALLY DISCOVERED THE ALLEGED BASIS FOR THE CLAIM. FOR PURPOSES OF THIS SECTION 23.2, A CLAIM IS "BROUGHT" WHEN A

COMPLAINT IS FILED IN THE APPROPRIATE COURT AND SERVED PROMPTLY ON DECLARANT. THIS TIME LIMITATION SHALL NOT LIMIT THE ASSOCIATION'S ABILITY TO CLAIM UNPAID ASSESSMENTS.

#### **SECTION 24. SPECIAL DECLARANT RIGHTS.**

Declarant, for itself and any successor Declarant, reserves the following special Declarant right:

**24.1. Termination of Declarant Rights.** Except as otherwise provided in this Declaration, the special Declarant rights set forth in this Section shall continue for so long as (i) Declarant is completing improvements which are within or may be added to this Condominium or (ii) Declarant owns any Units *provided*, that Declarant may voluntarily terminate any or all of such rights at any time by recording an amendment to this Declaration, which amendment specifies which right is thereby terminated.

**24.2. Declarant's Easements.** Declarant has a non-exclusive easement to, through, and over the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights, whether arising under the Act or reserved in this Declaration.

**24.3. Approval Rights.** Declarant shall have the right to approve amendments proposed by the Owners to this Declaration, the Bylaws, the Plat, and the Rules and Regulations for so long Declarant owns a Unit or 10 years from the date of the Turnover Meeting, whichever is later.

**24.4. Right of Review.** Upon reasonable advance notice to the Board, Declarant shall have the perpetual right to review all inspection and maintenance records of the Association, including changes to the suggested maintenance schedule prepared by Declarant, if any. In addition, upon request from Declarant, the Board shall provide Declarant at Declarant's cost copies of all inspection reports, proposed plans for alterations, and copies of all warranty claims. The Board shall provide Declarant with copies of submissions for alteration requests, advance notice of the Board's inspections of such alteration, and an opportunity for Declarant, its contractors, or agents to accompany the Board's professional advisors on any such inspection.

#### **SECTION 25. BYLAWS.**

**25.1. Adoption of Bylaws.** On behalf of the Association, Declarant hereby adopts the Bylaws of the Garajmahal Condominium Owners Association to govern the administration of the Condominium and the Association. By their terms, the Bylaws are effective upon execution and recording of the Bylaws.

**25.2. Association.** The name of the Association shall be the Garajmahal Condominium Owner Association, or a similar name as permitted by the Oregon Corporation Division. The Association shall be a nonprofit mutual benefit corporation, and each Unit Owner shall be a member of the Association.

**25.3. Management.** The affairs of the Association shall be governed by its Board of Directors pursuant to the terms of the Bylaws and Oregon law.

#### **SECTION 26. EASEMENTS AND OTHER SIMILAR INTERESTS OR ENCROACHMENTS.**

**26.1. General.** The Association shall have the authority to grant, execute, acknowledge, deliver, and record on behalf of the Owners leases, easements, rights-of-way, licenses, and other similar interests affecting the Common Elements and to consent

to vacation of roadways within or adjacent to the Condominium as provided by ORS 100.405(5) and (8). An instrument granting any such interest or vacating any such roadway shall be executed by the Chairperson and Secretary of the Association, and shall be acknowledged in the manner provided for acknowledgement of such instruments by such officers, and shall state that such grant was approved by a minimum required vote of the owners or Board as required by ORS 100.405(6).

**26.2. Utility Easements, Dedications.** Notwithstanding anything in this Declaration to the contrary, the Declarant shall have the right to execute, deliver and record on behalf of the Association and Owners such documents as may be required to grant easements, rights-of-way, licenses over the Common Elements for the installation, maintenance, and repair of public utilities serving the condominium or adjacent property. To effect the intent of this Section, each 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 Owner and the Owner's successor in interest, irrevocably appoints Forge Sustainable Investments, LLC, an Oregon limited liability company, or its nominee, as the Owner's lawful attorney-in-fact for the purpose of executing any and all documents required or permitted to be executed hereunder. The Power of Attorney and the rights under this Section shall expire at such time as the Declarant no longer owns a Unit or 3 years from the date that this Declaration is recorded, whichever is earlier.

**26.3. Encroachments.** There may be an easement for any encroachment of the Common Element on any Unit or an encroachment of any Unit on the Common Elements or another Unit arising from the original construction, reconstruction, authorized repair, shifting, settling or other movement of any portion of the condominium improvements. Such easements shall exist indefinitely and may be terminated only by the voluntary act of the party who benefits from the easement(s).

## **SECTION 27. MISCELLANEOUS.**

**27.1. Service of Process.** The designated agent to receive service of process in any action related to the Condominium as described in ORS 100.550(1) is named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with ORS 100.250(1)(a).

**27.2. Severability.** Each provision of this Declaration and the Bylaws shall be deemed independent and severable, and the validity of partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision of this Declaration or the Bylaws. If any term or provision of this Declaration or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, whether under the Act or otherwise, the remainder of this Declaration and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

**27.3. No Impairment.** The creation of this Condominium shall not be impaired and title to the Units and Common Elements shall not be rendered unmarketable or otherwise affected by reason of any insignificant failure of this Declaration or the Plat or any amendment thereto to comply with the Act.

**27.4. No Partition.** Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of interest in the Common Elements made without the Unit to which that interest is allocated is void.

**27.5. No Waiver of Strict Performance.** The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition, or restriction, but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with knowledge of any such breach, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

**27.6. Liability for Utility Failure, Etc.** Except to the extent covered by insurance obtained by the Board pursuant to this Declaration and the Bylaws, the Association, the Board, and Declarant shall not be liable for: (i) any failure of any utility or other service to be obtained and paid for by the Board; (ii) injury or damage to person or property upon or caused by the Common Elements, or (iii) inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**27.7. Rule Against Perpetuities.** The rule against perpetuities may not be applied to defeat any provisions of this Declaration, the Bylaws, or the Rules and Regulations.

**27.8. Transfer of Declarant's Powers.** Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any person, upon such terms and conditions as Declarant may determine, all of Declarant's rights, powers, privileges, and authority arising hereunder by virtue of Declarant's capacity as Declarant, which rights, powers, privileges, and authority are in addition to those arising from Declarant's ownership of one or more Units.

The undersigned Declarant of the Property has caused this Declaration to be executed this August 18, 2008.

FORGE SUSTAINABLE INVESTMENTS, LLC

By:   
John Audia, Manager

[END OF TEXT ON PAGE]

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

On August 18, 2008, John Audia personally appeared before me, and after being duly sworn did state that he is the manager of Forge Sustainable Investments, LLC, and that this Declaration was signed on behalf of Forge Sustainable Investments, LLC, by authority of its members, and he acknowledged this Declaration as being the members' voluntary act and deed.



Linda Tiekamp  
Notary Public for Oregon

The foregoing Declaration is approved pursuant to ORS 100.110 this August 19, 2008, and, in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within 2 years from this date.

REAL ESTATE COMMISSIONER

By: Laurie Skillman  
Laurie Skillman

The forgoing Declaration is approved pursuant to ORS 100.110 this October 9, 2008.

Deschutes County Assessor

Scot Hufon, by  
By: Scot Hufon

Deschutes County Tax Collector

By: Marty Wymeky  
Carol J. Hufon

Exhibit A       Property Description  
Exhibit B       Unit Square Footage and Allocations

## **EXHIBIT A**

### **THE PROPERTY**

Lots 3 and 5 of the Plat of "Robinson Park."

Together with: a portion of the lands described in Deed Recorded March 13, 2002 in Volume 2002, Page 14015 of Deschutes County Official Records, being more particularly described as follows:

Beginning at the Southwest Corner of said Lot 5, being a point on the south boundary of said plat; thence along said south boundary the following four (4) courses:

South 89°37'08" East a distance of 103.28 feet

South 31°59'03" East a distance of 60.25 feet

South 76°18'06" East a distance of 89.94 feet

South 51°16'51" East a distance of 18.67 feet

Thence leaving said south boundary south 00°26'37" west a distance of 12.45 feet; thence north 89°37'08" west a distance of 237.69 feet to a point on the west boundary of said volume 2002, Page 14015; thence along said west boundary north 00°22'52" east a distance of 95.65 feet to the point of beginning, the terminus of this description.

Subject to: all easements, restrictions and rights-of-way of record and those common and apparent on the land.

**EXHIBIT B**  
**UNIT SQUARE FOOTAGE AND ALLOCATIONS**

<b>BUILDING 2</b>		
<b>UNIT</b>	<b>SQUARE FEET</b>	<b>PERCENTAGE INTEREST IN COMMON ELEMENTS</b>
201	389	1.82
202	389	1.82
203	396	1.86
204	396	1.86
205	396	1.86
206	396	1.86
207	396	1.86
208	396	1.86
209	394	1.85
210	387	1.81
211	389	1.82
<b>BUILDING 3</b>		
301	635	2.98
302	627	2.94
303	644	3.02
304	644	3.02
305	640	3.00
306	646	3.03
307	644	3.02
308	644	3.02
309	646	3.03



310	641	3.01
311	646	3.03
312	643	3.01
313	645	3.02
314	642	3.01
315	631	2.95
316	632	2.95
<b>BUILDING 4</b>		
402	660	3.09
403	680	3.19
404	680	3.19
405	653	3.06
406	653	3.06
407	653	3.06
408	653	3.06
409	653	3.06
410	655	3.07
411	649	3.04
412	653	3.06
413	653	3.06
414	653	3.06
415	653	3.06
416	639	3.00
417	639	3.00
418	397	1.86
419	397	1.86
420	405	1.90

421	405	1.90
422	405	1.90
423	405	1.90
424	403	1.89
425	406	1.90
426	405	1.90
427	405	1.90
428	405	1.90
429	405	1.90
430	405	1.90
431	377	1.77
432	377	1.77
433	366	1.71
434	389	1.82
<b>TOTAL</b>	<b>21,331</b>	<b>100.00</b>

After Recording Return to:  
Chris Hatfield  
Hurley Re, P.C.  
747 SW Mill View Way  
Bend, OR 97702

**BYLAWS OF THE  
GARAJMAHAL CONDOMINIUM OWNER ASSOCIATION**

**Declarant: Forge Sustainable Investments, LLC**

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**BYLAWS OF THE  
GARAJMAHAL CONDOMINIUM OWNER ASSOCIATION,  
an Oregon Mutual Benefit Corporation**

These Bylaws, to be effective upon recording in the official records of Deschutes County, Oregon, are made by Forge Sustainable Investments, LLC, an Oregon limited liability company (the "Declarant").

**SECTION 1. GENERAL PROVISIONS.**

**1.1. Formation.** The Garajmahal Condominium Owner Association is a nonprofit corporation organized under the laws of the State of Oregon. The Articles of Incorporation (the "Articles") were filed in the Office of the Oregon Corporation Division concurrent with these Bylaws. The Association has been organized for the purpose of administering the operation and management of the Garajmahal Condominium (the "Condominiums"), in accordance with the terms of the Declaration of Condominium Ownership for Garajmahal Condominium (the "Declaration") and these Bylaws. The Condominium was established by the Declarant in accordance with the provisions of ORS Chapter 100 (the "Act"). The Condominium is located on property in Deschutes County, Oregon, as more particularly described in the Declaration, which is being recorded simultaneously herewith in the records of Deschutes County, Oregon.

**1.2. Other Documents.** The provisions of these Bylaws are applicable to the Condominiums and are expressly subject to the terms, provisions, and conditions contained in the Articles and in the Declaration.

**1.3. Definitions.** All terms used in these Bylaws shall have the same meaning provided for in ORS Chapter 100 and Section 1 of the Declaration, unless the context requires otherwise.

**1.4. Applicability.** All Owners, tenants, and occupants of any Unit; and their respective agents, servants, invitees, guests, licensees, and employees that use the Condominiums, or any part thereof, are subject to these Bylaws, and all rules and regulations thereunder as promulgated from time to time.

**1.5. Office.** The office of the Association shall be at, 404 SW Columbia, Suite 210, Bend, OR 97702, or at any other place within Bend, Oregon, designated by the Association.

**SECTION 2. MEETINGS OF OWNERS.**

**2.1. Administrative Control.** Notwithstanding any other provision of these Bylaws, until the Turnover Meeting, the Declarant shall have the powers and authorities reserved to the Declarant in Section 24 of the Declaration.

**2.2. Initial Meeting.** The initial meeting of the Association shall be held within 30 days after the Articles of Incorporation are filed in the Office of the Corporation Division. The initial meeting shall be called by providing notice of the meeting pursuant to Section 2.11. The initial meeting shall be for the purpose of appointing the initial Board of Directors and the Association's initial officers.

**2.3. Annual Meetings.** An annual meeting of Owners shall be held on the first Tuesday in January of each year at 7:00 p.m., unless a different date or time is fixed by the Board and stated in the notice of the meeting. The failure to hold an annual meeting on the stated date shall not affect the validity of any Association action. At the annual meeting, the Chairperson, and any other officer or person whom the Chairperson may designate, shall report on the

activities and financial condition of the Association and the Owners shall consider and act on other matters that may be raised consistent with the notice requirements of ORS 65.214.

**2.4. Special Meetings.** A special meeting of Owners shall be held (a) on the call of the Chairperson; (b) on the call of a majority of the Board; or (c) by the Chairperson or Secretary upon written request of at least 30% of the Owners. A call for a special meeting must be made in writing and signed, dated, and delivered to the Secretary, and must also describe the purpose or purposes for which the meeting is to be held. If the Owners request a special meeting and notice is not given within 30 days after the date the written request is delivered to the Chairperson or Secretary, an Owner who signed the request may set the time and place of the meeting and give notice as provided for in Section 2.11. Only matters within the purpose or purposes described in the meeting notice may be conducted at a special meeting of Owners.

**2.5. Transitional Committee Meeting.** Unless the Turnover Meeting has been held, the Declarant shall call a meeting of the Owners to form a transitional committee within sixty (60) days after conveyance of 50% of the Units to persons other than the Declarant. The Declarant shall give notice of the meeting pursuant to Section 2.11, at least 10 days but not more than 50 days prior to the meeting. If the transitional committee is not called within the time specified, the meeting may be called and notice given by an Owner. The transitional committee shall be advisory only and shall consist of 2 or more members selected by the Owners other than the Declarant and may include not more than one (1) representative of the Declarant. The committee members shall serve until the Turnover Meeting. The function of the committee shall be to prepare for 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 Section 2.6. If the Owners other than the Declarant do not select members for the committee, the Declarant shall have no further responsibility to form the committee.

**2.6. Turnover Meeting.** A Turnover Meeting shall be called by Declarant within ninety (90) days after the earlier of (1) 75% of the Units have been conveyed to persons other than Declarant; (2) 3 years after these Bylaws are first recorded in the Deschutes County records; or (3) Declarant voluntarily elects to turnover control to the Owners. Notice of the meeting shall be given pursuant to Section 2.11. If no meeting is called by Declarant within the time specified herein, then the Turnover Meeting may be called and notice given by an Owner or any first mortgagee of a Unit. At the Turnover Meeting: (a) the Declarant shall relinquish administrative control of the Association and the Owners shall assume control; (b) if a quorum of the Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board in accordance with the Declaration or these Bylaws; and (c) the Declarant shall deliver to the Association the documents required by ORS 100.210(5) or any other provision of the Condominium Act. In order to facilitate an orderly transition, during the 3 month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least 3 mutually acceptable dates to review the documents required to be delivered to the Association.

**2.6.1. Failure to Elect Quorum.** If the Declarant has complied with this Section 2.6, unless the Declarant otherwise has sufficient voting rights as an Owner to control the Association, the Declarant is not responsible for the failure of the Owners to elect the number of directors sufficient to constitute a quorum of the Board and assume control of the Association in accordance with this Section and the Declarant shall be relieved of any further responsibility for the administration of the Association, except as an Owner of any unsold Unit.



**2.6.2. Remedies.** If the Owners present do not constitute a quorum or the Owners fail to elect the number of directors sufficient to constitute a quorum at the Turnover Meeting, then at any time before the election of the number of directors sufficient to constitute a quorum, an Owner or first mortgagee of a Unit may call a special meeting for the purpose of electing directors. Notice of the special meeting shall be given in accordance with the special meeting provisions of Section 2.11. The Owners and first mortgagees present at the special meeting shall select a person to preside over the meeting. An Owner or first mortgagee may also request a court to appoint a receiver under ORCP 80 to manage the affairs of the Association. At least 45 days before an Owner or first mortgagee requests the appointment of a receiver, the Owner or first mortgagee shall mail, by certified or registered mail, a notice to the Association and shall post a copy of the notice in a conspicuous place or places on the property or provide notice by a method otherwise reasonably calculated to inform Owners or first mortgagee of the proposed action. The notice shall be signed by an Owner or first mortgagee and include: (a) a description of the intended action; (b) a statement that the intended action is pursuant to this Section 2.6 of the bylaws and the applicable provision of the Condominium Act; (c) the date, not less than 30 days after mailing of the notice, by which the Association must fill the vacancies on the Board sufficient to constitute a quorum; (d) a statement that if the Association fails to fill the vacancies on the Board by the specified date, the Owner or first mortgagee may file a petition with the court for appointment of a receiver; and (e) a statement that if a receiver is appointed, all expenses of the receiver will be common expenses of the Association as allowed by the Condominium Act. Notwithstanding the notice provisions in this Section 2.6, in the case of an emergency, the circuit court may waive the notice requirements of this Section 2.6.

**2.7. Place of Meetings.** Meetings of the Owners shall be held in any place designated by the Board not more than 10 miles from the Condominium.

**2.8. Telephonic Meetings.** The Board may permit any or all of the Owners to participate in an annual meeting or a special meeting, or to conduct the meeting, by using any means of communication by which all Owners participating may simultaneously hear each other during the meeting. This includes but is not limited to telephonic means and video conferencing. An Owner participating in the meeting by this means is deemed to be present in person at the meeting. Neither the Association nor the Board is obligated to accommodate an Owner's decision to attend a meeting by this means, and in particular, the Board is not obligated to select a meeting location that will accommodate an Owner's decision to attend a meeting by this means, and the Board is not obligated to incur any cost associated with an Owner's decision to attend the meeting by this means.

**2.9. Proxies.** The vote of an Owner may be cast by absentee ballot or by written proxy duly executed and filed with the Secretary. An absentee ballot or proxy may not be revoked except by actual notice to the person presiding over the meeting of the Association or to the Board if a vote is being conducted by written ballot in lieu of meeting pursuant to Section 2.10. A proxy is not valid if it does not state the date that it was executed. A proxy shall be terminated one year after its execution unless the proxy specifies a shorter period.

**2.10. Action Without Meeting by Unanimous Written Consent.** Except as stated below, any action required or permitted to be taken at a meeting may be taken without a meeting if the Association delivers a notice and written ballot to every Owner that is entitled to vote on the matter. The Board may also, in its discretion, provide that a vote, approval or consent of an Owner may be given by electronic ballot. For purposes of this Section 2.10., electronic ballot means a ballot given by electronic mail, facsimile transmission, posting on a website, or other methods of electronic communication acceptable to the Board. An electronic ballot may be

accompanied or contained in an electronic notice in accordance with Section 2.11. If an electronic ballot is posted on a website, a notice of the posting shall be sent to each Owner and shall contain instructions on obtaining access to the posting on the website. A vote by electronic ballot is effective when it is electronically transmitted to an address, location or system designated by the Board for that purpose. Unless otherwise provided in the Declaration of these Bylaws, a vote by electronic mail may not be revoked. The vote shall be conducted pursuant to ORS 100.425. Once delivered, a written ballot may not be revoked. Action by written ballot may not substitute for the Turnover Meeting, for the annual meeting if more than a majority of the Units are the principle residences of the Owners, a meeting where the agenda includes a proposal to remove a Director, or a special meeting called at the request of an Owner.

**2.11. Notice of Meetings.** The Secretary shall, not less than 10 days nor more than 50 days before any meeting called under this Section 2, cause notices to be hand delivered or mailed via first class mail to the mailing address of each Unit or to the mailing address designated in writing by the Owner, and to all mortgagees that have requested such notice. Some notices may also be given electronically as described below. Mortgagees may designate a representative to attend a meeting which the mortgagee is otherwise allowed to attend. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, or any proposal to remove a director or officer of the Association. Furthermore, notice of an annual meeting shall describe any matter or matters that must be approved by Owners under ORS 65.361, 65.404, 65.414(1)(a), 65.437, 65.464, 65.487, 65.534, or 65.624. Notice of a special meeting shall describe the purpose or purposes for which the meeting is called. Except as described below in this Section 2.11, the Board may in its discretion give any notice, information or other written material required to be given to an Owner or Director under the Declaration, these Bylaws or the Condominium Act, and may be given to an Owner by electronic mail, facsimile or other form of electronic communication acceptable to the Board. Electronic communication may not be used to give notice of the following: (a) failure to pay an assessment; (b) foreclosure of an association lien; (c) an action the Association may take against an Owner; or (d) an offer to use the dispute resolution program established under Section 22 of the Declaration. An Owner or Director may decline to receive notice by electronic mail, facsimile or other form of electronic communication and may direct the Board to provide notice in a manner otherwise required by this Section 2.11.

**2.12. Waiver of Notice.** An Owner may, at any time, waive any notice required by these Bylaws. Except as provided in this Section, any waiver must be in writing, be signed by the Owner entitled to the notice, specify the meeting for which the notice is waived, and be delivered to the Secretary for inclusion in the minutes or filing with the corporate records. An Owner's attendance at or participation in a meeting, either in person or by proxy, waives any required notice of the meeting to the Owner unless the Owner, at the beginning of the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

**2.13. Voting.**

**2.13.1. Classes of Voting Membership.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A members shall be all Owners including the Declarant). Class A members shall be entitled to one vote per Unit by the member.

**Class B.** The Class B member shall be Declarant and shall be entitled to three votes for each Unit owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs first: (i) when 75% of the Units have been sold and conveyed to Owners other than Declarant; (ii) 3 years after the first Unit is conveyed; or (iii) at such earlier time as Declarant may elect in writing to terminate Class B membership.

2.13.2. If an Owner is in default under a first Mortgage on his or her Unit for 60 consecutive days or more and the Mortgage instrument signed by the Owner provides for such a pledge upon default, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, or in the event the record Owner has otherwise pledged their vote regarding special matters to a Mortgagee under a duly recorded Mortgage, only the vote of such Mortgagee or vendor will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Owners and their respective Mortgagees, in any.

2.13.3. If an Owner is in default for payment of assessments or other charges under these Bylaws, the Declaration, or the Rules and Regulations for 60 consecutive days or more, the Owner's voting rights shall be suspended until such delinquencies are paid in full, including any interest, penalties, or late charges due for such delinquency.

2.13.4. Voting of the Owners may be by written ballot in accordance with the Oregon Nonprofit Corporations Act

**2.14. Fiduciaries.** An executor, administrator, guardian or trustee may vote or grant consent with respect to a Unit owned or held in a fiduciary capacity, whether or not the specific right has been transferred to the fiduciary, if the person satisfies the Secretary of the Association that the person is the executor, administrator, guardian or trustee holding the Unit in a fiduciary capacity.

**2.15. Foreclosure of Liens for Unpaid Common Expenses.** In any action brought by the Association to foreclose a lien on a Unit because of unpaid assessments or charges, the Board, acting on behalf of the Association, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit. An action to recover a money judgment for unpaid assessments or charges shall be maintainable without foreclosing any lien securing the same.

**2.16. Quorum and Voting.** A quorum for any meeting of the Association of Owners consists of the number of persons who are entitled to cast 20% of the voting rights and who are present in person, by proxy or by absentee ballots if absentee ballots are permitted by the Board, at the beginning of the meeting. If a quorum is present at the beginning of a meeting, the affirmative vote of a majority of the votes represented and voting when the action is taken is the act of the Owners except to the extent that the Articles, these Bylaws, or applicable law require the vote of a greater number of Owners. If any meeting of the Association cannot be organized because of a lack of a quorum, the Owners present, either in person or proxy, may adjourn the meeting. The quorum for a subsequent meeting is one-half of the quorum otherwise required by this Section 2.16.

**2.17. Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board, meetings of the Association and the Board shall be conducted in

accordance with the latest edition of *Robert's Rules of Order* published by the Robert's Rules Association.

### **SECTION 3. DIRECTORS**

**3.1. Powers.** Except as limited by the Declaration or these Bylaws, the Board may act on behalf of the Association.

**3.2. Qualifications.** Unless appointed by Declarant, all Directors must be individuals who are 18 years of age or older and Owners.

**3.3. Number.** The Board shall consist of not fewer than 3 persons or more than 5 persons. The number of Directors may be fixed or changed periodically, within the minimum and maximum by the members.

**3.4. Election and Tenure of Office.** Directors shall be elected at the initial meeting or the annual meeting of the Owners. Directors shall serve for terms of one year. Directors may be reelected for any number of consecutive terms. Despite the expiration of a Director's term, the Director shall continue to serve until the Director's successor is elected and qualifies, or until there is a decrease in the number of Directors.

**3.5. Vacancies.** A vacancy in the Board shall exist on the death, resignation, or removal of any Director. A vacancy in the Board may be filled by either the Board or the Owners at any meeting. Each Director so elected shall hold office for the balance of the unexpired term of his or her predecessor. If the Board accepts the resignation of a Director tendered to take effect at a future time, a successor may be elected to take office when the resignation becomes effective.

**3.6. Resignation.** A Director may resign at any time by delivering written notice to the Chairperson or the Secretary. A resignation is effective when notice is effective under ORS 65.034 unless the notice specifies a later effective date. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board.

**3.7. Removal.** The Owners may at any properly noticed meeting of the Owners at which a quorum is present remove any member of the Board, other than a member appointed by the Declarant, with or without cause, by vote of a majority of the Owners present at the meeting. Removal of a member of the Board is not effective unless the matter of removal is an item on the agenda stated in the meeting notice required under Section 2.11.

**3.8. 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 acts in furtherance of and pursuant to such powers and duties, except acts that by or under law, the Declaration or these Bylaws may not be performed by the Board or delegated to the Board by the Owners. The Board shall be governed by ORS 100.417 and applicable provisions of ORS 65.357, 65.361, 65.367, 65.369, and 65.377. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein), the following:

3.8.1. Operation, care, inspection, upkeep, repair, replacement, and maintenance of the Common Elements and Association Property.

3.8.2. Determination of the amounts required for operation, inspection, maintenance, and other affairs of the Association, and the making of such expenditures.

3.8.3. Annually conducting a reserve study, or review and update any existing study, of the Common Elements to determine the reserve fund requirements, in accordance with ORS 100.175(4).

3.8.4. Collection of the common expenses from the Owners.

3.8.5. Provision for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, and personnel necessary for the maintenance, upkeep, and repair of the Common Elements, and Association Property; engagement of or contracting for the services of others; and making purchases for the inspection, maintenance, repair, replacement, administration, management, and operation of the Condominiums and delegating any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent); provided, however, that any management agreement, service contract, or employee contract entered into before the Turnover Meeting shall not be in excess of 3 years, and shall be terminable by the Association without penalty upon not less than 30 days written notice to the other party given not later than 60 days after the Turnover Meeting; and provided, further, that any agreement for management services entered into after the Turnover Meeting on behalf of the Association must be terminable by the Association for cause upon not less than 30 days' notice, must have a reasonable term not exceeding 2 years, and must be renewable with the consent of the Association and the manager. If an Eligible Mortgagee had previously required professional management, the Board may not terminate professional management and assume self-management unless the decision to do so is approved by at least 100% of the total voting power of the Association, and approved by Eligible Mortgagees holding Mortgages on Units which have at least 51% of the voting rights of the Units subject to Eligible Mortgagee Mortgages.

3.8.6. Adoption and amendment of reasonable rules and regulations of Condominiums ("Rules and Regulations") pursuant to Section 8.24 hereof.

3.8.7. Maintaining bank accounts on behalf of the Association and designating the signatories required therefore.

3.8.8. Purchasing, leasing, or otherwise acquiring, in the name of the Association or its designee, corporate, or otherwise, on behalf of the Owners, Units offered for sale or lease or surrendered by their Owners to the Association.

3.8.9. Bidding for and purchasing Units at foreclosure sales (judicial or non-judicial) or other judicial or execution sales, in the name of the Association or its designee, corporate, or otherwise, on behalf of all Owners upon the consent or approval of the Owners of not less than 75 percent of the voting power of the Association.

3.8.10. Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of Directors), or otherwise dealing with Units of the Condominiums acquired by the Association or its designee on behalf of all the Owners.

3.8.11. Organizing corporations or limited liability companies to act as designees of the Association in acquiring title to or leasing Units by the Association on behalf of all Owners.

3.8.12. Obtaining and reviewing bonds and insurance, including Officers' and Directors' liability insurance, for the Association and the Condominiums, including the Units, pursuant to the provisions of these Bylaws and in the case of such insurance, reviewing it at least annually.

3.8.13. Making repairs, additions, and improvements to, or alterations of, the Condominiums and repairs to and restoration of the Condominiums in accordance with these Bylaws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or settlement under the threat thereof.

3.8.14. Making repairs, additions, and improvements to, or alterations of, the Common Elements; provided, however, that no such project of non-structural or non-capital nature may be undertaken by the Board if the total cost will exceed the amount of \$15,000,

unless the Owners have enacted a resolution authorizing the project by a vote of the Owners holding at least 75% of the voting power of the Association, present in person or by proxy at a meeting of the Owners. This limitation shall not be applicable to repairs or maintenance undertaken pursuant to Section 3.8.1. The \$15,000 threshold shall be subject to indexing as provided for in Section 13.2.

3.8.15. After giving written notice and an opportunity to be heard, levying reasonable fees, late charges, fines and/or interest against an Owner for violations of the Declaration, Bylaws, and/or Rules and Regulations, in addition to exercising any other rights or remedies provided for in the foregoing documents, based on a resolution of the Board that is delivered to each Unit, mailed to the mailing addresses designated in writing by the Owner, or mailed to the mailing address for each Unit.

3.8.16. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common Elements, and Association Property; provided, however, that (i) the consent of Owners holding at least 75% of the voting power of the Association, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required for the borrowing of any sum in excess of an amount or amounts, aggregated for the calendar year in question, exceeding 15% of the estimated budget of the Association for that calendar year to cover the operation, care, upkeep, and maintenance of the Common Elements, and Association Property, and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the consent of the Owner of such Unit. If any sum borrowed by the Board on behalf of the Association pursuant to the authority contained in this Section 3.8.16 is not repaid by the Association, an Owner who pays to the creditor such proportion thereof equal to his interest in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien that said creditor shall have filed or shall have the right to file against such Owner's Unit.

3.8.17. Adjusting and settling claims under insurance policies and executing and delivering releases on settlement of such claims on behalf of all Owners, all holders of Mortgages, or other liens on the Units, and all Owners of any other interest in the Condominium.

3.8.18. Filing all appropriate tax returns.

3.8.19. Filing of the Annual Report described in ORS 100.260 of the Act with the Real Estate Agency pursuant to ORS 100.250 of the Act.

3.8.20. Charging and collecting a fee in connection with moving in to or out of a Unit.

3.8.21. Investing the funds of the Association in accordance with an investment policy adopted and modified from time to time by the Board.

3.8.22. Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws, and any Rules and Regulations adopted hereunder. Nothing in these Bylaws shall be construed as requiring the Association to take any specific action to enforce violations.

3.8.23. Establish, periodically update, and implement a 30 year "Maintenance Plan" that identifies those components of the Common Elements requiring periodic maintenance, including a maintenance manual defining how and when such maintenance should be performed and setting forth the estimated cost of such maintenance. The Maintenance Plan shall provide for not less than annual inspections of the Property for evidence of water intrusion or other needed repairs by a knowledgeable independent party or the property manager for the Association, and the Board shall reasonably address any matters revealed by the inspection. For a period of 10 years following recording of the Declaration, Declarant shall be notified prior to the inspection,

shall have a right for Declarant or its employees or contractors to be present during the inspections, and have a right to receive a copy of the inspection reports promptly upon request. The operating and reserve budgets of the Association shall take into account the costs of complying with the Maintenance Plan. Changes or updates to the Maintenance Plan should be based upon the advice of competent experts or consultants.

**3.9. Limitation.** The powers of the Board enumerated in these Bylaws shall be limited in that the Board shall have no authority to (i) acquire and pay for out of the maintenance fund of the Association any structural alterations or capital improvements of, or capital additions to, the Common Elements (other than for purposes of repairing, replacing, or restoring portions of the Common Elements, subject to all the provisions of these Bylaws) requiring an expenditure in excess of an amount or amounts, aggregated for the calendar year in question, exceeding 10% of the estimated total budget of the Association for such calendar year; or (ii) enter into agreements having a term in excess of two years, except agreements specifically authorized in these Bylaws, without, in each case, the prior approval of Owners holding at least 75% of the voting power of the Association.

**3.10. Meetings.** An annual meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of Owners. If the time and place of any other Directors' meeting are regularly scheduled by the Board, the meeting is a regular meeting. All other meetings are special meetings. The Board may hold annual, regular, or special meetings in any place designated by the Board not more than 10 miles from the Condominiums.

**3.11. Public and Executive Session.** All meetings of the Board shall be open to Owners except that, in the discretion of the Board, the following matters may be considered in executive session: (1) consultation with legal counsel concerning rights and duties of the Association regarding existing or potential litigation or criminal matters; (2) personnel matters, including salary negotiations and employee discipline; (3) negotiation of contracts with third parties; and (4) collection of unpaid assessments. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the presiding Officer of the Board shall state the general nature of the action to be considered, 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. 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. The meeting and notice requirements in this Section and these Bylaws may not be circumvented by chance or social meetings or by any other means.

**3.12. Telephonic Participation.** The Board may permit any or all of the Directors to participate in an emergency meeting by, or to conduct the meeting, by using any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

**3.13. Call and Notice of Meetings.** Except in the case of emergency meetings, notice of the Board's meetings shall be posted at a place or places on the Condominium at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform Owners of such meetings.

**3.14. Quorum and Voting.** A quorum of the Board shall consist of a majority of the Directors in office immediately before the meeting begins. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present when the action is taken is the

act of the Board except to the extent that the articles of incorporation, these Bylaws, or applicable law requires the vote of a greater number of Directors. A Director is considered present regardless of whether the Director votes or abstains from voting. A Director may not vote by proxy or by secret ballot at Board meetings.

**3.15. Presumption of Assent.** A Director who is present at a meeting of the Board when corporate action is taken is deemed to have assented to the action taken unless:

(a) At the beginning of the meeting, or promptly on the Director's arrival, the Director objects to holding the meeting or transacting the business at the meeting;

(b) The Director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) The Director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Director who votes in favor of the action taken.

**3.16. Compensation.** Directors may be reimbursed for any expenses that are determined by resolution of the Board to be just and reasonable. Directors shall not otherwise be compensated for service in their capacity as Directors.

**3.17. Director Conflict of Interest.**

3.17.1. A conflict-of-interest transaction is a transaction with the Association in which a Director of the Board has a direct or indirect conflict of interest.

3.17.2. For purposes of this Section, a Director has a direct conflict of interest when the Director is a party to the transaction or the transaction concerns only the Director's Unit. A Director has an indirect interest in a transaction if (a) another entity in which the Director has a material interest or in which the Director is a general partner is a party to the transaction or (b) another entity of which the Director is a director, officer, member, manager, or trustee is a party to the transaction, and the transaction is or should be considered by the Board. A Director does not have conflict of interest merely because the Director's Unit is one of several Units impacted by the action or transaction.

3.17.3. A conflict-of-interest transaction is neither voidable nor the basis for imposing liability on the Director if the transaction is fair to the Association when it was entered into or is approved as provided in Section 3.17.4.

3.17.4. A transaction in which a Director has a conflict of interest may be approved either (a) in advance by the vote of the Board if the material facts of the transaction and the Director's interest were disclosed or known to the Board or (b) by the Owners if the material facts of the transaction and the Director's interest were disclosed or known to the Owners and they authorized, approved, or ratified the transaction in accordance with Section 3.17.6.

3.17.5. For purposes of clause (a) of Section 3.17.4, a conflict-of-interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the Directors on the Board who have no direct or indirect interest in the transaction. A transaction may not be authorized, approved, or ratified by a single Director. If a majority of the Directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this Section. The presence of, or a vote cast by, a Director with a direct or indirect interest in the transaction does not affect the validity of any action taken under clause (a) of Section 3.17.4 if the transaction is otherwise approved as provided in Section 3.17.4.

3.17.6. For purposes of clause (b) of Section 3.17.4, a conflict-of-interest transaction is authorized, approved, or ratified by the Owners if it receives a majority of the votes



entitled to be counted under this Section. Votes cast by or voted under the control of a Director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in Section 3.17.2 may be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict-of-interest transaction under clause (b) of Section 3.17.2. A majority of the Directors, whether or not present, that are entitled to be counted in a vote on the transaction under this section constitutes a quorum for the purpose of taking action under this section.

**3.18. Liability and Indemnification of Directors, Officers, or Agents.** To the fullest extent authorized by law and the Articles of Incorporation, the personal liability of each Director to the Association or an Owner for monetary damages for conduct as a Director shall be eliminated. Each Director, Officer, or Agent shall be indemnified and held harmless by the Association, to the fullest extent permitted by law, from and against all expenses and liabilities, including attorney fees and, reasonably incurred or imposed upon such person in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of being or having been a Director, Officer, or Agent, and shall be indemnified upon any reasonable settlement thereof. The foregoing rights of indemnification shall be in addition to and not exclusive of any and all other rights conferred on such person under any agreement, vote of the Owners or otherwise.

**3.19. Insurance.** The Board of Directors shall comply with the insurance requirements of Section 3.8.12 of these Bylaws. In addition, the Board of Directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association, the Board of Directors, the Officers, the Agents, if any, or the Owners.

#### **SECTION 4. OFFICERS.**

**4.1. Designation; Appointment.** The officers of the Association shall be a chairperson, a secretary, a treasurer, and any other officers that the Board may from time to time appoint. The Officers shall be appointed by, and hold office at the pleasure of, the Board. The same person may simultaneously hold more than one office, except for the offices of Chairperson and Secretary.

**4.2. Compensation and Term of Office.**

4.2.1. The compensation, if any, and term of office of each Officer of the Association shall be fixed by the Board.

4.2.2. Any Officer may be removed, with or without cause, at any time by action of the Board.

4.2.3 An Officer may resign at any time by delivering notice to the Board, the Chairperson, or the Secretary. A resignation is effective when the notice is effective under ORS 65.034 unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Association accepts the later effective date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the Board.

4.2.4 No removal or resignation as provided in Section 4.2.2 or 4.2.3 shall prejudice the rights of any party under a contract of employment.

**4.3. Chairperson.** The Chairperson shall preside at meetings of the Board, shall assure that the Board is advised on all significant matters of the Association's business, shall act as a principal spokesperson and representative of the Association, shall be the chief executive officer of the Association and have the general powers and duties of management usually vested

in a chief executive officer, and shall have other powers and duties that may be prescribed by the Board of Directors or the Bylaws.

**4.4. Vice Chairperson.** The Vice Chairperson, if any, shall preside at meetings of the Board at which the Chairperson is absent and, in the absence of the Chairperson, shall have the other powers and perform the other duties of the Chairperson. The Vice Chairperson also shall have other powers and perform such other duties that may be prescribed by the Board.

**4.5. Secretary.** The Secretary shall prepare minutes of meetings of the Board and authenticate records of the Association. The Secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of Directors. If the Association has a seal, the Secretary shall keep the seal in safe custody. The Secretary also shall have other powers and perform other duties that may be prescribed by the Board or these Bylaws.

**4.6. Treasurer.** The Treasurer shall be the chief financial officer of the Association and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Association. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Association with those depositories that may be designated by the Board, shall disburse or cause to be disbursed funds of the Association as may be ordered by the Board, and shall have other powers and perform other duties that may be prescribed by the Board or these Bylaws. If required by the Board, the Treasurer shall give the Association a bond in an amount and with the surety specified by the Board for the faithful performance of the duties of the Treasurer's office and for restoration to the Association of all of its books, papers, vouchers, money, and other property of every kind in the Treasurer's possession or under the Treasurer's control on the Treasurer's death, resignation, retirement, or removal from office. The Treasurer also shall have other powers and perform other duties that may be prescribed by the Board of Directors.

**4.7. Assistants.** The Board may appoint or authorize the appointment of Assistants to the Secretary, the Treasurer, or both. Those Assistants may exercise the powers of the Secretary or Treasurer, as the case may be, and shall perform those duties that are prescribed by the Board.

**4.8. Execution of Instruments.** All agreements, contracts, deeds, leases, and other instruments of the Association, shall be executed by such person or persons as may be designated by general or special resolution of the Board, including the execution of checks of up to \$4,999 and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the Chairperson. All checks of \$5,000 or more shall be signed by the Treasurer, or in his or her absence or disability, by the Chairperson or any duly elected Assistant Treasurer. Notwithstanding the foregoing, all checks of \$7,500 or more shall require the signatures of at least two authorized signatories. The dollar amounts stated in this Section shall be subject to indexing as provided in Section 13.2.

**4.9. Documents.** The following shall be delivered to the Real Estate Agency for filing on behalf of the Association: (1) A Condominium Information Report described in ORS 100.260 (1) by the Declarant not later than 90 days after the Declaration is recorded under ORS 100.100 or by the Board if required under ORS 100.275; (2) The Annual Report described in ORS 100.260(2) by the Declarant until the Turnover Meeting and the Board thereafter every year not later than the report date which shall be the anniversary date of filing the Condominium Information Report; (3) An amendment to the reports required under this Section by the Declarant until the Turnover Meeting and the Board thereafter, within 30 days after there is a change in the information contained in a report.

## **SECTION 5. BUDGET, EXPENSES, AND ASSESSMENTS.**

**5.1. Annual Budget.** The Board at least annually shall adopt a budget for the Association. Within 30 days after adopting the annual budget for the Association, the Board shall provide a summary of the budget to all Owners. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

**5.2. Annual Financial Statement.** Within 90 days after the end of the fiscal year the Board shall: (1) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year; and (2) Distribute to each Owner a copy of the annual financial statement. If the Association has annual assessments of more than \$75,000, the Association shall cause the annual financial statement to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in the State of Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. If the Association has annual assessments of more than \$75,000, the Owners may on an annual basis elect to not have the financial statement reviewed by an affirmative vote of at least 60% of the Owners, not including the votes of the Declarant with respect to Units owned by Declarant. If the Association has annual assessments of \$75,000 or less, the Association shall cause the most recent financial statement to be reviewed by an independent certified public accountant as described herein within 180 days after the Board receives the petition requesting review signed by at least a majority of the Owners.

### **5.3. Reserve Fund.**

**5.3.1. Declarant.** The Declarant shall conduct a reserve study and establish a reserve account for replacement of those Common Elements all or part of which will normally require replacement in more than 1 and less than 30 years, for painting of the Common Elements having painted surfaces, and for such other items as may be required by the Declaration or Bylaws. The reserve account need not include: (1) Items that could reasonably be funded from operating assessments; or (2) A reserve for Limited Common Elements for which maintenance and replacement are the responsibility of one or more Owners under the provisions of the Declaration or Bylaws.

**5.3.2. Assessments.** The reserve account must be funded by assessments against the individual Units for the purposes for which the reserve account is being established. The assessment under this Section will accrue from the time of the conveyance of the first individual Unit

**5.3.3. Reserve Account.** The reserve account shall be established in the name of the Association. The reserve portion of the initial assessment determined by the Declarant shall be based on the reserve study. The Board shall annually conduct a reserve study or review and update an existing study to determine the reserve account requirements and may: (1) Adjust the amount of payments in accordance with the study or review; and (2) Provide for other reserve items that the Board, in its discretion, may deem appropriate.

**5.3.4. Reserve Study.** The reserve study shall include: (1) Identification of all items for which reserves are to be established; (2) The estimated remaining useful life of each item as of the date of the reserve study; (3) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and (4) A 30-year plan for the maintenance, repair and replacement of Common Elements and Association property, if any, with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule. The 30-year plan shall: (1) Be appropriate for

the size and complexity of the Common Elements and Association property; and (2) Address issues that include but are not limited to warranties and the useful life of the Common Elements and Association property. The reserve study shall assume that the Board conducts normal, routine maintenance for the Common Elements and Association property reserved for and that the Board is required to perform this pursuant to the Declaration these Bylaws and the Act. If the Board fails to perform required maintenance, the reserve fund may be inadequate at the time of the required replacement for one or more Common Elements and Association property included in the reserve study.

**5.3.5. Summary.** The Board and the Declarant shall, within 30 days after conducting the reserve study, provide to every Owner a written summary of the reserve study and of any revisions to the 30-year plan adopted by the Board or the Declarant as a result of the reserve study.

**5.3.6. Use of Funds.** Except as provided in this Section, the reserve account is to be used only for the purposes for which reserves have been established and is to be kept separate from other funds. After the Turnover Meeting and the individual Owners have assumed administrative responsibility for the Association, if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds: (1) The Board may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses; and (2) Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Restrictions on the use of the reserve account do not prohibit its prudent investment subject to any constraints on investment of Association funds imposed by the Declaration, Bylaws, or rules of the Association.

**5.3.7. Ownership of Funds.** Assessments paid into the reserve account are the property of the Association and are not refundable to Owners or sellers of Units.

**5.3.8. Changes to Assessments.** In addition to the authority of the Board under Section 5.3.3 of this section, following Turnover, the Association may: (1) On an annual basis, elect not to fund the reserve account by unanimous vote of the Owners; or (2) Elect to reduce or increase future assessments for the reserve account by an affirmative vote of at least 75% of the Owners.

**5.4. Maintenance Plan.** The Declarant, on behalf of the Association, shall prepare an initial maintenance plan for the maintenance, repair, and replacement of all property for which the Association has maintenance, repair, or replacement responsibility under the Declaration, these Bylaws, or the Act. The maintenance plan shall: (a) Describe the maintenance, repair, and replacement to be conduction; (b) Include a schedule for the maintenance, repair, and replacement; (c) Be appropriate for the size and complexity of the maintenance, repair, and replacement responsibility of the Association; and (d) Address issues that include but are not limited to warranties and the useful life of the items for which the Association has maintenance, repair, or replacement responsibility. The Board shall review and update the maintenance plan as necessary.

**5.5. Common Expenses.** Common expenses shall include:

5.5.1. Expenses of administration, including any fee paid under ORS 100.250 or ORS 100.275;

5.5.2. Costs of insurance or bonds obtained in accordance with these Bylaws;

5.5.3. A general operating reserve sufficient to pay the amount of the deductible on any insurance policy held by the Association;

5.5.4. Reserve for replacement and deferred maintenance and for painting any exterior painted surfaces as needed;

5.5.5. The costs of the annual reserve study or the renewal or update of the reserve study;

5.5.6. The costs of establishing, updating and implementing the maintenance plan;

5.5.7. Any deficit in common expenses for any prior period, and any accrued interest or late charges thereon;

5.5.8. Utilities for the Common Elements and other utilities to Units not separately metered or charged;

5.5.9. Services for any person or firm to act on behalf of the Owners in connection with any matter where the respective interests of the Owners are deemed by the Board to be similar and nonadverse to each other;

5.5.10. Services for any person or firm to act on behalf of the Board;

5.5.10. Professional management services;

5.5.11. Landscaping, snow removal, waste removal, painting, cleaning, outside window washing and inspection, maintenance, repair and replacement of the exterior of the structures within the Condominium and inspection, maintenance, decorating, repair and replacement of the Common Elements, and furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper, which the Board shall have the exclusive right to acquire for the Common Elements;

5.5.12. Paving, resurfacing, or restriping of the driveways and the parking area, including the Parking Spaces that are designated as Limited Common Elements;

5.5.13. The discharge of any mechanic's lien, construction lien or other encumbrance levied against the entire Condominium, against the Common Elements or Association property. This does not include liens or encumbrances that are only against the interests of particular Owners. Where one or more Owners are responsible for the existence of such a lien or encumbrance, they shall be jointly and severally liable for the cost of discharging it and any cost incurred by the Board by reason of such lien or encumbrance shall be specifically assessed to the responsible Owner;

5.5.14. Inspection, maintenance, and repair of any Unit or Common Element if the Board determines that such inspection, maintenance, or repair is necessary to protect the Common Elements or any other portion of the Property, and the Owner of such Unit or such Common Element has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair delivered by the Board to such Owner, provided that the Board shall levy such a special assessment against such Owner for the cost of such maintenance or repair;

5.5.15. Any cost of furnishing, repairing or maintaining the Community restroom/lounge, including janitorial services;

5.5.16. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments that the Board is required to secure or pay for, pursuant to the terms of the Declaration or these Bylaws or that in the discretion of the Board are necessary or proper for the maintenance and operation of the Condominium as a first-class Condominium or for the enforcement of the Bylaws, and that the Board determines should be assessed to the Owners; and

5.5.17. Any other item properly chargeable as an expense of the Association.

**5.6. Assessments.** An Owner shall be personally liable for all assessments imposed on the Owner or assessed against the Unit by the Association. If a Unit is owned by a concurrent estate such as tenancy-in-common, each Owner shall be jointly and severally liable for all assessments imposed. If the Unit is acquired by a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Unit to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The Board shall assess the common expenses against the Owners from time to time, but no less than annually. The Board shall also take prompt action to collect from an Owner any assessment that remains unpaid for more than 30 days from the due date for its payment. All assessments shall be deposited in a separate bank account of the Association. All expenditures of the Association shall be paid from the Association bank account.

**5.7. Special Assessments.** The Board shall, pursuant to a majority vote of the Directors, have the power to levy special assessments against the Units for the following purpose: (1) to correct a deficit in the operating budget; (2) to make repairs to the Common Elements if sufficient funds are not available from the operating budget or replacement reserve account; and (3) to make capital acquisitions, additions or improvements costing \$2,500 or less. The Board shall, pursuant to a vote of more than 75% of the votes held by the Owners, have the power to levy special assessments against the Units for the purpose of making capital acquisitions, additions or improvements in excess of \$2,500. The dollar amount stated in this Section shall be subject to indexing as provided in Section 13.2.

**5.8. Special Reserves.** The Board may build up and maintain a reasonable reserve for contingencies and replacements not covered by the reserve account established under Section 5.3.3. The Board shall serve notice of such further assessments on all Owners by a statement in writing giving the amount and reasons therefor. The additional assessment shall become effective with the first monthly assessment of common expenses that is due more than 30 days after the delivery or mailing of such notice of further assessment.

**5.9. Billing.** The Board shall have the authority to determine the due date for monthly assessments and other charges. The Board shall cause a written notice of assessments and other charges to be sent by regular mail or personal delivery to each Owner not less than annually. The notice shall be sent to the Owner's Unit unless the Owner has, in writing, provided an alternative address.

**5.10. Default.**

**5.10.1. Timing, Fees.** The failure of an Owner to pay any assessment of the Association when due shall be a default by such Owner of his or her obligations pursuant to these Bylaws and the Oregon Condominium Act. Interest on delinquent assessments shall be charged at the statutory rate applicable to judgments. In addition, the Board at its option may impose a late fee on any assessment that is delinquent 10 or more days. The penalty shall not exceed 25% of the delinquent assessment, and shall only be imposed once on each regular or special assessment or installment of such assessments. If a check is dishonored, the Board may also charge and collect from the maker a reasonable fee representing the cost of handling and collecting the check.

**5.10.2. Lien.** Whenever the Association levies any assessment against a Unit, the Association shall have a lien upon the individual Unit and the undivided interest in the Common Elements appertaining to such Unit for any unpaid assessments. The lien shall include assessments, fines, interest, late charges, attorney fees, costs or other amounts levied under the Declaration or Bylaws.

**5.10.3. Checks, Drafts, etc.** All checks, drafts, and other orders for payment of money, notes, or other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed by the person or persons and in the manner that shall be determined from time to time by resolution of the Board.

## **SECTION 6. RECORDS AND AUDITS.**

**6.1. General Records.** The Board shall keep detailed records of the actions of the Board, minutes of the meeting of the Board, and minutes of the meetings of the Association and contemporaneous written documentation of the Association's inspection, operation, care, upkeep, repair, replacement, and maintenance of the Common Elements and Association property. The Board shall maintain a list of Owners entitled to vote at meetings of the Association and a list of all Mortgagees of Units. The Association shall maintain within the State of Oregon a copy, suitable for duplication, of: (i) the Declaration, these Bylaws, the Rules and Regulations, the recorded plat(s), and any amendments or supplements thereto; (ii) the most recent annual financial statement of the Association described in Section 6.5; (iii) the current operating budget of the Association and reserve study; and (iv) all documents, information, and records delivered to the Association at the Turnover Meeting. Such documents shall be available for inspection within the State of Oregon and upon written request, available for duplication by Owners, Mortgagees of Units, insurers and guarantors of such Mortgages, and prospective purchasers of Units during normal business hours. The Board shall retain the documents required by ORS 100.480(1) for the time period required by statute. Records kept by or on behalf of the Association may be withheld from examination as permitted by the Act.

**6.2. 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. Such records and the vouchers authorizing the payments shall be available for examination by the Owners, Mortgagees of Units, and insurers and guarantors of such Mortgages during normal business hours.

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

**6.4. Payment of Vouchers.** The Treasurer shall pay all vouchers up to \$5,000 signed by the Chairperson, managing agent, manager, or other person authorized by the Board. Any voucher in excess of \$5,000 shall require the signature of the Chairperson and one other Officer of the Association. The dollar amount stated in this Section shall be subject to indexing as provided in Section 13.2.

**6.5. Reports and Audits.** An annual audited financial statement of the Association, consisting of at least a balance sheet and income and expense statement for the preceding fiscal year, shall be rendered by the Board to all Owners, and to all Mortgagees of Units who have requested the same.

## **SECTION 7. NONDISCRIMINATION.**

The Association shall not discriminate in providing services, hiring employees, or otherwise, on the basis of gender, race, creed, marital status, sexual orientation, religion, color, age, or national origin.

## **SECTION 8. USE AND OCCUPANCY RESTRICTIONS; RULES OF CONDUCT.**

**8.1. Storage Purposes.** The Units shall be used only for storage and related purposes, by the Owner thereof, or by those utilizing the Unit pursuant to a lease or rental agreement with the Owner or otherwise under a grant of authority from the Owner. Any such use of the Units and the Common Areas shall be carried on in strict compliance with the permissible uses authorized by this Declaration, and no activity shall be carried on which would constitute a violation of any term or condition of this Declaration. Authorized Storage shall mean that type of storage of personal property that is incidental to the Permissible Uses of a Unit, provided that the property is not an improper storage of a "hazardous material" as defined under any applicable law of the State of Idaho or the United States, and further that the storage is not incidental to a Prohibited Use.

**8.2. Permissible Uses.** In conjunction with the passive activity of storage, it is also expressly provided that the following shall be deemed to be permissible uses of Units.

**8.2.1. Inventory Turnover and Assessment.** Any Owner or tenant may utilize his Unit for the storage of any permissible item of inventory and/or supplies used in a trade or business, may add to or withdraw from storage such inventory and/or supplies, or any part thereof, as and when required, and may take count of such inventory and/or supplies at all such times as may be deemed necessary.

**8.2.2. Business and Personal Records.** Any Owner or tenant may utilize his Unit for the storage of any business and personal records, and any Owner or tenant may conduct such reviews of such records as may be deemed to be required by such Owner or tenant at all such times as be deemed necessary.

**8.3. Prohibited Uses.** It is the explicit purpose of the Condominium that it shall be used and maintained as a first-class storage facility for the mutual benefit of each of the Owners. Any commercial or personal activity which creates waste, uncleanness, continuous excess noise, unacceptable risks and/or public intrusion is prohibited. Accordingly, it is expressly provided that the following (in addition to the foregoing un-Authorized Storage or un-Permissible Uses) shall be deemed to be prohibited uses of Units, and any use of a Unit in violation of the provisions hereof shall permit Declarant, while in control, and thereafter the Association, without notice to the Owner, to assess such Owner with such penalties as shall be adopted by Declarant and thereafter the Board for a violation of the provisions hereof and to commence an action seeking injunctive relief and damages accruing as a consequence thereof:

**8.3.1. Retail or Wholesale Outlet.** No Owner or tenant may utilize his Unit as a retail or wholesale outlet for the sale of goods or services to any third party, and no Owner or tenant may permit potential customers of such goods or services to enter the boundaries of the Condominium for such purpose. Notwithstanding the foregoing, nothing herein shall prohibit the owner of an item of personal property held for personal use, such as a boat, automobile, truck, recreational vehicle or other personal vehicle from showing such item for sale while in storage in a Unit on a casual basis only.

**8.3.2. Manufacture or Assembly.** No Owner or tenant may utilize his Unit as a place of manufacture or assembly of any item or combination of items, however characterized or conceived, for resale or for profit. Furthermore, no assembly of items for personal use, incident to an otherwise permissible use, may be conducted in a manner which will pose any risk to any other Unit and/or a use of or risk to any portion of the Common Areas to the extent that the use is not otherwise specifically allowed under this Declaration.

**8.3.3. Repair Activity.** No Owner or tenant may utilize his Unit as a place of business, whether primary or secondary, for the conducting of repair or maintenance activities and/or services of any sort, however characterized or conceived.

**8.3.4. Noxious Activity.** No Owner or tenant may utilize his Unit so as to cause an unacceptable level of noise, vibration, odor, garbage or other waste, the precise levels of which shall be determined by the Board and which may be more restrictive than levels established by the



City of Bend or the County of Deschutes, Oregon.

**8.3.5. Storage of Hazardous Substances.** No Owner or tenant may utilize his Unit for the storage of any substance or material defined or designated as hazardous, radioactive or toxic by any applicable federal, state or local statute, ordinance or regulation now in effect or hereafter promulgated; provided, however, that any fuels or other liquids contained within any boat, mobile home, motor home, automobile, truck, recreational vehicle, other vehicle and/or other equipment which is stored within a Unit shall be deemed permitted even if so defined, so long as such fuels or other liquids are necessary for the operation thereof and are lawfully contained within such item of personal property for such purpose.

**8.3.6. High Piled Combustible Storage.** No Owner or tenant shall store combustible materials in closely packed piles or on pallets or on racks or on shelves where the top of that high piled storage is greater than twelve (12) feet in total height. Additionally, when required by a fire code official, or if the high piled combustible materials also include certain high-hazardous commodities, such as rubber tires, Group A plastics, flammable liquids, idle pallets and similar products, then that high piled storage use shall be limited to six (6) feet of total high piled height.

**8.3.7. Residential Use.** No Owner or tenant may utilize his Unit, or permit another to use such Unit, for residential purposes, including without limitation any overnight occupancy by any person.

**8.4. Removal By Board.** The Board may require the immediate removal of any inoperable or improperly stored, unsightly vehicle left outside of a Unit and/or any other item of personal property improperly stored within the Condominium, whether or not contained within a Unit. If the same not be removed by the responsible Unit Owner, the Board may cause removal thereof at the risk and expense of the Unit Owner thereof.

**8.5. Effect on Insurance.** Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of, or cause the cancellation of, insurance for the Condominium.

**8.6. Commit No Waste.** No Owner of a Unit shall commit or permit waste of such Unit and/or of the Common Areas; and the liability in the event of such occurring shall be at the sole cost and expense of the responsible Unit Owner. This Section shall not be construed to permit any interference with or damage to the structural integrity of the buildings or interference with the use and enjoyment by others of the Common Areas and/or other Units, nor shall it be construed to limit the powers or obligations of the Declarant or of the Association.

**8.7. Rental.** The renting of a Unit by its Owner shall be governed by the provisions of this Section. "Renting" a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), whether in exchange for the payment of rent (that is, money, property, or other goods or services of value) or not; but shall not mean or include joint ownership of a Unit by means of joint tenancy, tenancy-in-common, or other forms of co-ownership. Any agreement to rent a Unit shall provide that the tenant shall comply with the terms of the Declaration, Bylaws, and Rules and Regulations of the Association, and that any failure by the tenant to comply shall be a default under the rental agreement. The tenant of a Unit shall not be allowed to vote as an Owner.

**8.7.1. No Partial Leases.** No Owner may rent less than the entire Unit together with its assigned Parking Space.

**8.7.2. Written Leases.** All rental agreements shall be in writing and be subject to these Declaration and the Bylaws (with a default by the tenant or occupant in complying with these Declaration and/or Bylaws constituting a default under the rental agreement).

**8.7.3. Payments by Tenant or Lessee to Association.** If a Unit is rented by its Owner, the Board may collect, and the tenant or occupant shall pay to the Board, any amounts due to the Association hereunder for such Unit, plus interest and costs if the same are in default over 30

days. The tenant or occupant shall not have the right to dispute payment over to the Board. Such payment will discharge the tenant's or occupant's duty of payment to the Owner for rent, to the extent such payment is made to the Association, but will not discharge the liability of the Owner and the Unit under these Declaration for assessments and charges, or operate as an approval of the rental agreement. The Board shall not exercise this power where a receiver has been appointed with respect to the Unit or its Owner, nor in derogation of any right which a Mortgagee of such Unit may have with respect to such rents.

**8.7.4. Identification of Tenants.** Each Owner electing to rent or grant occupancy of his or her Unit shall, within 10 days after the rental or occupancy of such Unit, submit to the Board in writing the identity of and contact information for such tenant or occupant and a copy of the rental agreement.

**8.8. Restrictions on Alterations to Unit.** No Owner shall make structural alterations to or installations in a Unit without written permission from the Board. The Board shall respond to the request to make structural alterations or installations within 30 days' of receiving the written request; however, the failure to respond does not give the Owner permission to make the alteration or installation. The Owner shall incur the cost of any architectural or engineering review required by the request, and shall advance the costs. The Owner shall provide additional information reasonably requested by the Board. Nothing in this section shall waive or limit the Owner's obligation to comply with the provisions of ORS 100.535.

**8.9. Pets.** The only animals that are allowed to be in any Unit are domesticated dogs, cats, and other animals as agreed to in writing by the Board (collectively referred to hereinafter, as "Pets"). No Pet shall be left unattended in a Unit or on the Property at any time. No Pet may be in a Unit if the Pet becomes a nuisance to other Owners or occupants of the Units. If and when any Pet is declared to be a nuisance by the Board, the Board may prohibit the Owner from having the Pet in the Unit or anywhere upon the Property. If the Board determines that Owner or Owner's guest, employee, agent, or invitee is not a responsible caretaker, the Board may prohibit Owner or Owner's guest, employee, agent, or invitee from having the Pet in the Unit or upon the Property. Pet shall be removed from the Unit immediately or as otherwise determined by the Board. The owners of Pets shall be responsible for the cleanup of any litter left by their Pets on the Common Elements. Dogs shall be kept on a leash and cats shall be kept in a carrier when on the Common Elements.

**8.10. Nuisances.** The Owner shall not engage in any activity in a Unit or on the Common Elements that unreasonably interferes with the peaceful enjoyment of other Units or the Common Elements. Noise created within a Unit or on the Common Elements shall be kept within reasonable limits and reasonable for the hour. Occupants will not operate or use radios, stereo equipment, televisions, amplifiers, musical instruments within the Unit or upon the Common Elements in a manner that is unreasonably disturbing to other Occupants. The Board may adopt rules to limit vibrational energy that may be transmitted outside a Unit as well as reasonable acoustical limits. The Owner will not allow odors within the Unit or on the Common Elements to interfere with the peaceful enjoyment of the other Units or the Common Elements. No Owner shall make or permit any use of a Unit or the Common Elements that would increase the cost of insurance upon the Condominium. No clotheslines, storage piles, or other unsightly object shall be kept on the Common Elements, and there shall be no exterior drying or laundering of clothes or other items on the Common Elements. All rubbish, trash, or refuse shall be deposited at designated trash receptacles.

**8.11. Offensive or Unlawful Use.** No offensive or unlawful use may be made of the Common Elements or a Unit. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction shall be obeyed.

**8.12. Limitation on Common Areas.** Other than objects placed by the Declarant and the Association, no furniture or objects of any kind shall be placed in the public walkways, stairway, or

any other part of the Common Elements. The common walkways and stairs shall be used only for normal passage.

**8.13. Trash.** No part of the Common Elements shall be used or maintained as a dumping area for rubbish, trash, garbage, or other waste, other than designated common trash disposal and recycling areas. No such items shall be kept or maintained excepting sanitary containers in areas designated therefor.

**8.14. Roof Access.** No access to the roof of the building shall be permitted without the prior authorization of the Board.

**8.15. Smoke Alarms.** No person shall tamper with or disable smoke alarms installed in a Unit.

**8.16. Signs.** No "For Sale", "For Rent", "For Lease", or any commercial signs shall be allowed on any part of the Common Element or Units without the prior written consent of the Board, except that the Declarant may post reasonable signs advertising any Unit for sale or rent in reasonable places on the Common Element or Units. In no event shall a sign or banner be affixed to Common Elements.

**8.17. Decorations.** No Owner shall cause anything to be hung, displayed or placed on the Common Elements or otherwise change the appearance of any portion of the Common Elements without the prior written consent of the Board.

**8.18. Private Sales.** The Board may in its discretion provide for no more than one annual community sale to be conducted on the Common Element. The Owners shall not otherwise conduct private sales such as estate sales, moving sales, or yard sales within a Unit or on the Common Element.

**8.19. Exterior Installations.** Except as required by law, no Owner shall install wiring for electrical or telephone installation, machines, or air conditioning unit or similar devices on the exterior of the Units or cause them to protrude through the walls or the roof of the Units except as authorized in writing by the Board.

**8.20. Satellite Dishes and Antennas.** Except as required by law, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed or placed on any Common Element without the written consent of the Board. If allowed, only exterior satellite dishes or antennas with a surface diameter of one (1) meter or less and antennas designed to receive television broadcast signals may be placed. Any damage to the Common Elements caused by such Owner shall be repaired at Owner's sole cost and expense. The Board may adopt reasonable rules and regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality.

**8.21. Parking.** All streets, driveways, sidewalks, entries, and passages outside of the Units shall remain unobstructed and shall not be used for purposes other than ingress and egress to the Units. Motor Vehicles may only be parked in designated Parking Spaces. The parking spaces shall not be used by Motor Vehicles that are in disrepair. The Parking Spaces shall not be used for repair or maintenance of Motor Vehicles. The Parking Spaces shall not be used for parking recreational vehicles, boats, or trailers. The Board may make such rules as may be necessary to govern the use of Parking Spaces. No person shall be permitted to sleep in any Motor Vehicle parked on the Common Elements.

**8.22. Vehicle Restrictions.** Motor Vehicles shall only be on the driveways and Parking Spaces of the Common Element and shall only be operated at a speed that is safe for the conditions then present, but in any case, not in excess of 5 miles per hour.

**8.23. Fines.** The Board may, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the

Association, provided that fines levied are based on a schedule previously adopted by Board resolution that is mailed to the mailing address of each Unit or mailed to the mailing address designated in writing by the Owners.

**8.24. Association Rules and Regulations.** In addition to the foregoing requirement, the Board from time to time may adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Units and the Common Elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Common Element including, without limitation, establishment of reasonable administrative fees, such as fees for new Owner set-up and Owner's packet, move-in and move-out fees, etc. Any such Rules and Regulations may be amended, modified, or revoked by the Owners in the same manner as the Bylaws. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Units from the date of delivery.

**8.25. Activities of Declarant.** Nothing in this Article 8 or in the other provisions of these Bylaws shall be construed to limit, modify, or otherwise restrict the rights of Declarant pursuant to the Declaration with respect to the planning, designing, developing, constructing, and sale of improvements on the Property.

## **SECTION 9. MAINTENANCE AND REPAIR.**

**9.1. Common Elements and Association Property.** The reserve study obtained or updated by the Declarant or the Board shall include a 30-year plan for the maintenance, repair, and replacement of the Common Elements and Association property (the "Maintenance Plan"). Except as provided for in Section 9 and below, all inspection, maintenance, repair and replacement of the Common Elements and Association property shall be made by the Association and shall be charged to the Owners as a common expense. If such maintenance, repairs, or replacement is made necessary because of the act or omission of an Owner or the Owner's tenant, guest, or invitee, then such costs shall be charged solely to the responsible Owner. If the cost cannot be collected from the responsible Owner, then the cost shall be treated as a common expense, without prejudice to the Association's right to pursue a claim against the responsible Owner. If the mortgagee of any Unit determines that the Board is not providing adequate maintenance, repair, and replacement program for the Common Elements, such mortgagee, at its option, may deliver a notice to the registered agent for the Association, as required by ORS 100.550, setting forth the particular defects which it believes exist in the maintenance, repair, and replacement program. If the specified defects are not corrected within 60 days after receipt of such notice, then the mortgagee, upon written notice to the registered agent of the Association that it is exercising its proxy rights thereunder, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each Unit on which it holds a mortgage on all business coming before such meeting, which proxy rights shall continue until the defect(s) described in the notice are corrected.

**9.2. Unit Owners.** Unless otherwise provided in the Declaration or Bylaws, an Owner may not change the appearance of the Common Elements or the exterior appearance of a Unit without prior written permission of the Board.

**9.3. Units.** All maintenance of and repairs to the Unit shall be made by the Owner at the Owner's own expense. Except as provided below, the Owner may make any improvements or alterations to the Unit of the Owner that do not impair the structural integrity or mechanical systems of the Unit or lessen the support of any portion of the Unit.

**9.3.1.** If an Owner acquires an adjoining Unit or an adjoining part of an adjoining Unit, he or she may submit a written request to the Board for permission to remove or

alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a Common Element. The Board shall approve the change unless it determines within 45 days that the proposed change will impair the structural integrity or mechanical systems of the Unit or lessen the support of any portion of the Unit. The Board may require the Owner, at the expense of the Owner, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the Unit or lessen the support of any portion of the Unit. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

9.3.2. An 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 the value thereof, impair any easement, or hereditament or increase the common expenses of the Association unless the consent of all the other Owners affected is first obtained.

9.3.3. The Association may make repairs that an Owner is obligated to make and that the Owner does not make within a reasonable time. If such repairs are necessary to prevent further or imminent potential damage to the Unit involved, other Units, any Common Element, or other personal or property damage, in its sole discretion the Association may, but is not obligated to, make such repair immediately with or without notice to the Owner. The Owner is deemed to consent to having such repairs done to the Unit by the Association, and the Association shall have no liability to an Owner for entry into the Unit or regarding the repair. The Owner shall reimburse the Association for the full cost of such repairs, except to the extent covered by insurance proceeds received by the Association. The Owner shall also reimburse the Association for any legal fees or costs incurred in order to collect the cost of such repairs. All such costs incurred shall bear interest at the statutory rate applicable to judgments. The Association shall have a lien for all such costs as a special assessment provided for in Section 5.6.

**9.4. Failure to Follow Maintenance Plan.** If the Association fails to follow the maintenance and inspection requirements contained in the maintenance plan described in Section 9, then the Association hereby waives any claim it might otherwise have against Declarant and its design professionals, contractors, subcontractors, and their consultants, including without limitation, all of their officers, members, directors, employees, agents, brokers, and affiliates, for loss or damage, to the extent the same results from such failure to follow the maintenance plan, and shall indemnify such persons and entitles from and against claims by owners or other persons or entities for loss or damage resulting from such failure.

## **SECTION 10. INSURANCE.**

**10.1. Types.** Each Owner shall be responsible for obtaining at the Owner's own expense, insurance covering the Owner's property not insured by Section 10.1.1. below and against his or her liability not covered under Section 10.1.2., unless the Association agrees otherwise. For the benefit of the Association, the Owners and the Board shall obtain and maintain at all times, shall review at least annually, and shall pay for out of common expense funds the following insurance:

10.1.1. Insurance covering loss or damage under an all-risk replacement cost policy, which coverage must include fire, extended coverage, vandalism and malicious mischief, and such other coverage which the Association or the Board may deem desirable, for not less than the full insurable replacement value, including the cost of replacement in compliance with the then applicable building codes, of the Units and Common Elements, including any fixtures, building service equipment, and common personal property and supplies belonging to the

Association. Such policy or policies shall name the Association and the Owners as insureds, as their interests may appear, and shall provide for a separate loss payable endorsement of the mortgagee of each Unit, if any. The responsibility for payment and the amount of the deductible may be prescribed by resolution adopted by the Board. The Board shall make reasonable effort to obtain policies with deductibles less than \$10,000 per occurrence; however, the Board may consider a policy or policies with higher deductibles depending on market availability and special reserves available to pay deductible amounts. The \$10,000 target deductible shall also be subject to indexing as provided in Section 13.2.

10.1.2. A policy or policies insuring the Declarant, the Association, the Board, the Owners, and the managing agent, against liability to the public or to the Owners, and their employees, invitees, or tenants, incident to the supervision, control, operation, inspection, maintenance, or use of the Unit, including all Common Elements, public ways, and any other areas under the supervision of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board) for liability arising out of acts or omissions of such Owner and liability incident to the ownership and/or the use of the part of the Unit as to which such Owner has the exclusive use or occupancy. Limits of liability under such insurance shall not be less than two million dollars (\$2,000,000) on a combined single limit basis. This minimum coverage amount shall be subject to indexing pursuant to Section 13.2. The policy limits of liability shall be increased in the sole discretion of the Board. Such policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of the named insured under the policy or policies shall not be prejudiced as respects to any action against another named insured.

10.1.3. Worker's compensation insurance to the extent necessary to comply with applicable laws.

10.1.4. Directors' and Officers' liability insurance with coverage in an amount not less than \$2,000,000, subject to a reasonable deductible which shall be determined by the Board. This minimum coverage amount shall be subject to indexing pursuant to Section 13.2.

10.1.5. Fidelity insurance for all Officers, Directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association has retained a manager, such manager shall maintain fidelity insurance for its Officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance shall be a common expense. The total amount of fidelity insurance shall be within the sole discretion of the Board. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessment on all Units plus reserve funds. Such fidelity insurance shall name the Association as an insured and shall contain waivers by the insurer of the insurance of all defenses based on the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be cancelled or substantially modified (including cancellations for nonpayment of premium) without at least 10 days' prior written notice to the Association and each servicer on behalf of the Federal National Mortgage Association ("FannieMae").

**10.2. Mandatory Policy Provisions.** Insurance obtained by the Association shall be governed by the following provisions:

10.2.1. All policies shall be written with companies licensed in the State of Oregon or a company domiciled in the United States and licensed to do business in the State of Oregon and holding a commissioner's rating of at least "A", and a size rating of at least "AAA", by the *Best's Insurance Reports* current at the time the insurance is written or, prior to the

Turnover Meeting, holding ratings acceptable to the Declarant. Should reinsurance be involved, the Board shall use its best efforts to obtain such coverage from a reinsurer having a size rating of at least "A-".

10.2.2. All losses under policies hereafter in force placed by the Association regarding the Unit shall be settled exclusively by the Board or its authorized representative. The Board may give such releases as are required, and any claimant, including the Owner of a damaged Unit, shall be bound by such adjustment; provided, however, that the Board may, in writing, authorize an Owner to adjust any loss to his or her Unit.

10.2.3. Each Owner shall be required to notify the Board of all improvements made by the Owner to his or her Unit, the value of which is in excess of Five Hundred Dollars (\$500.00). The dollar amount stated in this Section shall be subject to indexing as provided in Section 13.2. Nothing in this Section shall permit an Owner to make improvements without first obtaining the written approval of the Board pursuant to Section 9.2.

10.2.4. Any Owner who obtains individual insurance policies covering any portion of the Unit other than his personal property and fixtures (other than built-in kitchen appliances) shall file a copy of such individual policy or policies with the Association within 30 days after the purchase of such insurance.

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

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

10.2.7. For purposes of this Section 10, insurance policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against FannieMae, the designee of FannieMae, or the Association Owners, or (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon the action by the carrier's Board, policyholders, or members, or (iii) policy includes any limiting clauses (other than insurance conditions) that could prevent collecting insurance proceeds.

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

**10.3. Discretionary Provisions.** The Board shall make every effort to secure insurance policies that will provide for the following:

10.3.1. A waiver of subrogation by the insurer as to any claims against the Association, the Board, the manager, the Owners and their respective servants, agents, household members, and guests, except for arson and fraud;

10.3.2. A provision that any master policy on the Units cannot be canceled, invalidated, or suspended, nor coverage denied thereunder, on account of the conduct of any one or more individual Owners;

10.3.3. A provision that any master policy on the Units 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 the manager cure the defect;

10.3.4. A provision that any "no other insurance" clause in any master policy exclude individual Owner's policies from consideration, and a waiver of the usual proration clause with respect to such policies;

10.3.5. A provision that the insurer issue subpolicies specifying the portion of any master policy earmarked for each Owner's interest and that until the insurer furnishes written notice and a grace period to the Mortgage insured under the loss payable clause thereof, the Mortgagee's coverage is neither jeopardized by the conduct of the mortgagor-Owner, the Association, or other Owners, nor canceled for nonpayment of premiums;

10.3.6. A rider on any master policy patterned after "Use and Occupancy" insurance which will provide relief from monthly assessments while a Unit is uninhabitable by the payment of the Unit expenses thereof and any other fixed costs, including, but without being limited to, taxes, rent, insurance, and Mortgage payments. The proceeds from any casualty policy, whether held by the Association or an Owner, payable with respect to any loss or damage to the Common Elements, shall be held in trust for the benefit of all insured as their interests may appear;

10.3.7. A waiver of the insurer's right to determine whether the damage should be repaired. If reasonably available, the policy or policies should contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause, to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild;

10.3.8. Waiver of any defense based on co-insurance or of invalidity arising from the conduct or any act or omission or breach of a statutory condition of or by any insured;

10.3.9. A provision that the same shall be primary insurance in respect of any other insurance carried by any Owner;

10.3.10. An "inflation guard" endorsement;

10.3.11. An endorsement providing coverage with respect to changes that may be required under applicable codes or ordinances to undamaged portions of the Unit in the event of a casualty affecting a portion of the Unit; and

10.3.12. A provision that any insurance trust agreement will be recognized.

**10.4. Additional Requirements.**

10.4.1. Prior to obtaining any policy or policies of insurance under Section 10.1.1, or any renewal or renewals thereof and if any first Mortgagee holding Mortgages on at least 75% of the Units so requires, or at such other times as the Board may deem advisable, the Board shall obtain an appraisal from an independent qualified appraiser, of the "full replacement cost" of the Units, for the purpose of determining the amount of insurance to be obtained pursuant to Section 10.1.1, and the cost of such appraisal shall be a common; provided, however, that the full



replacement cost of the Unit for the policy or policies of insurance placed in force upon recording of these Bylaws or the Declaration shall be determined by the Declarant.

10.4.2. No Mortgage may be placed against any Unit unless the Mortgagee agrees to waive any contractual or statutory provision giving the Mortgagee the right to have the proceeds of any insurance policy or policies applied on account of the Mortgage and thereby prevent application of the proceeds of any insurance policy or policies towards the repair of the property pursuant to the provisions of these Bylaws. This Section 10.4.2 shall be read without prejudice to the right of a Mortgagee to vote on or to consent to certain matters, if the Mortgage itself contains a provision giving the Mortgagee that right, and also to the right of any Mortgagee to receive the proceeds of any insurance policy, if the insured property is not repaired.

10.4.3. A certificate or memorandum of all insurance policies and endorsements thereto shall be issued as soon as possible to each Owner and a duplicate original or certified copy of the policy or policies to each Mortgagee. Renewal certificates or certificates of new insurance policies shall be furnished to each Owner and Mortgagee not later than 10 days before the expiration of any current insurance policy. The master policy (or a copy thereof) for any insurance coverage shall be kept by the Association in its office, available for inspection by an Owner or Mortgagee on reasonable notice to the Association.

10.4.4. No insured, other than the Association, shall be entitled to amend any policy or policies of insurance obtained and maintained by the Association, or to direct that loss shall be payable in any manner other than as provided in the Bylaws.

**10.5. By the Owner.** It is acknowledged that the forgoing provisions specify the only insurance required to be obtained and maintained by the Association and that the following insurance shall be obtained and maintained by each Owner, as specified.

10.5.1. Insurance on any additions or improvements made by the Owner to his or her Unit shall be purchased and maintained for the full insurable value thereof, to the extent not covered by the Association's insurance policy, unless the Owner presents in writing to the Board evidence that the additions or improvements made by the Owner to his or her Unit are insurable under the insurance issued pursuant to Section 10.1.1 and the Board, after consultation with the Association's insurer, concurs that such additions or improvements are insured under such insurance and, if necessary, the Association's insurer undertakes the requisite action to cause the additions or improvements to be added to the policy issued pursuant to Section 10.1.1. Insurance also shall be purchased by the Owner for furnishings, fixtures (other than built-in kitchen appliances), equipment, decorating and personal property, and chattels of the Owner contained within his or her Unit, and his or her personal property and chattels stored elsewhere on the Property, including his or her automobile or automobiles, and for loss of use and occupancy of his or her Unit in the event of damage. Owners shall be responsible for insuring the deductible amount under the Association's policies. The Association shall notify all Owners of the amount of the deductible under the Association policies, and to the extent reasonably practical, the Association shall give at least 30 days' notice to the Owners of any increase in the deductible proposed in renewal or replacement insurance policies. Any such policy or policies of insurance shall contain waivers of subrogation against the Association, its manager, agents, employees and servants, and against the other Owners and any members of their households, except for vehicle impact, arson, and fraud.

10.5.2. Public liability insurance in the amount reasonably set by the Board no more often than every three years, covering any liability of any Owner to the extent not covered by any public liability and property damage insurance obtained and maintained by the

Association, including, without limitation, damages caused by fixtures, equipment, or personal property under the custody, care, or control of the Owner.

10.5.3 If the Board is unable to obtain the rider specified in Section 10.3.6, then the Owners shall obtain and pay the expense of such rider.

#### **SECTION 11. AMENDMENTS TO BYLAWS.**

Amendments to the Bylaws may be proposed by a majority of the Board or by at least 30% of the Owners. Generally, approval of an amendment requires approval by at least a majority of the Owners. An amendment relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy Units, and limitations on the rental of Units requires approval by at least 75% of the Owners. If the Bylaws contain an item that is required by the Oregon Condominium Act to be included in the Declaration, the voting requirements for amending the Declaration shall also govern amendment to the provision in the Bylaws. The Bylaws may not be amended to limit or diminish any special Declarant right without the consent of the Declarant. However, the Declarant may waive the Declarant's right of consent. An amendment is not effective unless the amendment is approved by a sufficient number of Owners and certified by the Chairperson and Secretary of the Association as being adopted in accordance with the Bylaws and the provisions of this Section, acknowledged in the manner provided for acknowledgement of instruments and recorded. If required by law, for five years after the recording of the initial Bylaws, before any amended Bylaws may be recorded, the amended Bylaws must be approved by the Real Estate Commissioner; however, the approval by the Commissioner is not required for Bylaws restated under ORS 100.410(10), unless the Bylaws are restated during the five-year period after the recording of the initial Bylaws.

#### **SECTION 12. LITIGATION.**

**12.1. Complaints Against.** Complaints brought against the Association, the Board, or the Officers, employees, or agents thereof, in their respective capacities as such, or against the Property as a whole, shall be directed to the Board, which shall promptly give written notice thereof to the Owners and any Mortgagees who have requested notice thereof and shall be defended by the Board, and the Owners and Mortgagees shall have no right to participate other than through the Board in such defense. One or more Owners shall have the right to enjoin, abate, or remedy by appropriate legal proceedings any failure by the Association or the Board to comply with the provisions of the Declaration, these Bylaws, or any Rule or Regulation. Complaints against one or more, but less than all of the Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Board and to the Mortgagees having an interest in such Units, and shall be defended by such Owners.

**12.2. Mediation.** Prior to initiating litigation or an administrative proceeding in which the Declarant, the Board, the Association and/or an Owner have an adversarial relationship, all claims shall first be submitted to mediation within Deschutes County, Oregon, with any dispute resolution program available that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended. The foregoing requirement does not apply to circumstances in which irreparable harm to a party will occur if litigation or an administrative proceeding is delayed by mediation.

**12.3. Limitations on Actions.** Notwithstanding any other provision of the Declaration or these Bylaws, the Association shall not expend or commit to expend in excess of \$2,500 for attorney's fees and costs unless first approved by at least 75% of the outstanding votes of the Owners. The dollar amount stated in this Section shall be subject to indexing pursuant to Section

13.2. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under the Declaration or these Bylaws, for actions initiated while Declarant holds Class B membership; for actions challenging ad valorem taxation or condemnation proceedings; initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; actions to summarily abate and remove a structure or condition that violates the Declaration or these Bylaws; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims).

**12.4. No Attorneys' Fees.** Except as specifically provided for in the Declaration or these Bylaws, no party in any arbitration, mediation, litigation, or other proceeding shall be entitled to recover attorneys' fees in connection therewith.

**12.5. Suits Against Declarant.** Declarant shall have the right to be present at any meeting of the Association during which the Board or the Owners vote on whether to initiate legal action against Declarant. The Board shall provide Declarant with at least 10 days' written notice of the time and place of any such meeting.


### **SECTION 13. MISCELLANEOUS.**

**13.1. Severability.** A determination that any provision of these Bylaws is for any reason inapplicable, invalid, illegal, or otherwise ineffective shall not affect or invalidate any other provision of these Bylaws.

**13.2. Indexing.** Where specifically provided, dollar amounts stated in these Bylaws shall be increased or decreased each January 1<sup>st</sup> by the percentage change in the *Consumer Price Index* published by the United States Bureau of Labor Statistics of the United States Department of Labor. Comparison shall be made using the index entitled *U.S. City Average – All Items and Major Group Figures for All Urban Consumers*, (1982-84=100), or the nearest comparable data on changes in the cost of living if such index is no longer published. The change shall be determined by comparison of the figure for January 1, 2007, with that of January 1<sup>st</sup> of each succeeding year.

The foregoing Bylaws were duly adopted by the Declarant, Forge Sustainable Investments, LLC, on behalf of the Association.

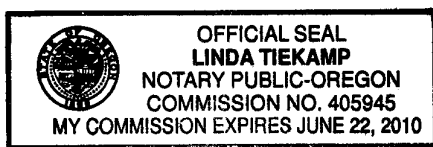
FORGE SUSTAINABLE INVESTMENTS, LLC

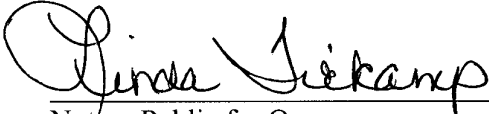
By:   
John Audia, Manager

[NOTARY BLOCK ON FOLLOWING PAGE]

STATE OF OREGON            )  
  ) ss.  
County of Deschutes        )

Personally appeared before me on August 18, 2008, the above named John Audia, who being duly sworn did state that he is a manager of Forge Sustainable Investments, LLC, and that these Bylaws were signed on behalf of Forge Sustainable Investments, LLC, and he acknowledges these Bylaws as being Forge Sustainable Investments, LLC's, voluntary act and deed.



  
\_\_\_\_\_  
Notary Public for Oregon