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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE TATE CONDOMINIUMS**

**Dated: May 14, 2006**

**Declarant: 1375 Olive, LLC, an Oregon limited liability company**

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## **Exhibits to Declaration**

- Exhibit A - Property Description
- Exhibit B - Areas of Units and Allocation of Interest in Common Elements
- Exhibit C - Allocation of Common Profits
- Exhibit D-1 Listing of Commercial Expenses
- Exhibit D-2 Listing of Residential Expenses
- Exhibit D-3 Allocation of Expenses to Owners of Residential Units
- Exhibit D-4 Allocation of Expenses to Owners of Commercial Units
- Exhibit D-5 Reserve Allocation
- Exhibit E Bylaws of The Tate Condominiums Owners' Association

**DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE TATE CONDOMINIUMS**

**MADE PURSUANT TO THE OREGON CONDOMINIUM ACT**

This Declaration, to be effective upon its recording in Lane County, Oregon, pursuant to the provisions of the Oregon Condominium Act, is made and executed this 14th day of May, 2006 by 1375 Olive, LLC, an Oregon limited liability company ("Declarant").

Declarant proposes to create a condominium located in the City of Eugene, Lane County, Oregon, to be known as the Tate Condominiums, composed of 49 Primary Units, 47 Parking Units, and 51 Storage Units located in a newly constructed building. The purpose of this Declaration is to submit the Property (as defined below) to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act.

1. Definitions and Interpretation.

1.1 Definitions. As used in this Declaration, the Articles of Incorporation of the Tate Condominiums Owners' Association, its Bylaws, its Rules and Regulations, and any exhibits thereto, unless the context shall otherwise require, the following definitions shall be applied:

1.1.1 Act shall mean the Oregon Condominium Act, currently ORS 100.005 to 100.990, as amended from time to time.

1.1.2 Association shall mean the nonprofit corporate entity responsible for the administration, management and operation of the Condominium.

1.1.3 Association Property shall mean any real property or interest in real property acquired, held or possessed by the Association under ORS 100.405.

1.1.4 Board or Board of Directors shall mean the Board of Directors of the Association.

1.1.5 Bylaws shall mean the Bylaws of the Association, as amended from time to time.

1.1.6 Commercial Units shall mean the part of the Condominium designated as such in Section 4 and comprised of the space enclosed by its boundaries as described in Section 4.

1.1.7 Common Elements shall mean all those portions of the Condominium exclusive of the Units.

1.1.8 Condominium shall mean the Property that is hereby submitted to condominium ownership and all improvements thereon and all easements and rights appurtenant thereto.

1.1.9 Declaration shall mean this Declaration of Condominium Ownership for the Condominiums and any amendments thereto.

1.1.10 General Common Elements shall mean those Common Elements designated in Section 5.

1.1.11 Legal Requirements shall mean any and all laws, orders, rules, and regulations of any governmental entity.

1.1.12 Limited Common Elements shall mean those Common Elements designated in Section 6.

1.1.13 Mortgage shall include a deed of trust and a contract for the sale of real estate.

1.1.14 Mortgagee shall include a deed of trust beneficiary and a vendor under a contract for the sale of real estate.

1.1.15 Owner shall mean the owner or owners of a Primary Unit and, in addition to a Primary Unit, any Parking or Storage Unit, but shall not include a Mortgagee unless in possession of a Primary Unit and, in addition to a Primary Unit, any Parking or Storage Unit. A person or entity who does not own a Primary Unit shall not be an Owner.

1.1.16 Parking Unit shall mean that part of the Condominium designated as such in the Plans and comprised of the space enclosed by its boundaries as described in Section 4.

1.1.17 Plans shall mean the plat for the Condominium which is being recorded in the deed records of Lane County, Oregon, concurrently with this Declaration and any revisions of such plat subsequently recorded.

1.1.18 Primary Unit shall mean the part of the Condominium designated as such in Section 4 and comprised of the space enclosed by its boundaries as described in Section 4.

1.1.19 Property shall mean the property submitted to the provisions of the Act, as described more particularly in Section 2.

1.1.20 Residential Units shall have the meaning given in Section 4.2.

1.1.21 Rules and Regulations shall mean those rules and regulations governing the use and enjoyment of the Condominium, as adopted by the Board pursuant to the Bylaws.

1.1.22 Storage Unit shall mean the part of the Condominium designated as such in the Plans and comprised of the space enclosed by its boundaries as described in Section 4.

1.1.23 Turnover Meeting shall mean the meeting at which Declarant relinquishes control of the administration of the Association pursuant to ORS 100.210.

1.1.24 Units shall mean those parts of the Condominium designated in Section 4 as Primary, Parking or Storage Units and comprised of the spaces enclosed by each of their respective boundaries as described in Section 4; Unit shall mean any one of the Units.

1.2 Liberal Construction. The provisions of 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 Oregon law. The terms used herein are intended to have the same meaning as may be given in the Act to such terms unless the context clearly requires otherwise or definition in this manner would have an unlawful consequence.

1.3 Mortgagee Approval. For purposes of determining the percentage of first Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds first Mortgages on more than one Primary Unit, such Mortgagee shall be deemed a separate Mortgagee as to each such Primary Unit.

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

1.5 No Fiduciary Standard. In no event shall Declarant be deemed to be a fiduciary of the Owners or be held to a fiduciary standard with respect to activities hereunder. The foregoing language does not apply to fiduciary responsibilities the officers or directors of the Association may otherwise have.

1.6 Captions and Exhibits. The captions given 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.

1.7 Miscellaneous. All terms and words used in this Declaration, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. "And/or" when applied to two or more matters or things shall be construed to apply to any one or more or all thereof, as the circumstances then warrant. "Herein," "hereof," "hereunder," and words of similar import shall be construed to refer to this Declaration as a whole, and not to any particular section, unless expressly stated otherwise.

2. Property Submitted. The Property hereby submitted to the provisions of the Act is the land owned in fee simple by Declarant and described on the attached Exhibit A, together with all easements, rights, and appurtenances belonging thereto and all improvements now existing or hereafter constructed on such land.

3. Name. The name by which the Property is to be identified is "The Tate Condominiums."

#### 4. Units.

4.1 General Description of Building. The Condominium shall consist of one building with six levels above grade. The building is a concrete tension slab structure with brick veneer and parking on the ground floor. The building has no basement.

4.2 General Description, Location, and Designation of Units. The Condominium consists of a total of 147 Units, consisting of 49 Primary Units, 47 Parking Units, and 51 Storage Units. The area in square feet of the Primary Units, Parking Units, and Storage Units is listed on Exhibit B. The Primary Units are the Residential and Commercial Units designated on the Plans numerically. Primary Units 101 through 103 are located on the first level as depicted on the Plans. Primary Units 201 through 210 are located on the second level above grade, as shown on the Plans. Primary Units 301 through 310 are located on the third level above grade, as shown on the Plans. Primary Units 401 through 404 and 406 through 410 are located on the fourth level above grade, as shown on the Plans. Primary Units 501 through 510 are located on the fifth level above grade, as shown on the Plans. Primary Units 601 through 607 are located on the sixth level above grade. The Parking Units designated numerically as P-13 through P-15 and P-40 through P-47 are located on grade level adjacent to the building, as shown on the Plans. Parking Units designated numerically as P-01 through P-12 and P-16 through P-39 are located inside the building on the ground level of the Condominium, as shown on the Plans. The Storage Units designated numerically S-01 through S-51 are located on the ground level, as shown on the Plans. Each of the Primary Units designated in Section 9 for residential use only shall be a residential unit (a "Residential Unit"), and each of the Primary Units designated in Section 9 for commercial use shall be a commercial unit (a "Commercial Unit").

#### 4.3 Boundaries of Units.

4.3.1 Primary Units. Each Unit identified on the Plans as a primary unit (a "Primary Unit") shall be bounded by the interior surfaces of the common corridor wall immediately adjacent to such Primary Unit's perimeter walls, a vertical plane located in the center of its perimeter wall located immediately adjacent to another Primary Unit(s), the interior surfaces of the perimeter walls on the exterior of the building facing the interior of the Unit, interior surfaces of windows and window frames, doors and door frames, and trim, and the surfaces of the floor and ceiling slabs facing the interior of the Unit (i.e., the slab that supports hardwood, linoleum tile, or other flooring materials or the slab above any finished ceiling) and shall include both the interior surfaces so described (including the unexposed face of the sheetrock or similar material and the underside of the finished floor) and the air space so encompassed and shall exclude those portions of the walls, floors or ceilings that materially contribute to the structural, or shear capacity of the Condominium, as well as any steel or concrete support columns located within the Primary Unit. Each Primary Unit shall also include the chase serving the fireplace, if any, located within the Unit. In addition, each Primary Unit shall include the outlet of any utility service lines, including water, plumbing, sewer, electricity, gas, or cable television, and those portions of ventilating or air conditioning ducts within the unit boundaries described herein.



4.3.2 Parking Units. Each Unit identified on the Plans as a parking unit (a "Parking Unit") shall consist of the paved surface of the Parking Unit, four vertical planes extending upwards at a 90° angle from the boundaries of the paved surface of the Parking Unit and a horizontal plane coextensive with the boundaries formed by the uppermost edge of each vertical plane, as shown on the Plans. The height of such horizontal plane may vary in some interior Parking Units, due to the existence of mechanical equipment located above such Parking Units. Regardless of the actual location of the painted striping for Parking Units, the boundaries of the Parking Units shall be as set forth herein and on the Plans. Parking Units do not include the paved surface, ceiling or perimeter walls themselves.

4.3.3 Storage Units. Each Unit identified on the Plans as a storage unit (a "Storage Unit") shall be bounded by (i) the exterior surfaces of its doorway or face panel, including any fixtures thereon or attached thereto, such as knobs, handles, and hinges and (ii) the interior surfaces of the side and back walls (or side and back panels, some of which may consist of chain link fencing), floor (or bottom panel), and ceiling (or top panel) of each Storage Unit, and shall include the air space so encompassed.

5. Owner's Interest in Common Elements; General Common Elements. The allocation of undivided interests in the Common Elements is shown on the attached Exhibit B. The method used to establish this allocation consists of (i) an allocation of an 0.01 percent undivided interest to each of the Parking Units, and Storage Units, and (ii) an allocation of the remaining undivided interests to the Primary Units determined by the ratio which the area of each Primary Unit bears to the total area of all Primary Units combined, as shown on the Plans. The general location of the Common Elements is shown on the Plans. The General Common Elements shall consist of all parts of the Condominium other than the Units and the Limited Common Elements and include, without limitation, the following:

5.1 All floor and ceiling slabs; meter rooms; boiler rooms; elevator shaft room; janitor's rooms; maintenance rooms; mechanical room; electrical rooms; building storage rooms; foundations; exterior windows; crawl spaces; roofs; columns; beams; girders; supports; common corridor and stairwell walls; and bearing walls.

5.2 Pipes, ducts (other than chases and those portions of ducts located within Primary Units pursuant to Section 4.3.1), boiler equipment, common corridor heating equipment, chutes, conduits, wires, and other utility installations, in each case to their respective outlets.

5.3 Land and ground level landscaping, exterior walkways, and exterior bicycle racks, if any.

5.4 Controlled security access system.

5.5 Those portions of walls, floors and ceilings which materially contribute to the structural or shear capacity of the Condominium.

5.6 Canopies located above sidewalks or loading docks, if any, except such canopies as are installed by Commercial Unit Owners pursuant to Section 7.5 of the Bylaws.

5.7 Nine exterior parking spaces, including two handicapped accessible parking spaces, which are reserved for commercial use during business hours as provided in Section 7.14 of the Bylaws.

5.8 All other elements of the Condominium necessary or convenient to its existence, maintenance, or safety, or normally in common use, except as may be expressly designated herein as a part of a Unit or a Limited Common Element.

6. Limited Common Elements. The Limited Common Elements shall consist of (i) balconies or terraces located adjacent to certain of the Primary Units situated on the second through sixth levels of the building, the use of which is reserved on an exclusive basis for the adjoining Primary Unit, as shown on the Plans; (ii) elevator mechanical room on the ground floor, which serves the elevators, the use of which is reserved for the exclusive use of Residential Units; and (iii) the first floor lobby area, entrance ways and vestibules, trash disposal and recycling area, mail area, terrace garden, common corridors, restroom located on the ground level, stairways, and elevators, the use of which is reserved for the exclusive use of Residential Units. The dimensions, designation, and location of the Limited Common Elements are shown on the Plans.

7. Allocation of Common Profits and Expenses; Enforcement of Assessments.

7.1 Method of Allocation. The common profits of the Property shall be distributed among the Owners in proportion to the respective undivided interests in the Common Elements pertaining to their Primary Units, without regard to any interest in the Common Elements pertaining to their Parking or Storage Units. The allocation of common profits shall be as set forth on Exhibit C. The common expenses shall be divided into commercial expenses (including any reserve assessments allocated to Commercial Owners pursuant to Section 13.3, the "Commercial Expenses") and residential expenses (including any reserve assessments allocated to Residential Owners pursuant to Section 13.3, the "Residential Expenses"), as shown on the attached Exhibits D-1 and D-2, respectively. The Residential Expenses shall be charged to the Owners of the Residential Units according to the percentage determined by the ratio which the area of each Residential Unit bears to the total area of all Residential Units, as shown on the attached Exhibit D-3. The Commercial Expenses shall be charged to the Owners of Commercial Units according to the percentage determined by the ratio by which the area of each Commercial Unit bears to the total areas of all Commercial Units, as shown on the attached Exhibit D-4. Any costs or expenses incurred by the Association (including, without limitation, capital improvements) that are not assessable to an Owner pursuant to Section 5.7 of the Bylaws and not shown on Exhibit D and that do not relate solely to the Commercial Units or Residential Units, respectively, shall be allocated between Commercial Expenses and Residential Expenses in a proportion that reasonably and equitably reflects the benefit realized as a result of such cost or expense by the Owners of Commercial Units and Residential Units, respectively. The allocation described in the preceding sentence shall be determined by agreement between (i) the director of the Association elected by the Owners of Commercial Units, if any, and (ii) by a majority of the directors of the Association elected by the Owners of Residential Units. In the event such directors are unable to reach agreement on an allocation within 30 days following notice given to all directors of the cost or expense requiring allocation, the cost or expense shall be allocated 96 percent as a Residential Expense and four percent as a Commercial Expense. Assessments of

administrative control of the Association, Declarant may elect to defer the commencement of common expenses (other than assessments for reserves pursuant to Section 13.3) for a period not exceeding 60 days from such closing. Declarant shall give not less than 10 days' written notice to all Owners of the commencement of all common expense assessments. Assessments for reserves pursuant to Section 13.3 shall commence upon closing of the first sale of a Primary Unit, subject to the right of Declarant to defer the payment of assessments for reserves pursuant to Section 13.3. Until the commencement of assessments for common expenses, Declarant shall be responsible for payment of all common expenses of the Association (other than assessment for reserves pursuant to Section 13.3). Except to the extent provided in the Bylaws, the common expenses of the Property shall be assessed on a monthly basis.

7.2 No Exception and No Offset. No Owner may claim exemption from liability for contribution toward the common expenses by waiver by the Owner of the use or enjoyment of any of the Common Elements or by abandonment by the Owner of the Owner's Unit, except as expressly set forth in Section 7.1. No Owner may claim an offset against an assessment for common expenses for failure of the Board of Directors to perform its obligations.

7.3 Default in Payment of Common Expenses. In the event of default by any Owner in paying to the Association the assessed common expenses (including, but not limited to, reserve assessments or any other special assessments), such Owner shall be obligated to pay interest on such common expenses from the due date thereof, together with all expenses, including attorneys' fees, incurred by the Association in any proceeding brought to collect such unpaid expenses, or any appeal therefrom. No interest or late charges will be assessed on common expenses paid within 30 days after the due date therefor. Otherwise, delinquent payments of common expense assessments shall bear interest from the date thereof at a rate determined by the Board of up to 18 percent per annum, but in no event higher than the maximum rate permitted by law. The Board of Directors may also establish and impose charges for late payments of assessments, if the charge imposed is based upon a resolution adopted by the Board of Directors 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. The Board of Directors shall have the right and duty to recover for the Association such common expenses, together with interest thereon, late charges, if any, and expenses of the proceeding, including attorneys' fees, by an action brought against such Owner or by foreclosure of the lien which the Board of Directors shall have upon such Owner's Units (including that Owner's Parking or Storage Unit, if any) with respect to all such obligations.

7.4 Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Association to foreclose a lien on a Unit or Units because of unpaid common expenses, the Owner shall be required to pay a reasonable rental for the use of the Unit or Units during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such Unit or Units at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit or Units. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing any lien securing the same.

7.5 Prior Mortgages; Liability of Subsequent Purchaser. Any lien of the Association against a Unit or Units for common expenses shall be subordinate to tax and assessment liens and any prior Mortgage of record, unless there has been compliance with all requirements of ORS 100.450(7). Where the purchaser or Mortgagee of a Unit or Units obtains title to the Unit or Units 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 or Units which became due prior to the acquisition of title to such Unit or Units 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 or Units from the lien of, any common expenses thereafter becoming due. In a voluntary conveyance of a Unit or Units (subject to the restrictions of this Declaration), the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Unit or Units to the time of grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the Board of Directors shall make and deliver a statement of the unpaid assessments against the prospective grantor of the Unit or Units, and the grantee in such case shall not be liable for, nor shall the Unit or Units when conveyed be subject to, a lien filed thereafter for any unpaid assessments against the grantor in excess of the amounts therein set forth.

8. Voting Rights. Subject to the provisions of Section 20 of this Declaration and Section 3 of the Bylaws, one vote shall be allocated to each Primary Unit. No voting rights shall be allocated to Parking or Storage Units.

9. Use. Primary Units 101 to 103, as shown on the Plans, may be used for exclusively commercial purposes in accordance with Section 7.3 of the Bylaws (the "Commercial Units"). The remaining 46 Primary Units, as shown on the Plans, are intended for residential use only (as described in Section 7.2 of the Bylaws). The use of Parking Units shall be limited to the Owner of a Residential Unit, or the family members, tenants or guests of such Owner temporarily or permanently residing in such Residential Unit. Storage Units S-01 through S-51 shall be limited to storing items associated with a Residential Unit.

10. Service of Process. The designated agent to receive service of process in cases 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).

11. Authority Regarding Easements and Other Property Rights. The Association has the authority, pursuant to ORS 100.405(5) and (6), to 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 and adjacent to the Condominium. The granting of any interest pursuant to this Section 11 (other than leases having a term of two years or less or consent to vacation of roadways) shall first be approved by Owners holding at least 75 percent of the voting power of the Association, unless otherwise allowed to be approved by the Board under 100.405(6)(a)(B).

12. No Restrictions on Alienation; Right of First Refusal.

12.1 No Restrictions on Alienation. This Declaration and the Bylaws impose no restrictions on the alienation of any Residential Units. No person or entity may own or shall be entitled to acquire a Parking or Storage Unit unless such person or entity owns or shall simultaneously acquire a Residential Unit. Any conveyance, transfer or other disposition ("Transfer") of a Parking or Storage Unit to a person or entity who does not own or who will not acquire a Residential Unit is prohibited. In addition, no person may Transfer his or her only Primary Unit without also Transferring such Owner's Parking Unit and Storage Unit. In the case of a Transfer or attempted Transfer of a Parking or Storage Unit in violation of this Section 12, in addition to the Association's other rights under this Section 12, the person or entity making or attempting such Transfer shall indemnify and hold harmless the Association and its members from all cost, liability, and damage that the Association or its members may incur (including, without limitation, attorneys' fees and expenses) as a result of such Transfer or attempted Transfer. In the event a person or entity engages or attempts to engage in a Transfer of a Parking or Storage Unit in violation of this Section 12, the Association acting through the Board may, in its sole discretion, fine the offending person or entity in such amounts as it may determine to be appropriate, in addition to any other rights or remedies available to the Association under this Declaration, the Bylaws or applicable law or in equity including, without limitation, the remedies of specific performance and injunction.

12.2 Right of First Refusal. The Association shall have the right of first refusal ("Purchase Right") to purchase each Commercial Unit upon the same terms and conditions as those of any bona fide offer received by and acceptable to the Commercial Unit Owner. Each Commercial Unit Owner, before accepting or making any offer or agreement to sell his or her Commercial Unit, shall notify the Board of Directors in writing of the terms and conditions of such offer and the Board of Directors shall have a period of thirty (30) days from the date of receipt of such notice within which to exercise the Association's Purchase Right on the identical terms and conditions of such offer, by giving written notice of such election to the Commercial Unit Owner. If the Board of Directors fails to give such timely written notice of an election to purchase, the Commercial Unit Owner will have a period of sixty (60) days from the date of the expiration of the period for giving of notice by the Board of Directors to transfer the Commercial Unit described in the Commercial Unit Owner's original notice, upon terms not more favorable to the purchaser than those contained in such notice. The failure of the Board of Directors to exercise the Association's Purchase Right on one or more occasions shall not affect the Association's right to exercise such right on any subsequent occasions. The Association shall not exercise its Purchase Right for any unlawful purpose. The Association's Purchase Right shall not apply to any sales of Commercial Units by Declarant and shall not apply to transfers of a Commercial Unit by a Commercial Unit Owner into revocable or irrevocable trusts, gifts of all or a part of the ownership interest in a Commercial Unit, or transfers of a Commercial Unit between entities under common control.

13. Maintenance and Repairs; Reserve Fund.

13.1 Maintenance of Common Elements, Parking Units, and Chases. The necessary work to inspect, maintain, repair, or replace the Common Elements, the Parking Units, and the chases serving the fireplaces in Primary Units, if any, shall be the responsibility of the

Association and shall be carried out as provided in the Bylaws and the Maintenance Plan (defined in Section 5.2 of the Bylaws). Notwithstanding the foregoing, Owners of Residential Units having the exclusive use of adjoining terraces or balconies shall keep such areas clean as provided in Section 13.2. Without limiting the foregoing, the Association shall properly maintain the exterior walls of the Condominium to prevent water intrusion, including maintaining the surface of such exterior walls. The Association is responsible for maintaining warranties in effect for all portions of the Common Elements and Parking Units, to the fullest extent possible. If the Mortgagee of any Primary Unit determines that the Association is not providing an adequate 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(s) which it believes exists in the maintenance, repair, and replacement program. If the specified defect(s) are not corrected within 60 days after receipt of such notice, then the Mortgagee, upon written notice to the registered agent 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 Primary 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.

13.2 Maintenance of Units. All maintenance of and repairs to any Primary and Storage Unit (other than the chases of a fireplace, if any, located in a Primary 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 painting and staining which at any time may be necessary to maintain the good appearance and condition of his or her Unit or Units, subject to the provisions of the Bylaws. In addition, each Owner of a Primary Unit shall be responsible for the maintenance, repair, or replacement of interior doors and any plumbing fixtures, heating fixtures, telephones, fans, lighting fixtures and lamps, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in his or her Primary Unit and each Owner of a Storage Unit shall be responsible for the maintenance, repair, and replacement of the exterior doorway or face panel of any Storage Unit and any fixtures thereon, such as knobs, handles, and hinges, the interior surfaces of the Storage Unit, and any lighting fixtures or other fixtures located within, or attached to the interior of, the Storage Unit. Each Owner shall maintain the doors which provide the means of ingress and egress to and from his or her Primary Unit (including the repair of any damage thereto), and the windows opening on to his or her Unit (including the repair or replacement of cracked or broken windows, notwithstanding that such surfaces may be part of the Common Elements) but the Association shall be responsible for maintenance, repair and replacement of the window frames and door frames of doors providing ingress and egress to the Unit. Each Owner of a Primary Unit shall maintain the fan and/or compressor serving his or her Primary Unit and located on the roof, if any, as well as the heating equipment located within the Primary Unit. Owners shall coordinate such maintenance of fans or compressors with the managing agent of the Condominium, if any, or if none, the Board of Directors. Each Owner having the exclusive use of an adjoining balcony or terrace shall keep such area clean and free from debris or trash, notwithstanding that such balcony or terrace is a Common Element. The Association may elect, but shall not be required, to perform exterior window washing.

13.3 Reserve Fund for Replacing Common Elements. Declarant shall obtain a reserve study from a professional management company or professional reserve study provider 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 three and fewer than 30 years and for the painting of exterior painted surfaces of Common Elements, if any, as provided in Section 5.2 of the Bylaws. **The reserve study assumes that the Board conducts normal, routine maintenance for the items reserved for and that the Board is required to perform pursuant to this Declaration, the Bylaws, the Maintenance Plan 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 elements included in the reserve study.** The reserve fund shall also be governed by Section 5.2 of the Bylaws. Declarant may elect to defer payment of assessments for the reserve fund with respect to a Unit until the time of conveyance of the Unit; provided, however, that Declarant may not defer payment of accrued assessments for the reserve fund beyond the date of the Turnover Meeting, or if the 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.

14. Rights of Access and Use.

14.1 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 ingress and egress to and from such Owner's Unit or Units; for the support of such Owner's Unit or Units; and for the installation, operation, repair, maintenance, and replacement of utilities and other systems serving such Owner's Units, including, but not limited to, water, natural gas, air conditioning, cable television, electrical power and wiring, light, or plumbing serving a Primary Unit. The Owner 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 14.1. 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.

14.2 Additional Rights Created by Association. The Association, upon prior approval of Owners holding at least 75 percent of the voting power of the Association, may create on behalf of the Owners additional rights of access and use with respect to the General Common Elements. No such right may be granted with respect to a Limited Common Element unless the Owners and Mortgagees of the Primary Units having the right to use such Limited Common Elements consent to the creation of such a right. Nothing in this Section 14.2 shall be construed to enable the Association to revoke, alter, modify, or terminate any easements, rights of way, licenses, or similar interests of record on the date this Declaration is recorded.

14.3 Water Intrusion and Mold Inspection. The Board, acting on behalf of the Association, may authorize entry into any Owner's Unit or Units to conduct a periodic inspection of the Owner's Primary Unit and Storage Unit for water intrusion into the Unit and/or the appearance of mold or mildew within such Unit. Such inspection shall be made by an agent of the Association appointed by the Board of Directors and shall occur at such time as is reasonably convenient to the Owner (or Owner's tenant) and the inspector. The right of entry and inspection provided in this Section 14.3 shall not in any way obligate the Association or the Board of Directors 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 Board of

Directors. Nothing contained within this Section 14.3 is intended to modify the maintenance and repair obligations of any party as provided in the Bylaws and this Declaration.

14.4 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 any Owner's Unit or Units in the case of any emergency or property damage originating in or threatening such Unit or Units or other Units, Common Elements or Association Property or requiring repairs in such Unit or Units 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 or Units for the purpose of performing installations, alterations, maintenance, or repairs to any Common Element, preventing damage to the Common Elements, Association Property, or another Unit, or inspecting the Unit or Units 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 entry are made in advance and that such entry is at a time reasonably convenient to the Owner.

14.5 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 and Parking Units for the purpose of (i) inspecting the Property for defects or to verify appropriate maintenance is being performed; (ii) planning, designing, developing, constructing, maintaining, repairing, or selling all or any part of the Property, to the extent Declarant is required or authorized to conduct such activities (a) pursuant to this Declaration, the Bylaws, or the Plans, (b) under contracts of sale with purchasers of Units, (c) in order to satisfy any warranty obligation of Declarant, or (d) under applicable law or regulations, and (iii) carrying out sales activities reasonably necessary for the sale of Units, including, without limitation, the right to use the Primary Units owned by Declarant as model Units and/or as a sales office and to post "for sale" signs until all such Units have been conveyed to persons other than Declarant; provided, however, Declarant shall restore the portions of the Property which it accesses or uses pursuant to this Section 14.5 to substantially the same condition that existed prior to such access or use (except to the extent Declarant has constructed improvements contemplated by this Section 14.5). Declarant is expressly authorized to complete construction of all parts of the Condominium, including Common Elements and Units, until such time as Declarant has conveyed all Units to other persons. The right of entry and inspection provided in this Section 14.5 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.

## 15. Encroachments.

15.1 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, including but not limited to any encroachment from the building's HVAC equipment extending down from the ceiling of a



Parking Unit. 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 15.2, the rights and obligations of Owners shall not be altered in any way by the encroachment.

15.2 The easement described in Section 15.1 does not relieve an Owner of liability in case of willful misconduct of an Owner or relieve the Declarant or any contractor, subcontractor, or materialman of liability for failure to adhere to the Plans.

15.3 The encroachments described in Section 15.1 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

16. Notices to Mortgagees. The Association shall provide timely written notice of the following matters to any Mortgagee of a Unit, or any insurer or guarantor of a Mortgage on a Unit:

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

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

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

16.4 Any proposed action that requires the consent of a specified percentage of Mortgagees under this Declaration or the Bylaws.

17. Operating Entity. The Tate Condominiums Owners' 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. A copy of the Bylaws, which have been adopted by the Declarant as required by ORS 100.410(1), are attached hereto as Exhibit E. The Owner of each Primary Unit shall automatically become a member of the Association upon such Owner's acquisition of an ownership interest in any Primary 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 Primary Units, 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 the 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 Primary 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.

18. Managing Agent. 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 not later than 60 days after the Turnover Meeting, the Board shall have the authority, on behalf of the Association, to enter into a management agreement with respect to the Condominium prior to the Turnover Meeting for a term not to exceed three (3) years. On behalf of the Association, the Board may, after the Turnover Meeting, employ or contract for a managing agent or manager in accordance with the Bylaws at a compensation to be established by the Board. 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.

19. Taxation of Units. Each Primary Unit, Parking Unit, and Storage Unit, together with the undivided percentage interest in the Common Elements allocated to such Units, 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.

20. Administrative Control. Except as otherwise provided in this Declaration or in the Bylaws, Declarant reserves control until the earlier to occur of the date that is three years after the date on which the first Unit is conveyed or the date at which 75 percent of the 147 Units planned for the Condominium have been conveyed to persons other than the Declarant, during which period:

20.1 Declarant may appoint and remove officers and members of the Board;

20.2 Declarant shall have five votes with respect to each Primary Unit owned by it, notwithstanding the provisions of Section 8; and

20.3 Declarant shall have the right to exercise all powers of the Association, the Board, or the Condominium officers under this Declaration, the Bylaws, and the Act. Declarant may not bind the Association to any management agreement, service contract, or employment contract to which Declarant is a party, which is made prior to the Turnover Meeting unless the Association or the Board is granted therein a right of termination thereof which is exercisable without cause or penalty upon not less than 30 days' written notice given to the other party thereto not later than 60 days after the Turnover Meeting.

21. Casualty.

21.1 Responsibility of Association. Upon notice to the Association, the Association shall be responsible for repairing, reconstructing, or rebuilding all damage or destruction of the Common Elements, the Parking Units, and the chases serving the fireplaces located within Primary Units, if any, by casualty and, to the extent of the Association's insurance coverage, all such damage or destruction to the other Units. Each Owner shall be responsible for the repairing, reconstructing, or rebuilding of the Owner's Primary Unit (other than the chase

referred to above), and Storage Unit to the extent not covered by the Association's insurance. The Association shall rebuild and restore the damaged or destroyed portions of the Common Elements, the Parking Units, and such chases and, to the extent of the Association's insurance coverage, of the other 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 percent of the Primary Units and 75 percent of all first Mortgagees of Primary 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 Primary 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 Section 100.605 thereof, and any proceeds resulting from such removal shall be distributed in accordance with ORS 100.615.

21.2 Responsibility of Owner. If, due to the act or neglect of an Owner, or of a member of his or her family or his or her household pet or of a guest, servant, invitee, employee, or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Association.

## 22. Condemnation.

22.1 Total Condemnation. In the event of condemnation of the whole of the Condominium, the compensation to be paid to Owners of Units shall be negotiated and finalized, including, if required, by representation in any proceeding, by the Association, subject to ratification of such compensation by the Owners of at least 75 percent of the Primary Units at a special meeting called for that purpose, whether or not proceedings are necessary, and compensation, less expenses involved, if any, in obtaining the compensation shall be paid to the Association and then distributed among the Owners of Units in equitable proportions 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, the rights of each Owner of a Unit shall be separate to negotiate and finalize his or her personal compensation for improvements made to the Unit or Units, cost of moving, and other similar items personal to each Owner.

22.2 Partial Condemnation. In the event of a partial condemnation of the Condominium which includes some Units and/or Limited Common Elements, each Owner whose Unit or Units or associated Limited Common Elements are condemned shall deal with the condemning authority with regard to compensation therefor, and the compensation for such Unit or Units or Limited Common Elements shall be paid to such Owner (or the Mortgagee of that Owner's Unit). The Association shall negotiate compensation relating to any General Common

Elements. The cost, if any, of restoring the balance of the Condominium so that it may be used shall be determined by the Association and the Association shall negotiate with the condemning authority with regard to compensation for this expenditure and shall, unless the Condominium is terminated within 30 days after the receipt of such compensation in accordance with the Act, reconstruct the Condominium, 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.

23. Fidelity Bond. The Board of Directors shall require that any person or entity, including, but not limited to, 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 of Directors deems adequate under this Section 23. 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 three months of common expense assessments on all Units. Any such bond shall include a provision requiring not less than ten days' written notice to the Association and any Mortgagee of a Unit requesting a copy thereof before cancellation or substantial modification of the bond for any reason. The premiums on such bonds shall be paid by the Association.

24. Amendment.

24.1 Approval by Owners. Except as may otherwise be provided in this Declaration or by the Act, this Declaration may be amended if such amendment is approved by Owners holding at least 75 percent of the voting power of the Association and the consent of the Declarant for a period of 11 years after the date of recording of this Declaration in the deed records of Lane County, Oregon. The unanimous consent of all Owners of Primary Units shall be required for amendments of Sections 14.2 and 16 of this Declaration. In addition to the majority vote of all Primary Units, the consent of a majority of Owners of Commercial Units is required for any amendment of Section 9 that limits or restricts the use for commercial purposes of the Commercial Units. Except as otherwise provided in the Act, no amendment may change the allocation of undivided interest in the Common Elements, method for determining liability for common expenses, right to common profits, or voting rights of or with respect to any Unit unless such amendment has been approved by the Owners of the affected Units. For as long as Declarant remains the Owner of one or more Primary Units, the Bylaws, the Rules and Regulations, and this Declaration may not be modified, added to, amended, or repealed so as to eliminate, change, or impair any rights, privileges, easements, licenses or exemptions granted therein or herein to Declarant or its designee, or otherwise so as adversely to affect Declarant or such designee, without Declarant's or such designee's prior written consent in each instance. During the period of Declarant's administrative control pursuant to Section 20, voting on an amendment by Declarant shall be without regard to the weighted vote set forth in Section 20 except for amendments to this Declaration to approve a plat amendment, or to correct any provision of or exhibit to this Declaration, whether such correction is required due to a surveyor's error, factual error, miscalculation, omission or to comply with the requirements of any applicable state, federal or local laws, guidelines and regulations, including, without limitation, the Oregon Condominium Act, and the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National

Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for condominiums or to comply with the Act.

24.2 Approval by Mortgagees. Amendment of any of the following provisions of this Declaration shall require the prior written approval of at least 51 percent of those holders of first Mortgages on Units (based upon one vote for each first Mortgage held):

24.2.1 Section 4.3, which addresses Unit boundaries;

24.2.2 Section 5, which addresses the allocation of interests in the Common Elements and the description of the General Common Elements;

24.2.3 Section 6, which addresses the Limited Common Elements;

24.2.4 Section 7, which addresses the allocation of common profits and expenses and related matters;

24.2.5 Section 8, which addresses voting rights;

24.2.6 Section 12, which addresses restrictions on alienation of Units;

24.2.7 Section 13, which addresses maintenance and repairs and the establishment of a reserve fund;

24.2.8 Sections 14.1, 14.2, and 14.5, which address use of and access to the Common Elements;

24.2.9 Section 16, which addresses notices to Mortgagees;

24.2.10 Section 21, which addresses casualty loss;

24.2.11 Section 22, which addresses condemnation;

24.2.12 Section 23, which addresses fidelity bonds;

24.2.13 This Section 24;

24.2.14 Section 25, which addresses termination of the Condominium; and

24.2.15 Any other provision of this Declaration which expressly benefits Mortgagees of a Unit or insurers or guarantors of a Mortgage on a Unit.

In addition, except as otherwise provided in the Act, no amendment to this Declaration may change the size, location, allocation of undivided interest in the Common Elements, method for determining liability for common expenses, right to common profits, or voting rights of or with respect to any Unit unless such amendment has been approved by the holders of any

Mortgages on the affected Units. Any approval of a Mortgagee required under this Section 24 may be presumed by the Association if such Mortgagee fails to submit a response to a written proposal for an amendment to this Declaration within 60 days after it receives notice of such proposal by certified or registered mail, return receipt requested.

24.3 Approval by Governmental Authorities. The Association shall use reasonable efforts to obtain the approval of an amendment to this Declaration by a governmental authority engaged in the guaranty of, or the issuance of insurance with respect to, Mortgages, if required by such authority.

24.4 Recordation. Amendments to this Declaration shall be effective upon recordation of the Declaration as amended, or of the amendment thereto, certified by the chairperson and secretary of the Association and approved by the county assessor and the Oregon Real Estate Commissioner, if required by law, in the deed records of Lane County, Oregon.

25. Termination. Termination of the Condominium shall be effected in accordance with ORS 100.600 and any other applicable provision of the Act, but in no event shall be consummated, other than in connection with the substantial destruction or condemnation of the Property, without the prior written consent of at least 67 percent of holders of first Mortgages on Primary Units. Any approval of a Mortgagee required under this Section 24 may be presumed by the Association if such Mortgagee fails to submit a response to a written proposal for an amendment to this Declaration within 60 days after it receives notice of such proposal by certified or registered mail, return receipt requested. (based upon one vote for each first Mortgage held). The common profits and expenses of the Property following termination of the Condominium shall be allocated in accordance with the Act.

26. TIME LIMITATIONS ON ACTIONS. ANY CLAIMS, OTHER THAN EXPRESS WARRANTY CLAIMS PURSUANT TO A UNIT SALES AGREEMENT WITH DECLARANT, WHICH AN OWNER OR OWNERS MAY HAVE AGAINST DECLARANT OR DECLARANT'S AGENTS, SUCCESSORS, EMPLOYEES, OR MEMBERS, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR NEGLIGENCE, MISREPRESENTATION, BREACH OF CONTRACT, CONSTRUCTION DEFECTS, OR ANY OTHER NONWARRANTY THEORY, MUST BE BROUGHT ON OR BEFORE THE EARLIER OF (A) EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS, OR (B) WITHIN ONE (1) YEAR FROM THE DATE OF THE TURNOVER MEETING AS DESCRIBED IN THE BYLAWS, WHETHER SUCH CLAIMS ARISE FROM STATUTE, CONTRACT, TORT OR OTHERWISE FOR DAMAGES TO PROPERTY OR PERSONAL INJURY NOW EXISTING OR ARISING AFTER THE DATE OF THIS DECLARATION AND RELATING TO OR ARISING IN OR FROM ANY OF THE FOLLOWING: (A) DEFECTS, REPAIRS, REPLACEMENTS OR MODIFICATIONS TO THE UNIT OR COMMON ELEMENTS EXCEPT AS SPECIFICALLY COVERED BY THE WARRANTY CONTAINED IN SECTION 8 OF THE UNIT SALES AGREEMENT; (B) FAILURE TO COMPLY WITH CODE, NONCOMPLIANCE WITH PLANS AND SPECIFICATIONS, DEFECTIVE CONSTRUCTION, NEGLIGENT CONSTRUCTION AND/OR NON-WORKMANLIKE CONSTRUCTION; (C) TORT AND/OR UNLAWFUL TRADE PRACTICES VIOLATIONS, EMOTIONAL DISTRESS, FRAUDULENT, INTENTIONAL,

NEGLIGENT OR INNOCENT MISREPRESENTATION, NEGLIGENCE OR GROSS NEGLIGENCE, NUISANCE, AND/OR TRESPASS; (D) BREACH OF CONTRACT, INCLUDING BREACH OF ALLEGED WARRANTIES, (E) BREACH OF FIDUCIARY DUTY BY THE DECLARANT PRIOR TO OR AFTER THE DATE CONTROL OF THE ASSOCIATION IS TURNED OVER TO THE UNIT OWNERS; (F) WATER INTRUSION, WATER INFILTRATION, WATER PENETRATION, AND/OR THE EXISTENCE OF MOLD, MILDEW, FUNGUS AND/OR ODORS IN THE UNIT OR COMMON ELEMENTS; (G) PRODUCTS OR SUBSTANCES FOUND IN OR USED IN THE UNIT OR COMMON ELEMENTS, INCLUDING, FOR EXAMPLE PURPOSES ONLY, RADON OR CARPET GLUE; (H) SOUND TRANSMISSION BETWEEN UNITS AND/OR LEVELS OR ADEQUACY OF SOUND INSULATION IN THE UNIT OR COMMON ELEMENTS; (I) THE CONDITION OF THE UNIT AND/OR COMMON ELEMENTS; (J) OWNER'S LOSS OF USE OF THE UNIT AND/OR COMMON ELEMENTS AND/OR THE LOSS OF VALUE THEREOF; AND (K) CONSEQUENTIAL DAMAGES OR EXPENSES FOR ATTORNEY FEES AND/OR RESULTING FROM THE RELOCATION OF OWNER OR FROM THE TERMINATION OF THE UNIT SALES AGREEMENT OR DELAYS IN CLOSING, IF ANY, SUCH AS LODGING, COMMISSIONS, INTEREST RATE FLUCTUATIONS, STORAGE, MOVING, MEALS OR TRAVEL EXPENSE. ANY SUCH CLAIMS NOT BROUGHT WITHIN THIS TIME PERIOD WILL BE DEEMED FULLY TIME BARRED, REGARDLESS OF WHEN AN OWNER ACTUALLY DISCOVERED THE ALLEGED BASIS FOR THE CLAIM. FOR PURPOSES OF THIS SECTION 26, A CLAIM IS "BROUGHT" WHEN ARBITRATION IS FORMALLY INITIATED OR A COMPLAINT IS FILED IN THE APPROPRIATE COURT AND SERVED PROMPTLY ON DECLARANT. THIS SECTION 26 SHALL NOT BE DEEMED TO EXPAND AN OWNER'S RIGHT TO ASSERT ANY NONWARRANTY CLAIMS, WHICH RIGHT DECLARANT DENIES.

27. Dispute Resolution.

27.1 Required Procedure. Except as provided in Section 26 above, to the fullest extent allowed by law, if a dispute arises, all claims, controversies, or disputes, whether they are statutory, contractual, tort claims, and/or counterclaims between or among Declarant, Declarant's successors and assigns, the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are related to the Condominium, the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations, or which relate to the interpretation or breach of the Act, this Declaration or the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations (collectively referred to as "Claims") shall be resolved in accordance with the procedures specified herein. Except as otherwise required by the Act, the following matters are excluded from this dispute resolution clause and do not constitute Claims: (i) judicial or non-judicial foreclosure or any other action or proceeding to enforce assessments, fines, interest or a trust deed, mortgage, Association lien, or land sale contract; (ii) a forcible entry and detainer action; or (iii) actions by the Association pursuant to Section 5.6 of the Bylaws prior to summary abatement and removal of a structure or other condition that violates this Declaration, the Bylaws or any Rules and Regulations; (iv) actions for the appointment of a receiver pursuant to Section 5.9 of the Bylaws; (v) provisional remedies such as injunctions or the filing of a lis pendens, or (vi) the filing or enforcement of a mechanic's lien. The filing of a notice of pending action (lis pendens) or the application to any court having jurisdiction thereof for the issuance of any

provisional process remedy described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or corresponding federal statutory remedies), including a restraining order, attachment, or appointment of receiver, shall not constitute a waiver of the right to mediate or arbitrate under this Section, nor shall it constitute a breach of the duty to mediate or arbitrate. The proceeds resulting from the exercise of any such remedy shall be held by the Party obtaining such proceeds for disposition as may be determined by an agreement of the Parties pursuant to a mediation or by the arbitration award.

**27.2 Negotiated Resolution.** The Parties will seek a fair and prompt negotiated resolution of Claims and shall meet at least once to discuss and to seek to resolve such claims, but if this is not successful, all disputes shall be resolved in small claims court, by mediation or by binding arbitration as set forth in Sections 27.3, 27.4 and 27.5 below, as applicable.

**27.3 Mediation.** Prior to mediation of any Claim, the Parties shall have endeavored to resolve disputes through the process set forth in Section 27.2 above. All Claims that are not resolved by such process shall be subject to mediation as a condition precedent to arbitration. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth in Section 27.5 below, but, in such event, mediation shall proceed in advance of arbitration, 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 Lane County, Oregon that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended.

**27.4 Small Claims.** All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Circuit Court of the State of Oregon shall be brought and determined there, and all Parties waive their right to a jury trial with respect to such claims.

**27.5 Arbitration.** Prior to arbitration of any Claim, the Parties shall have endeavored to resolve disputes through the processes set forth in Section 27.2, 27.3 and 27.4 above, as applicable. All Claims that have not been resolved by such processes shall be resolved by binding arbitration. Such arbitration shall be conducted by and pursuant to the then effective arbitration rules of the American Arbitration Association, or another reputable arbitration service selected by Declarant. If Declarant is not a Party to such dispute, the arbitration service shall be selected by the Association. Any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

**27.6 Confidentiality.** The Parties shall keep all discussions of disputes, all settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties unless compelled to do so by an order of a court of competent jurisdiction. The Parties agree in the event a Party breaches its confidentiality obligation that the other Party or Parties to the dispute shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance and each Party hereby waives any claim or defense that the other Party has an adequate remedy at law for any such breach and the Parties agree that the aggrieved Party shall not be required to post any bond or other security in connection with any such equitable relief.



27.7 No Attorneys' Fees. Except as specifically provided for in this Declaration or the Bylaws, no Party in the arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith.

28. Special Declarant Rights. As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following special Declarant rights:

28.1 Completion of Improvements. Declarant and its agents, employees, and contractors shall have the right to complete improvements and otherwise perform work that is: (i) authorized by this Declaration; (ii) indicated on the Plans; (iii) authorized by building permits; (iv) provided for under any unit sales agreement between Declarant and a Unit purchaser; (v) necessary to satisfy any express or implied warranty obligation of Declarant; or (vi) otherwise authorized or required by law.

28.2 Sales Facilities of Declarant. Declarant and its agents, employees, and contractors shall be permitted to maintain during the period of sale of the Condominium upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of Declarant may be required, convenient, or incidental to the construction or sale of Units and appurtenant interests, including but not limited to, a business office, storage area, signs, model units, sales office, construction office, and parking areas for all prospective purchasers of Declarant. The provisions of this Section are subject to the provisions of other state law and to local ordinances. The number, size, location, and relocation of such facilities shall be determined from time to time by Declarant in the exercise of its sole discretion; *provided*, that the maintenance and use of such facilities shall not unreasonably interfere with an Owner's use and enjoyment of the Unit and those portions of the Common Elements reasonably necessary to use and enjoy such Unit.

28.3 Termination of Declarant Rights. Except as otherwise provided in this Declaration, the special Declarant rights set forth in this Section 28 shall continue for so long as (i) Declarant is completing improvements which are within or may be added to this Condominium; (ii) Declarant owns any Units; or (iii) for a period of 10 years after the date of the turnover Meeting; *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.

28.4 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.

28.5 Approval of Amendments. Declarant shall have the right to approve amendments proposed by the Owners to this Declaration, the Bylaws, the Plans, and the Rules and Regulations for so long as Declarant owns a Unit or for 11 years from the date this Declaration is recorded, whichever is latest.

28.6 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, without limitation, 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. As provided in Section 7.5 of the Bylaws, the Board shall provide Declarant with copies of submissions for alteration requests, advance notice of the Board's inspections of such alterations, and an opportunity for Declarant, its contractors or agents to accompany the Board's professional advisors on any such inspection.

29. Severability. Each provision of this Declaration and the Bylaws shall be deemed independent and severable, and the validity or 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.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 13<sup>th</sup> day of May, 2006.

Declarant:

1375 OLIVE, LLC, an Oregon limited liability company

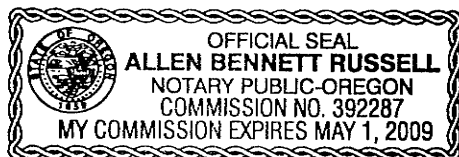
By: Jean Tate

Its: Member

STATE OF OREGON

County of MULTNOMAH ) ss.  
~~Lane~~ )

This instrument was acknowledged before me on May 14, 2006, by JEAN TATE, member of 1375 Olive, LLC, an L.L.C., as member for 1375 Olive, LLC, an Oregon limited liability company, on behalf of the limited liability company.



[Signature]  
Notary Public for Oregon

My Commission Expires: May 1 2009

[Signature]  
County Assessor

County Tax Collector

The foregoing Declaration is approved pursuant to ORS 100.110 this 24<sup>th</sup> day of July, 2006 and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within two (2) years from this date.

SCOTT W TAYLOR  
Real Estate Commissioner

By Laurie Skillman  
Laurie Skillman

