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CONDOMINIUM BY-LAWS OF  
PORT OF OLD MISSION CONDOMINIUMS NO. III

ARTICLE I

THE CONDOMINIUM

Section 1. Organization. PORT OF OLD MISSION CONDOMINIUMS NO. III, a residential condominium located in the Township of Peninsula, Grand Traverse County, Michigan (the "Condominium"), shall be administered by an association of co-owners (the "Association"), which shall be organized as a nonprofit corporation under the laws of the State of Michigan. The Association will be responsible for the management, maintenance, operation and administration of the common elements, easements and, generally, the affairs of the Condominium in accordance with the Master Deed, these By-Laws, the Articles of Incorporation, By-Laws, Rules and Regulations of the Association, and the laws of the State of Michigan.

Section 2. Compliance. All present and future co-owners (who shall be "members" of the Association as provided in Article II, Section 1, below, the terms "member" and "co-owner" are used interchangeably herein), mortgagees, tenants and all other persons who may in any manner use, enter upon or acquire any interest in the Condominium Premises, or any Condominium unit, shall be subject to and comply with the provisions of the Act, the Master Deed, these Condominium By-Laws, and the Articles of Incorporation, By-Laws, Rules and Regulations of the Association including, without limitation, any provision thereof pertaining to the use and operation of the Condominium Premises and the Condominium. The acceptance of a deed or conveyance, the taking of a mortgage, the execution of a lease, the act of occupying a unit, or presence in the Condominium shall constitute an acceptance of the provisions of these documents and an agreement to comply therewith.

Section 3. Purpose of By-Laws. These By-Laws govern the general operation, maintenance, administration, use and occupancy of the Condominium, and all such activities shall be performed

in accordance with the provisions hereof.

## ARTICLE II

### MEMBERSHIP AND VOTING

Section 1. Membership. Each co-owner of a Condominium unit, present and future, shall be a member of the Association during the term of such ownership, and no other person or entity shall be entitled to membership. Neither Association membership nor the share of a member in the Association funds and assets shall be assigned, pledged or transferred in any manner, except as an appurtenance to a Condominium unit, and any attempted assignment, pledge or transfer in violation of this provision shall be wholly void.

Section 2. Voting Rights. Except as limited in the Master Deed and in these By-Laws, the members owning each unit shall collectively be entitled to one vote when voting by number and one vote, the value of which shall equal the total percentage of value assigned to the unit or units owned by them in Article VLB. of the Master Deed, when voting by value. Voting, when required or permitted herein or elsewhere in the Condominium Documents, shall be by value, except in those instances where voting is specifically required to be by number, or both by value and by number, and shall be conducted on a cumulative basis.

Section 3. Persons Entitled to Vote. If one person owns a unit, he shall establish his membership in the Association and his right to vote by presenting evidence of his ownership. If more than one person owns a unit, or the unit is leased, all of the record owners of the unit shall sign and file with the Secretary of the Association a certificate designating the person entitled to exercise the unit's membership in the Association, to cast the vote for the unit and to receive all notices and other communications from the Association. Such certificate shall state the name and address of the individual representative designated, the number or numbers of the unit or units owned, the name and address of the person or persons, firm, corporation, partnership, association, trust or other legal entity who is the co-owner thereof, and shall be signed and dated by all co-

owners of record. All certificates shall be valid until revoked, until superseded by a subsequent certificate, or until a change occurs in the record ownership of the unit concerned. The Developer shall, at any meeting, be entitled to cast a vote on behalf of each unit it owns without submitting any proof of ownership. For purposes of this Section 3, the Developer shall be deemed to own only completed units, as defined in Article V, Section 8, hereof.

Section 4. Method of Voting. Votes on a specific issue may be cast in person. In addition, any person entitled to vote at any meeting may also appear and vote via telecommunications equipment, as provided by Article 11, Section 6, of the Association By-Laws, or appear and vote (either specifically on an issue or by the general designation of a person to cast a vote) by written proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated, and any adjournment thereof, and must be filed with the Association before the appointed time of the meeting.

Section 5. Majority. At any meeting of the members at which a quorum is present, fifty-one percent (51%) in value of the members voting, whether in person, by telecommunications or by proxy, on any particular matter, shall constitute a majority for the approval of such matter, except as otherwise required herein, by the Master Deed or by law.

### ARTICLE III

#### MEETINGS AND QUORUM

Section 1. First Meeting of Members. The first meeting of the members of the Association may be convened only by the Board of Directors and may be called at any time upon ten (10) days' written notice to all members. In no event, however, shall the first meeting be held later than one hundred twenty (120) days after legal or equitable title to twenty-five percent (25%) of the Condominium units has been conveyed to non-Developer co-owners; or (b) fifty-four (54) months after the first conveyance of legal or equitable title to a Condominium unit to a non-Developer co-owner, whichever first occurs. The Board of Directors may call meetings of members of the

Association for informational or other appropriate purposes prior to the first meeting of members, but no such meeting shall be construed as the first meeting of members.

Section 2. Advisory Committee. The Board of Directors shall establish an Advisory Committee of non-Developer members upon the passage of: (a) one hundred twenty (120) days after legal or equitable title to one-third (1/3) of the Condominium units has been conveyed to non-Developer co-owners; or (b) one (1) year after the initial conveyance of legal or equitable title to a Condominium unit to a non-Developer co-owner, whichever first occurs. The Advisory Committee shall meet with the Board of Directors to facilitate communication with the non-Developer members and to aid in transferring control from the Developer to non-developer members. The Advisory Committee shall be composed of not less than one (1) nor more than three (3) non-Developer members, who shall be appointed by the Board of Directors in any manner it selects, and who shall serve at the pleasure of the Board of Directors. The Advisory Committee shall meet at least semiannually with the Board of Directors. Reasonable notice of such meetings shall be provided to all members of the Advisory Committee, and such meetings may be open or closed, in the discretion of the Board of Directors.

Section 3. Annual Meetings of Members. Following the first meeting of members, and in addition to subsequent meetings called for the purpose of electing Directors, as provided in Article IV, Section 1, below, an annual meeting of the members shall be held each year at the time and place specified in the Association By-Laws. At least ten (10) days prior to the date of an annual meeting, written notice of the time, place and purpose of such meeting shall be sent by first-class mail, postage prepaid, to each person entitled to vote at the meeting.

Section 4. Special Meetings of Members. It shall be the duty of the President to call a special meeting of the members upon a petition signed by one-third (1/3) of the members in number and presented to the Secretary of the Association or upon the direction of a majority of the Board of Directors. Notice of any special meeting shall state the time and place of such meeting and

the purposes thereof and shall be given at least ten (10) days prior to the date of such meeting. No business shall be transacted at a special meeting except as stated in the Notice.

Section 5. Quorum of Members. Unless otherwise provided herein, the presence, in person or by proxy, of fifty-one percent (51%) in number and value of the members entitled to vote shall constitute a quorum of members. If a quorum shall not be present at any meeting, the members present may adjourn the meeting for not more than thirty (30) days.

#### ARTICLE IV

#### ADMINISTRATION

Section 1. Board of Directors. The business, property and affairs of the Association shall be managed by a Board of Directors initially consisting of three Directors, but no more than seven (7), all as provided in Section 1 of Article III of the Association By-Laws. Not later than one hundred and twenty (120) days after the conveyance of legal or equitable title to non-Developer co-owners of twenty-five percent (25%) of the units that may be created, at least one (1) Director and at least one-fourth (1/4) of the Board of Directors of the Association shall be elected by non-Developer co-owners. Not later than one hundred and twenty (120) days after the conveyance of legal or equitable title to non-Developer co-owners of fifty percent (50%) of the units that may be created, at least one-third (1/3) of the Board of Directors shall be elected by non-Developer co-owners. Not later than one hundred and twenty (120) days after the conveyance of legal or equitable title to non-Developer co-owners of seventy-five percent (75%) of the units, the non-Developer co-owners shall elect all Directors on the Board except that the Developer may designate at least one (1) Director as long as the Developer owns or offers for sale at least ten percent (10%) of the units in the Project or as long as ten percent (10%) of the units that may be created remain unbuilt.

Notwithstanding the formula provided above, fifty-four (54) months after the first conveyance of legal or equitable title to a non-Developer co-owner of a unit in the Project, if title to

at least seventy-five percent (75%) of the units that may be created has not been conveyed, the non-Developer co-owners may elect the number of Members of the Board of Directors of the Association equal to the percentage of units they hold, and the Developer may elect the number of Members of the Board equal to the percentage of units that it owns and pays assessments for. This election may increase but not reduce the minimum election and designation rights otherwise established in these By-Laws. The application of this provision does not require a change in the size of the Board as stated in the Association By-Laws.

If the calculation of the percentage of Members of the Board that the non-Developer co-owners may elect or if the product of the number of Members of the Board multiplied by the percentage of units held by the non-Developer co-owners results in a right of non-Developer co-owners to elect a fractional number of Members of the Board, a fractional election right of zero point five (0.5) or more shall be rounded up to the nearest whole number, which shall be the number of Members of the Board that the non-Developer co-owners may elect. After applying this formula, the Developer may elect the remaining Members of the Board. The application of this provision shall not eliminate the right of the Developer to designate at least one (1) Member, as provided in these By-Laws.

Section 2. Powers and Duties. The Board of Directors shall have all powers and duties necessary for the administration of the affairs of the Condominium and may do all things which are not prohibited by law or the Condominium Documents or required thereby to be done by the members. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the power and duty:

(a) To manage and administer the affairs of and to the Condominium, all appurtenances thereto and the common elements, property and easements thereof;

(b) To levy and collect assessments against and from the members of the Association and to use the proceeds therefrom for the purposes of the Association, and to enforce



assessments through liens and foreclosure proceedings where appropriate;

(c) To carry insurance and to collect and allocate the proceeds thereof;

(d) To restore, repair or rebuild the Condominium, or any portion thereof, after occurrence of casualty and to negotiate on behalf of all of the members in connection with the taking of the common elements of the Condominium, or any portion thereof, by eminent domain;

(e) To contract for and employ, and to discharge, persons or business entities to assist in the management, operation, maintenance and administration of the Condominium;

(f) To make reasonable rules and regulations governing the use and enjoyment of the Condominium by members and their tenants, guests, employees, invitees, families and pets and to enforce such rules and regulations by all legal methods, including, without limitation, imposing fines and late payment charges, or instituting eviction or legal proceedings;

(g) To own, maintain and improve, and to buy, sell, convey, grant, assign, transfer, mortgage or lease (as landlord or tenant), or otherwise deal in any real or personal property, including, but not limited to, any Condominium unit, easements, rights-of-way, licenses or any other real property, whether or not contiguous to the Condominium, to benefit the members of the Association and to further any of the purposes of the Association;

(h) To borrow money and issue evidences of indebtedness in furtherance of any and all of the purposes of the Association, and to secure the same by mortgage, pledge or other lien on Association property; provided, however, that any such action shall first be approved by the affirmative vote of more than two-thirds (2/3) of the Association members in number and in value at a meeting of the members duly called;

(i) To establish such committees as it deems necessary, convenient or desirable and to appoint persons thereto, to administer the Condominium and to delegate to such committees any functions or responsibilities which are not by law or the Condominium Documents required to be performed by the Board;

(j) To make rules and regulations or to enter into agreements with institutional lenders, or both, for the purpose of obtaining mortgage financing for members which is acceptable for purchase by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association or any other agency of the Federal Government, the State of Michigan, or any other agency or unit of government;

(k) To enforce the provisions of the Master Deed, of these Condominium By-Laws, and of the Articles of Incorporation, By-Laws, Rules and Regulations of the Association, and to sue on behalf of the Condominium or the members and to assert, defend or settle claims on behalf of the members with respect to the Condominium;

(l) To do anything required of or permitted to it as administrator of said Condominium by the Condominium Master Deed or Condominium By-Laws or by Act No. 59 of the Public Acts of 1978, as amended, including, but not limited to, those amendments contained in Act No. 538 of the Public Acts of 1982, and in Act No. 113 of the Public Acts of 1983.

(m) In general, to enter into any kind of activity, to make and perform any contract and to exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of the Condominium and to the accomplishment of any of the purposes thereof not forbidden, and with all powers conferred upon nonprofit corporations by the laws of the State of Michigan. Provided, however, that neither the Board nor the Association shall, by act or omission,

abandon, partition, subdivide, encumber, sell or transfer the common elements, or any of them, unless at least two-thirds (2/3) of the mortgagees (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the members in number and value have consented thereto. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Condominium shall not be deemed a transfer for these purposes.

Section 3. Managing Agent. The Board of Directors may employ, at a compensation established by it, a Managing Agent for the Condominium to perform such duties and services as the Board shall authorize, including, but not limited to, the powers and duties set forth in Section 2 of this Article. The Developer, or any related person or entity, may serve as Managing Agent if so appointed. If the Board employs a professional management agent for the Association, the Board shall notify each holder of a mortgage lien on any Condominium unit prior to terminating the employment of such professional management agent (or any successor thereto) and assuming self-management. In no event shall the Board be authorized to enter into a contract with a professional management agent, or a contract providing for services by the Developer or its affiliates, under which the maximum term is greater than three (3) years or which is not terminable by the Association upon the transitional control date or within ninety (90) days thereafter and upon thirty (30) days written notice for cause. On the transitional control date, or within ninety (90) days thereafter, the Board of Directors may terminate a service or management contract with the Developer or its affiliates. In addition, the Board of Directors may terminate any management contract which extends beyond one (1) year after the transitional control date by providing notice of termination to the management agent at least thirty (30) days before the expiration of the one (1) year.

Section 4. Officers. The Association By-Laws shall provide for the designation, number, terms of office, qualifications, manner of election, duties, removal and replacement of the officers

of the Association and may contain any other provisions pertinent to Association officers not inconsistent herewith. Officers may be compensated, but only upon the prior affirmative vote of two-thirds (2/3) of the members.

Section 5. Actions Prior to First Meeting. Subject to the provisions of Section 3 of this Article IV, all of the actions (including, without limitation, the adoption of these By-Laws, the Association By-Laws, any Rules and Regulations of the Association, and any undertakings or contracts entered into with others on behalf of the Association) of the Board of Directors of the Association designated by the Incorporator, or their appointed successors, before the first meeting of members, shall be binding upon the Association in the same manner as though such actions had been authorized by a Board of Directors duly elected by the Association members at the first or any subsequent meeting of members so long as such actions are within the scope of the powers and duties which any Board of Directors may exercise, as provided in the Condominium Documents.

Section 6. Indemnification of Officers and Directors. The Association shall indemnify every Association director and officer against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him as a consequence of his being made a party to or being threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of his being or having been a director or officer of the Association, except in such cases wherein he is adjudged guilty of willful and wanton misconduct or gross negligence in the performance of his duties or adjudged to have not acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and its members, and with respect to any criminal actions or proceeding, he is adjudged to have had no reasonable cause to believe that his conduct was lawful; provided that, if a director or officer claims reimbursement or indemnification hereunder based upon his settlement of a matter, he shall be indemnified only if the Board of Directors (with any director seeking reimbursement abstaining)

approves such settlement and reimbursement as being in the best interests of the Association and, if a majority of the members requests it, such approval is based on an opinion of independent counsel supporting the propriety of such indemnification and reimbursement. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights such director or officer may have. The Board of Directors shall notify all members that it has approved an indemnification payment at least ten (10) days prior to making such payment.

## ARTICLE V

### OPERATION OF THE PROPERTY

Section 1. Personal Property. The Association shall be assessed as the person or entity in possession for any tangible personal property of the Condominium owned or possessed in common by the co-owners, and personal property taxes based thereon shall be treated as expenses of administration.

Section 2. Costs and Receipts to Be Common. All costs incurred by the Association to satisfy any liability arising within, or caused by or in connection with, the common elements, or caused by or in connection with the administration of the Condominium, shall be expenses of administration, and all sums received as proceeds of, or pursuant to, any insurance policy carried by the Association securing the interests of the members against liabilities or losses arising within, caused by or connected with, the common elements or the administration of the Condominium shall be receipts of administration.

Section 3. Books of Account. The Association shall keep or cause to be kept detailed books of account showing all expenditures and receipts (including both general and special expenses of receipts of administration) concerning the administration of the Condominium. Such books of account shall specify the maintenance and repair expenses of the common elements and any other expenses incurred on behalf of the Association and members. The members and their mortgagees may inspect the books of account during reasonable working hours on normal working days at a

place the Association designates. The books of account shall be audited at least annually by qualified independent auditors, but such audit need not be a certified audit nor must the auditors be certified public accountants. The cost of such audit, and all accounting expenses, shall be an expense of administration. Any institutional holder of a mortgage lien on any Condominium unit who so requests shall be given a copy of the audit report within ninety (90) days following the end of the Association's fiscal year. At least once a year, the Association shall prepare and distribute to each member a statement of its financial condition, the contents of which shall be defined by the Association.

Section 4. Regular Monthly Assessments. The Board of Directors shall establish an annual budget in advance for each fiscal year for the Condominium, and such budget shall contain the Board's estimate of the funds required to defray the expenses of administration for the forthcoming year, as those items are defined by these By-Laws, and all other common expenses. The budget also shall allocate and assess all such common charges against all members in accordance with the percentage of value allocated to each unit by the Master Deed, without increase or decrease for the existence of any rights to the use of limited common elements appurtenant thereto. The general common expenses shall consist, among other things, of such amounts as the Board may deem proper for the operation, management and maintenance of the Condominium property under the powers and duties delegated to it hereunder, and may include, without limitation, amounts to be set aside for working capital of the Condominium, for a general operating fund, for a reserve fund and for meeting any deficit in the common expense budget for any prior year. The budget shall establish an adequate reserve fund for maintenance, repair and replacement of the general and limited common elements, which fund shall be financed by regular monthly payments rather than by special assessments. The Board shall advise each member in writing of the amount of common charges payable by him and shall furnish copies of each budget on which such common charges are based to all members, although failure to deliver a copy of the budget to each member shall not

affect any member's liability for any existing or future assessments. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient: (a) to pay the operation and management costs of the Condominium, (b) to provide for the maintenance, repair or replacement of existing common elements, or (c) to provide for emergencies, the Board may increase the general assessments or levy such additional assessment or assessments, and apportion them, as it deems necessary. Members shall pay all assessments levied in accordance with this Section 4 in twelve (12) equal monthly installments, commencing with acquisition of title to a unit by any means.

Section 5. Detached Garage Assessments. The Association shall establish from time to time a reasonable additional assessment to defray the on-going costs to the Association of each such detached garage including, but not limited to, insurance, repairs, maintenance and all other expenses of administration and a reasonable allowance for contingencies and reserves and shall collect each assessment for each owner of a unit assigned such detached garage as shown in Exhibit "B" in the manner provided in Article V, Sections 4 and 7 of these By-Laws.

Section 6. Special Assessments. Special assessments, in addition to those provided for in Section 4 above, may be levied by the Board of Directors from time to time, following approval by the members as hereinafter provided, to meet other needs, requirements or desires of the Association, including, but not limited to: (a) assessments for capital improvements or additions to the common elements at a cost exceeding Four Thousand and 00/100 Dollars (\$4,000) per year; (b) assessments to purchase a unit upon foreclosure of a lien for assessments, as described in Section 7 hereof; or (c) assessments for any other appropriate purpose not elsewhere herein described. Special assessments referred to in this Section 6 (but not including those assessments referred to in Sections 4 and 5 above, which shall be levied in the sole discretion of the Board of Directors) shall not be levied without the prior approval of more than two-thirds (2/3) of all members in value and in number, which approval shall be granted only by a vote of the members

taken at a meeting of the members called in accordance with the provisions of Article III hereof. The discretionary authority of the Board to levy assessments pursuant to this Section will rest solely with the Board for the benefit of the Association and the members thereof and will not be enforceable by any creditors of the Association or its members.

Section 7. Collection of Assessments. When used in this Section 7 and Section 13 below, and wherever else appropriate in these Condominium By-Laws, the term "assessment" shall include all regular monthly, detached garage and special assessments referred to in Sections, 4, 5, and 6 above and in addition, all other charges whatsoever levied by the Association against any co-owner. This Section 7 is designed to provide the Association with a vehicle for collection. Each member, whether one or more persons, shall be and shall remain personally obligated for the payment of all assessments levied with regard to his unit during the time that he is the owner thereof, and no member may exempt himself from liability for his contribution toward the expenses of administration by waiver of the use or enjoyment of any of the common elements or by the abandonment of his unit. If any member defaults in paying the assessed common charges, interest at the maximum legal rate shall be charged on such assessment from the due date thereof and further penalties or proceedings may be instituted by the Board of Directors in its discretion. If such assessment, or any part thereof, is not paid on or before the due date established by the Board of Directors for such payment, then such payment shall be in default. The Board of Directors may, but need not, report such a default to any mortgagee of record. Any mortgagee of a Condominium unit may consider a default in the payment of any assessment a default in the payment of its mortgage. Unpaid assessments shall constitute a lien upon the unit prior to all other liens except tax liens and sums unpaid on a first mortgage of record. The Association may enforce collection of delinquent assessments by a suit at law for a money judgment or by foreclosure of the lien that secures payment of assessments. Each member, and every other person, except a first mortgagee, who from time to time has any interest in the Condominium shall be deemed to have granted to



the Association the unqualified right to elect to foreclose such lien either by judicial action or by advertisement (in accordance with the provisions of Chapter 32 of the Michigan Revised Judicature Act, as amended). The provisions of Michigan law pertaining to foreclosure of mortgages by judicial action or by advertisement, as the same may be amended from time to time, are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligations of the parties to such actions. The Association is hereby granted what is commonly known as a "power of sale." Each member and every other person, except a first mortgagee, who from time to time has any interest in the Condominium shall be deemed to have authorized and empowered the Association to sell or to cause to be sold at public auction the unit with respect to which the assessment is delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. Each member acknowledges that when he acquired title to his unit, he was notified of the provisions of this section and that he voluntarily, intelligently and knowingly waived notice of any proceedings brought by the Association to foreclose by advertisement the lien for nonpayment of assessments and a hearing on the same prior to the sale of the subject unit. Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for a money judgment shall be commenced, nor shall any notice of foreclosure by advertisement be published, until ten (10) days have expired after the mailing, by certified mail, return receipt requested and postage prepaid, addressed to the delinquent member at his last known address, of a written notice that an assessment, or any part thereof, levied against his unit is delinquent and that the Association may invoke any of its remedies hereunder if the default is not cured within ten (10) days after the date of mailing. A written affidavit of an authorized representative of the Association that sets forth (a) the affiant's capacity to make the affidavit, (b) the statutory and other authority for the lien, (c) the amount outstanding (exclusive of interest, costs, attorneys' fees and future assessments), (d) the legal description of the subject unit, and (e) the name of the member of

record, shall accompany such written notice. Such affidavit shall be recorded in the Office of the Grand Traverse County Register of Deeds prior to the commencement of any foreclosure proceeding, but it need not have been recorded as of the date of mailing the notice. If the delinquency is not cured within the ten (10) day period, the Association may take such remedial action as may be available to it hereunder or under Michigan law. In the event the Association elects to foreclose the lien by advertisement, the Association shall so notify the representative of the delinquent member designated in Article II, Section 3, above, and shall inform such representative that he may request a judicial hearing by bringing suit against the Association. The expenses incurred in collecting unpaid assessments, including interest, costs, reasonable attorneys' fees (not limited to statutory fees) and advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the member in default and shall be secured by the lien on his unit. If any member defaults in the payment of any installment of the annual assessment levied against his unit, the Association shall have the right to declare all unpaid installments of the annual assessment of the pertinent fiscal year immediately due and payable. In a judicial foreclosure action, the court may appoint a receiver to collect a reasonable rental for the unit from the member owning it or any persons claiming under him, and each member hereby covenants to the appointment of such a receiver. The Association may also stop furnishing any services to a member in default upon seven (7) days written notice to such member of its intent to do so. A member in default in the payment of any assessment shall not be entitled to vote at any meeting of the Association so long as such default continues.

If the holder of a first mortgage on a Condominium unit obtains title to the unit by foreclosing the mortgage, accepting a deed in lieu of foreclosure or similar remedy, or any other remedy provided in the mortgage, such person, and its successors and assigns, or other purchaser at a foreclosure sale, shall not be liable for unpaid assessments chargeable to the unit which became due prior to the acquisition of title to the unit by such person; provided, however, that

such unpaid assessments shall be deemed to be common expenses collectible from all of the members, including such person, its successors and assigns, and that all assessments chargeable to the unit subsequent to the acquisition of title shall be the responsibility of such person as hereinbefore provided with respect to all members. When a member is in arrearage to the Association for assessments, the Association may give written notice of arrearage to any person occupying his unit under a lease or rental agreement, and such person, after receiving the notice, shall deduct from rental payments due the member the arrearage and future assessments as they fall due and pay them to the Association. The deductions shall not be a breach of the rental agreement or lease by the occupant.

The Association may purchase a unit at any foreclosure sale hereunder.

#### Section 8. Obligations of the Developer.

(a) The Developer shall be responsible for payment of the full monthly Association maintenance assessment, and all special assessments, for all completed units owned by it. "Completed unit" shall mean a unit with respect to which a certificate of occupancy has been issued by the Construction Code Office of Grand Traverse County, Michigan.

(b) The Developer shall also maintain any incomplete units owned by it and pay a fair share of all road maintenance (including snow removal) costs and real estate taxes in the year of the establishment of the Condominium. An "incomplete unit" shall mean any unit that is not a completed unit.

Section 9. Maintenance and Repair. As provided in the Master Deed, the Association shall maintain and repair the general common elements, whether located inside or outside the units, and the limited common elements, to the extent set forth in the Master Deed. The costs thereof shall be charged to all the members as a common expense, unless necessitated by the negligence, misuse or neglect of a member, in which case such expense shall be charged to such member. The Association or its agent shall have access to each unit from time to time during reasonable working

hours, upon notice to the occupant thereof, for the purpose of maintenance, repair or replacement of any of the common elements located therein or accessible there from. The Association or its agent shall also have access to each unit at all times without notice for making emergency repairs necessary to prevent damage to other units, the common elements, or both.

Each member shall provide the Association means of access to his unit and any limited common elements appurtenant thereto during all periods of absence, and if such member fails to provide a means of access, the Association may gain access in such manner as may be reasonable under the circumstances and shall not be liable to such member for any necessary damage to his unit or any limited common elements appurtenant thereto caused thereby or for the repair or replacement of any doors or windows damaged in gaining such access, the costs of which damage shall be borne by such member. Unless otherwise provided herein or in the Master Deed, damage to a unit or its contents caused by the repair or maintenance activities of the Association, or by the common elements, shall be repaired at the expense of the Association.

All other maintenance and repair obligations shall, as provided in the Master Deed, rest on the individual member. Each member shall maintain his unit and any limited common elements appurtenant thereto for which he has maintenance responsibility in a safe, clean and sanitary condition. Each member shall also use due care to avoid damaging any of the common elements, including, but not limited to, the telephone, water, gas, plumbing, electrical or other utility conduits and systems and any other elements in any unit which are appurtenant to or which may affect any other unit. Each member shall be responsible for damages or costs to the Association resulting from negligent damage to or misuse of any of the common elements by him, his family, guests, agents or invitees, unless such damages or costs are actually reimbursed from insurance carried by the Association, in which case there shall be no such responsibility (if reimbursement to the Association is excluded by virtue of a deductible provision, the responsible member shall bear the expense to the extent of the deductible amount, anything else in these By-Laws to the contrary

notwithstanding). Any costs or damages to the Association that are herein or elsewhere in the Condominium Documents assigned to the individual member may be assessed to and collected from the responsible member in the manner provided for regular assessments in Article V, Section 4, hereof.

The provisions of this Section 9 shall be subject to those of Article VI, Sections 1-3, in the event of repair or replacement on account of a casualty loss.

Section 10. Taxes. Subsequent to the year in which the Condominium is established, all special assessments and property taxes shall be assessed against the individual units and not upon the total property of the Condominium or any part thereof. Taxes and special assessments which have become a lien against the property of the Condominium in the year of its establishment (as provided in Section 131 of the Act) shall be expenses of administration and shall be paid by the Association. Each unit shall be assessed a percentage of the total bill for such taxes and assessments equal to the percentage of value allocated to it in the Master Deed, and the members owning those units shall reimburse the Association for their unit's share of such bill within ten (10) days after they have been tendered a statement therefore.

Section 11. Documents to Be Kept. The Association shall keep current copies of the approved Master Deed, all amendments thereto, and all other Condominium Documents available for inspection at reasonable hours by members, prospective purchasers and prospective mortgagees of Condominium units.

Section 12. Reserve for Major Repairs and Replacement. The Association shall maintain a reserve fund for major repairs and replacement of common elements in an amount equal to at least ten percent (10%) of the Association's current annual budget on a non-cumulative basis. Moneys in the reserve fund shall be used only for major repairs and replacement of common elements. THE MINIMUM STANDARDS REQUIRED BY THIS SECTION MAY PROVE INADEQUATE FOR A PARTICULAR PROJECT. The Association of members should carefully analyze the Condominium

Project to determine if a greater amount should be set aside, or if additional reserve funds should be established for other purposes.

Section 13. Statement of Unpaid Assessments. Pursuant to the provisions of the Act, the purchaser of any unit may request a statement from the Association as to the outstanding amount of any unpaid assessments thereon, whether regular, detached garage or special. Upon written request to the Association accompanied by a copy of the executed purchase agreement pursuant to which the purchaser holds a right to acquire a unit, the Association shall provide a written statement of such unpaid assessments as may exist or a statement that none exist, which statement shall be binding upon the Association for the period stated therein. Upon the payment of that sum within the period stated, the Association's lien for assessments as to such unit shall be deemed satisfied; provided, however, that the failure of a purchaser to request such statement at least five (5) days prior to the Closing of the purchase of such unit shall render any unpaid assessments and the lien securing the same fully enforceable against such purchaser and the unit itself.

## ARTICLE VI

### INSURANCE: REPAIR OR REPLACEMENT

Section I. Insurance. The Association shall carry all-risk property coverage and liability insurance (including, without limitation, Directors' and Officers' coverage), Workers' Compensation insurance, if applicable, and such other insurance coverage as the Board may determine to be appropriate with respect to the ownership, use and maintenance of the general and limited common elements of the Condominium and the administration of Condominium affairs. Such insurance shall be carried and administered in accordance with the following provisions:

(a) All such insurance shall be purchased by the Association for the benefit of the Association, the members and their mortgagees, as their interests may appear, and provision shall be made for the issuance of certificates of insurance with mortgagee

endorsements to the mortgagees of members' units. It shall be each member's responsibility to obtain insurance coverage for his personal property located within his unit or elsewhere in the Condominium and for his personal liability for occurrences within his unit or upon limited common elements appurtenant to his unit, and also for alternative living expenses. The Association shall have absolutely no responsibility for obtaining such coverage. The Association and all members shall use their best efforts to see that all property and liability insurance carried by the Association or any member shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against any member or the Association, and, subject to the provisions of Article V, Section 9, hereof, the Association and each member hereby waive, each as to the other, any right of recovery for losses covered by insurance. The liability of carriers issuing insurance obtained by the Association shall not, unless otherwise required by law, be affected or diminished on account of any additional insurance carried by any member, and vice versa.

(b) All common elements of the Condominium shall be insured against fire and other perils covered by a standard all-risk coverage endorsement in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. Such coverage shall also include interior walls within any unit and the pipes, wires, conduits and ducts contained therein and shall further include all fixtures, equipment and trim within a unit which were furnished with the unit by the Developer (or such replacements thereof as do not exceed the cost of such original items). Any improvements a member makes within his unit shall be covered by insurance obtained by him at his expense; provided that, if the Association elects to include such improvements under its insurance coverage, any additional premium cost to the Association attributable thereto shall be assessed to and borne solely by said member and collected as a part of the assessment levied against said

member under Article V, Section 4 hereof.

(c) Public liability insurance shall be carried in such limits as the Board may from time to time determine to be appropriate, and shall cover the Association, each member, director and officer thereof, and any managing agent.

(d) All premiums upon insurance policies purchased by the Association pursuant to these By-Laws shall be expenses of administration, except as otherwise provided in subsection (b) above.

(e) Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account, and distributed to the Association, the members and their mortgagees as their interests may appear; provided, however, whenever Section 3 of this Article requires the repair or reconstruction of the Condominium, any insurance proceeds received by the Association as a result of any loss requiring repair or reconstruction shall be applied for such purpose. Hazard insurance proceeds shall never be used for any purpose other than for repair, replacement or reconstruction of the Project unless all of the holders of mortgages on units in the Condominium have given their prior written approval.

(f) All insurance carried by the Association shall, to the extent possible, provide for cross-coverage of claims by one insured against another.

(g) Fidelity bonds may be required by the Board of Directors from all person handling or responsible for Association funds, the amount of such bonds shall be determined by the Board in its sole discretion, and the premium for such bonds shall be a general expense of the Association.

Section 2. Appointment of Association. Each member, by ownership of a unit in the Condominium, shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning insurance pertinent to the Condominium and the



common elements thereof. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit premiums therefore, to collect proceeds and to distribute the same to the Association, the members and respective mortgagees, as their interests may appear (subject always to the Condominium Documents), to execute releases of liability, and to execute all documents and to do all things on behalf of such members and the Condominium as shall be necessary or convenient to accomplish the foregoing.

Section 3. Reconstruction or Repair. If any part of the Condominium shall be damaged, the determination of whether or not, and how, it shall be reconstructed or repaired shall be made in the following manner

(a) If a common element or a unit is damaged, such property shall be rebuilt or repaired if any Condominium unit is tenantable, unless the members unanimously vote that the Condominium shall be terminated and each holder of a mortgage lien on any Condominium unit has given its prior written approval of such termination.

(b) If the Condominium is so damaged that no unit is tenantable, and if each holder of a mortgage lien on any unit in the Condominium has given its prior written approval to the termination of the Condominium, the damaged property shall not be rebuilt and the Condominium shall be terminated, unless all the members in value and in number agree to reconstruction by vote or in writing within ninety (90) days after the destruction.

(c) Any reconstruction or repair shall be performed substantially in accordance with the Master Deed and the plans and specifications for the Condominium to a condition as similar as possible to the condition existing prior to damage, unless the members and each holder of a mortgage lien on any Condominium unit shall unanimously decide otherwise.

(d) If the damage is only to a part of a unit which it is the responsibility of a

member to maintain and repair, it shall be the responsibility of the member to repair such damage in accordance with subsection (e) hereof. In all other cases, the responsibility for reconstruction and repair shall be that of the Association. The Association promptly shall notify each holder of a mortgage lien on any of the Condominium units if any unit or any part of the common elements is substantially damaged or destroyed.

(e) Each member shall be responsible for the reconstruction and repair of the interior of his unit, including, but not limited to, floor coverings, wall coverings, window shades, draperies, interior walls (but not any common elements therein), interior trim, furniture, light fixtures and all appliances, whether freestanding or built-in, and items deemed to be the responsibility of the individual member by Article V.C. of the Master Deed. If damage to interior walls within a unit or to pipes, wires, conduits, ducts or other common elements therein is covered by insurance held by the Association, then the reconstruction or repair thereof shall be the responsibility of the Association in accordance with subsection (f). If any other interior portion of a unit, or item therein, is covered by insurance held by the Association for the benefit of the member, the member shall be entitled to receive the proceeds of insurance relative thereto, and if there is a mortgagee endorsement, the proceeds shall be payable to the member and the mortgagee jointly, without any change to the obligations set forth in this subsection (e).

(f) The Association shall be responsible for the reconstruction and repair of the common elements, and for any incidental damage to a unit and the contents thereof caused by such common elements or the reconstruction or repair thereof. Immediately after a casualty occurs causing damage to property for which the Association has the responsibility of maintenance, repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost to return the damaged property to a condition as good as that existing before the damage.

(g) Any insurance proceeds received, whether by the Association or a member, shall be used for reconstruction or repair when reconstruction or repair is required by these By-Laws. If the insurance proceeds are not sufficient to pay the estimated costs of reconstruction or repair required to be performed by the Association, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all members for the cost of reconstruction or repair of the damaged property in sufficient amounts to provide funds to pay the estimated or actual cost of repair. Such assessments shall be levied in the same manner as the regular monthly assessments, as set forth in Article V, Section 4, hereof.

Section 4. Eminent Domain. The following provisions shall control upon any taking by eminent domain:

(a) The Association, acting through its Board of Directors, may negotiate on behalf of all members for any taking of common elements. Any negotiated settlement shall be subject to the approval of more than two-thirds (2/3) of the members in number and in value and shall thereupon be binding on all members.

(b) If an entire unit is taken by eminent domain, the award for such taking shall be paid to the Association for the benefit of the owner of such unit and the mortgagee thereof, as their interests may appear. After acceptance of such award by the member and his mortgagee, they shall be divested of all interest in the Condominium. The undivided interest in the common elements belonging to the member whose unit has been taken shall thereafter appertain to the remaining units, including those restored or reconstructed under the provisions of this section.

(c) If any condemnation award shall become payable to any member whose unit is not wholly taken by eminent domain, then such award shall be paid by the condemning

authority to the Association on behalf of such member and his mortgagee, as their interest may appear. If only a part of any unit is taken, the Association shall, if practical, use the award to rebuild the same to the extent necessary to make it habitable and remit the balance of the condemnation proceeds attributable to such unit to the owner and mortgagee thereof, as their interests may appear.

(d) If any portion of the Condominium other than any unit is taken, the condemnation proceeds relative to such taking shall be paid to the Association, and the affirmative vote of more than fifty percent (50%) of the members in number and in value at a meeting duly called shall determine whether to rebuild, repair or replace the portion so taken or to take such other action as they deem appropriate. If no such affirmative vote is obtained, such condemnation proceeds shall be remitted to the members and their respective mortgagees, as their interests may appear, in accordance with their respective percentages of value set forth in Article VI of the Master Deed.

(e) If the Condominium Project continues after a taking by eminent domain, then the remaining portion of the Condominium Project shall be resurveyed and the Master Deed amended accordingly, and, if any unit shall have been taken, then Article VI of the Master Deed shall be amended to reflect such taking and to proportionately readjust the percentages of value of the remaining members based upon a continuing value for the Condominium of one hundred percent (100%). Such amendment may be effected by an officer of the Association duly authorized by the Board of Directors without the necessity of execution or specific approval thereof by any members, but only with the prior written approval of all holders of mortgage liens on individual units in the Project.

(f) If any Condominium unit, or any portion thereof, or the common elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the

Association promptly shall so notify each holder of a mortgage lien on any of the Condominium units.

(g) If the taking of a portion of a Condominium unit makes it impractical to rebuild the partially taken unit to make it habitable, then the entire undivided interest in the common elements appertaining to that Condominium unit shall thenceforth appertain to the remaining Condominium units, and shall be allocated to them in proportion to their respective undivided interests in the common elements. The remaining portion of that Condominium unit shall thenceforth be a common element.

(h) Votes in the Association of members and liability for future expenses of administration appertaining to a Condominium unit taken or partially taken (as provided in subsection (g) hereof) by eminent domain shall thenceforth appertain to the remaining Condominium units, and shall be allocated to them in proportion to their relative voting strength by value in the Association.

Section 5. Construction Liens. The following provisions shall control the circumstances under which construction liens may be applied against the Condominium or any unit thereof:

(a) Except as provided below, a construction lien for work performed on a Condominium unit or upon a limited common element may attach only to the unit upon or for the benefit of which the work was performed.

(b) A construction lien for work authorized by the Developer and performed upon the common elements may attach only to units owned by the Developer at the time of recording of the claim of lien.

(c) A construction lien for work authorized by the Association may attach to each unit only to the proportional extent that the member owning the unit is required to contribute to the expenses of administration as provided by the Condominium Documents.

(d) A construction lien may not arise or attach to a unit for work performed on the

common elements not contracted for by the Developer or the Association.

If a member is advised or otherwise learns of a purported construction lien contrary to the foregoing, he shall immediately notify the Board of Directors. Upon learning of the purported construction lien, the Board shall take appropriate measures to remove any cloud on the title of units improperly affected thereby.

Section 6. Notice to FHLMC. If any mortgage in the Condominium is held by the Federal Home Loan Mortgage Corporation ("FHLMC"), then the Association shall give FHLMC written notice at such address as it may, from time to time, direct of any loss to or taking of the common elements of the Condominium, if the loss or taking exceeds Ten Thousand and 00/100 Dollars (\$10,000.00) in amount.

Section 7. Mortgagees. Nothing contained in the Condominium Documents shall be construed to give a Condominium unit owner, or any other party, priority over any rights of mortgagees of Condominium units pursuant to their mortgages in the case of a distribution to Condominium unit owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium units, common elements or both.

## ARTICLE VII

### USE AND OCCUPANCY RESTRICTIONS: ENFORCEMENT

Section 1. Establishment of Restrictions. In order to provide for congenial occupancy of the Condominium, and for the protection of the value of the units, the use of Condominium property shall be subject to the following limitations:

(a) No Condominium unit shall be used for other than single-family residential purposes (except that persons not of the same immediate family residing together may occupy a unit with the written consent of the Board of Directors) and the common elements shall be used only for purposes consistent with the use of single-family residences. A family shall mean one person or a group of two or more persons related by bonds of

consanguinity, marriage or legal adoption.

(b) No member shall alter the exterior appearance or structurally modify his unit (including interior walls through or in which there exist easements for support or utilities) or change any of the limited or general common elements from the way it or they were originally constructed by the Developer, including, without limitation, painting the exterior or erecting antennae, lights, aerials, awnings, doors, shutters or other exterior attachments or modifications including, but not limited to enclosing decks, porches or patios, nor shall any member damage, modify or make attachments to common element walls between units, which alterations in any way impair the sound-conditioning properties thereof, without the express written approval of the Board of Directors. The Board of Directors, in its sole discretion, may disapprove any such request. However, it may only approve such alterations as do not impair the structural soundness, safety, utility, integrity or appearance of the Condominium. The Association may charge any co-owner requesting such approval a reasonable additional assessment to defray the on-going cost to the Association of such alteration or change including, but not limited to, insurance, repairs, maintenance and all other expenses of administration and a reasonable allowance for contingencies and reserves which additional assessment, if any, shall be collected in the manner provided in Article V. Sections 4 and 7 of these By-Laws. The Board of Directors may appoint a Grounds Control Committee and may delegate to it responsibility for establishing rules relating to the appearance of units and common areas, and the approval of the construction, maintenance and repair thereof. Even after approval, a member shall be responsible for all damages to any other units and their contents or to the common elements resulting from any such alteration.

(c) No immoral, improper, unlawful or offensive activity shall be carried on in any unit or upon the limited or general common elements, nor shall anything be done which

may be or become an annoyance or a nuisance to the members, nor shall any unreasonably noisy activity be carried on in any unit or on the common elements. No member owning any unit shall do or permit anything to be done or keep or permit to be kept in his unit or on the common elements anything that will increase the insurance rate on the Condominium without the written approval of the Association. Each member who is the cause thereof shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition.

(d) Neither the limited nor general common elements shall be used to store supplies, materials, personal property, trash or refuse of any kind, except as designated by the Association. Trash receptacles shall be maintained in areas designated therefore at all times and shall not be permitted elsewhere on the common elements except for such short periods of time as may be reasonably necessary to permit the periodic collection of trash. The common elements shall not be used in any way for the drying, shaking or airing of clothing or other fabrics. Automobiles may only be washed in areas approved by the Association. In general, no activity shall be carried on nor condition maintained by a member, either in his unit or upon the common elements, which unreasonably spoils the appearance of the Condominium.

(e) Sidewalks, yards, landscaped areas, driveways, roads, parking areas, halls, stairs and, in general, all of the common elements, shall not be obstructed in any way nor shall they be used for purposes other than for which they are reasonably and obviously intended. No bicycles, vehicles, chairs or benches may be left unattended on or about the common elements, without the prior written consent of the Board of Directors. Use of any recreational facilities in the Condominium by children may be limited to such times and in such manner as the Association shall determine by duly adopted regulations.

(f) No member shall use, or permit any occupant, agent, employee, invitee, guest  
or



member of his family to use, any firearms, air rifles, pellet guns, BB guns, bows and arrows or other similar dangerous weapons, projectiles or devices anywhere on or about the Condominium Premises.

(g) No signs or other advertising devices shall be displayed which are visible from the exterior of a residential unit or on the common elements, including "For Sale" signs, without written permission from the Association, which permission shall not be unreasonably withheld.

(h) Reasonable regulations consistent with the Act, the Master Deed and these Bylaws concerning the use of the common elements may be made and amended from time to time by any Board of Directors of the Association, including the Board of Directors appointed by the Incorporator and its successors. Copies of all such regulations and amendments thereto shall be furnished to all members and shall become effective ten (10) days after mailing or delivery thereof to the designated voting representative of each member. Any such regulation or amendment may be revoked at any time by the affirmative vote of more than fifty percent (50%) of all members in number and in value at any duly convened meeting of the Association, except that the members may not revoke any regulation or amendment prior to the first meeting of the Association.

(i) No member shall perform any landscaping or plant any trees, shrubs or flowers or place any ornamental materials upon the common elements without the express written approval of the Board of Directors.

(j) No unsightly condition shall be maintained upon any balconies, porches or decks and only furniture and equipment consistent with ordinary balcony, porch or deck use shall be permitted to remain there during seasons when such areas are reasonably in use, and no furniture or equipment of any kind shall be stored in such areas during seasons when they are not reasonably in use.

(k) No animal, including household pets, shall be kept in any unit or in or upon the common elements without the prior written consent of the Board of Directors which consent, if given, shall be revocable at any time. Such pet may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous pet shall be kept. No such pet may be permitted to run loose upon the common elements, limited or general. The Association may charge all co-owners maintaining a pet a reasonable additional assessment to be collected in the manner provided in Article V, Section 4 of these By-Laws if the Association determines such assessment necessary to defray the maintenance cost to the Association of accommodating animals within the Condominium. The Association may, without liability to the owner thereof, remove or cause to be removed any animal from the Condominium which it determines to be in violation of the restrictions imposed by this Section. The Association shall have the right to require that any pets be registered with it and may adopt such additional reasonable rules and regulations with respect to pets as it may deem proper. Any person who causes an animal to be brought or kept in the Condominium shall indemnify and hold harmless the Association for any damage, loss or liability which might accrue to the Association as a result of the presence of such animal in the Condominium.

(1) Parking spaces and detached garages are assigned as provided in the Condominium Documents to particular units, and any parking space or detached garage, once assigned to said unit shall thereafter be reserved to the use of the unit to which it was originally assigned and to the exclusion of the other units. Detached garages may be reassigned as provided in Section 39 of the Act. Any non-assigned parking area shall be for the general use of the members and their guests. In the event a shortage of parking spaces arises, the Association may allocate or assign parking spaces from time to time on an

equitable basis. No house trailers, commercial vehicles, boat trailers, boats, campers, camping vehicles, camping trailers, snowmobiles, snowmobile trailers or motor vehicles or . trailers other than automobiles may be parked or stored on the Condominium premises, unless parked in an area specifically designated therefore by the Association; provided, however, that campers and similar vehicles may be kept at the Condominium for a period of less than forty-eight (48) hours without obtaining the Association's prior written approval. Commercial vehicles and trucks shall not be parked in or about the Condominium (except as, provided above) unless while making deliveries or pickups in the normal course of business.

(m) None of the restrictions contained in this Article VII shall apply to the commercial activities or signs or billboards, if any, of the Developer during the development and sales period as defined hereinafter, or of the Association in furtherance of its powers and purposes set forth herein and in its Articles of Incorporation and By-Laws as the same may be amended from time to time. For the purposes of this subsection, the development and sales period shall be deemed to continue so long as Developer owns any unit which it offers for sale or so long as any additional unit may be created in the Condominium. Until all units that may be created in the Condominium have been sold by Developer, Developer shall have the right to maintain a sales office, a business office, a construction office, model units, storage areas, reasonable parking incident to the foregoing and such access to, from and over the Project as may be reasonable to enable development and sale of the entire Project by Developer.

Section 2. Enforcement. Failure to comply with any of the terms of the Act, the Master Deed, these Condominium By-Laws, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association, shall be grounds for relief, which may include, without limitation, an action to recover sums due for such damages, injunctive relief, and any other remedy that may

be appropriate to the nature of the breach. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Act, the Master Deed, these Condominium By-Laws, the Articles of Incorporation, By-Laws or Rules and Regulations of the Association shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

## ARTICLE VIII

### APPROVAL OF LEASE

Section 1. Notice of Desire and Intent. A member who desires to rent or lease his Condominium unit for any term shall provide notice of such desire to the Board of Directors at least ten (10) days before presenting a lease form to a potential lessee. At the same time, the member shall provide to the Board a copy of the exact lease form proposed so that the Board may review it for compliance with the Condominium Documents. Tenants and non-co-owner occupants shall comply with all of the conditions of the Condominium Documents and all of the provisions of the Act, and all leases and rental agreements shall so state. The Board shall advise the member of any deficiencies in the lease form, and the member shall correct such deficiencies as directed by the Board before presenting a copy of the lease form to a potential lessee. If the Developer desires to rent or lease a Condominium unit before the transitional control date, it shall notify either the Advisory Committee or each co-owner in writing.

Section 2. Lease of Detached Garages. An owner of a unit assigned a detached garage may lease such detached garage to another owner of a unit in the Project, Port Of Old Mission Condominiums No. I or Port Of Old Mission Condominiums No. II, on such terms and conditions as are agreeable between them; however, such lease shall not in any way change the duties and responsibilities of the owner of the unit which has the exclusive service, use and benefit of such detached garage as provided in the Condominium Documents; provided, further, any such lease does not have to be approved by the Association. No other lease of a detached garage is permitted.

Section 3. Additional Restrictions on Leasing. No member shall lease less than an entire unit in the Condominium, and no tenant of a unit shall be permitted to occupy a unit, except under written lease, the initial term of which is at least one (1) year, unless specifically approved in writing by the Board of Directors. The Board may, except to the extent prohibited by law, require a security deposit from any proposed tenant of a unit as a condition to the approval of any lease.

Section 4. Non-Co-Owner Compliance.

(a) All non-co-owner occupants shall comply with all of the terms and conditions of the Condominium Documents and the provisions of the Act.

(b) If the Association determines that a non-co-owner occupant has failed to comply with the conditions of the Condominium Documents, or the provisions of the Act, the Association shall take the following action:

(i) The Association shall advise the appropriate member by certified mail of the alleged violation by a person occupying his unit.

(ii) The member shall have fifteen (15) days after receipt of the notice to investigate and correct the alleged breach or advise the Association that a violation has not occurred.

(iii) If after fifteen (15) days the Association believes that the alleged breach has not been cured or may be repeated, it may institute on its behalf, or derivatively by the members on behalf of the Association if it is under the control of the Developer, an action for eviction against the non-co-owner occupant and, simultaneously, for money damages against the member and non-co-owner occupant for breach of the conditions of the Condominium Documents or of the Act. The relief set forth in this section may be by any appropriate proceeding. The Association may hold both the non-co-owner occupant and the member liable for any damages caused to the Condominium.

## ARTICLE IX

### MORTGAGES

Section 1. Mortgage of Units. No member owning any unit may mortgage his unit or any interest therein without the approval of the Association except to a bank, pension fund, insurance company, savings and loan association, credit union or other institutional lender.

The approval of any other mortgage may be arbitrarily withheld; provided, that nothing herein shall be construed to prevent the Developer from accepting a purchase money mortgage as a part of the purchase price of a unit nor prevent a member from accepting a purchase money mortgage from a subsequent approved purchaser.

Section 2. Notice of Mortgage. A member who mortgages a unit shall notify the Association of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Association, which shall maintain such information in a book entitled "Mortgages of Units."

Section 3. Notice of Default. The Association shall give to the holder of any mortgage covering any unit in the Project written notification of any default in the performance of the obligations of the member owning such unit that is not cured within sixty (60) days.

Section 4. Notice of Insurance. The Association shall notify each mortgagee appearing in said book of the name of each company insuring the Condominium against fire, perils covered by all-risk property coverage, and vandalism and malicious mischief and the amounts of such coverage.

Section 5. Notice of Meetings. Upon request submitted to the Association, any institutional holder of a mortgage lien on any unit in the Condominium shall be entitled to receive written notification of every meeting of the members of the Association and to designate a representative to attend such meeting.

Section 6. Acquisition of Title by Mortgagee. As provided in Article V, Section 7, any first

mortgagee who obtains title to a unit pursuant to the remedies provided in the mortgage, or a deed in lieu thereof, shall not be liable for such unit's unpaid assessments which accrue prior to acquisition of title by the first mortgagee.

## ARTICLE X

### WATER AND SANITARY SEWER SYSTEMS

The water and sanitary sewer systems located in the Project which are connected to and served by the public water and sanitary sewer systems of the City of Traverse City have been turned over by the Developer to Peninsula Township for maintenance, operation, repair, substitution, removal, enlargement, inspection, and replacement thereof with appropriate user charges to be determined by Peninsula Township and the City of Traverse City.

## ARTICLE XI

### AMENDMENTS

Section I. Proposal. Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting upon the vote of a majority of the Directors or by one-third (1/3) or more in number of the members by an instrument in writing signed by them.

Section 2. Meeting to Be Held. If such an amendment is proposed, a meeting for consideration of the same shall be duly called in accordance with the provisions of the Condominium Documents.

Section 3. Vote Required. These Condominium By-Laws may be amended by an affirmative vote of two-thirds (2/3) of all members in number and in value and two-thirds (2/3) of all mortgagees at any regular meeting, or at a special meeting called for such purpose. For purposes of such voting, each mortgagee shall have one (1) vote for each mortgage held.

Section 4. Amendments Not Materially Changing Condominium By-Laws. The Board of Directors may enact amendments to these Condominium By-Laws without the approval of any member or mortgagee, provided that such amendments shall not materially alter or change the

rights of a member or mortgagee.

Section 5. Amendments Concerning Leases. Provisions in these By-Laws relating to the ability or terms under which a member may rent his unit may not be modified and amended without the consent of each affected member and mortgagee.

Section 6. Effective Date. Any amendment to these By-Laws (but not the Association By-Laws) shall become effective upon the recording of such amendment in the Office of the Register of Deeds in the county where the Condominium is located. Without the prior written approval of all holders of mortgage liens on any unit in the Condominium, no amendment to these By-Laws shall become effective which involves any change, direct or indirect, in Article I, Section 2; Article IV, Sections 2 and 3; Article V, Sections 3, 4 and 7; Article VI; Article IX; and Article XI, Sections 3 and 6; or to any other provision hereof that alters or changes materially the rights of any member or mortgagee.

Section 7. Costs of Amendment. Any person causing or requesting an amendment to these Condominium By-Laws shall be responsible for the costs and expenses of considering, adopting, preparing and recording such amendment; provided, however, that such costs and expenses relating to amendments adopted pursuant to Article XI, Section 3, or pursuant to a decision of the Advisory Committee shall be expenses of administration.

Section 8. Notice: Copies of Amendment. Members and mortgagees of record of Condominium units shall be notified of proposed amendments not less than ten (10) days before the amendment is recorded. A copy of each amendment to these Condominium By-Laws shall be furnished to every member after recording; provided, however, that any amendment to these By-Laws that is adopted in accordance with this Article or the Act shall be binding upon all persons who have an interest in the Project irrespective of whether such persons actually receive a copy of the amendment.



## ARTICLE XII

### DEFINITIONS

All terms used herein shall have the same meanings as set forth in the Act or as set forth in the Master Deed to which these Condominium By-Laws are attached as an exhibit.

## ARTICLE XIII

### REMEDIES FOR DEFAULT

Section 1. Relief Available. Any default by a member shall entitle the Association or another member or members to the following relief:

(a) Failure to comply with any of the terms or conditions of the Condominium Documents shall be grounds for relief, which may include, without limitation, an action to recover sums due for damages, for injunctive relief, for foreclosure of lien (if in default in payment of an assessment) or any combination thereof, and such relief may be sought by the Association, or, if appropriate, by an aggrieved member or members.

(b) In any proceeding arising because of an alleged default by any member, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (not limited to statutory fees) as may be determined by the Court, but in no event shall any member be entitled to recover such attorneys' fees.

(c) Such other reasonable remedies as provided in the rules and regulations promulgated by the Board of Directors, including, without limitation, the levying of fines against members after notice and opportunity for hearing, as provided in the Association rules and regulations, and the imposition of late charges for nonpayment of assessments.

(d) The violation of any of the provisions of the Condominium Documents shall also give the Association or its duly authorized agents the right, in addition to the rights set forth above, to enter, where reasonably necessary, upon the limited or general common elements, or into any unit, and summarily remove and abate, at the expense of the violating

member, any structure, thing or condition existing or maintained contrary to the provisions of the Condominium Documents.

Section 2. Failure to Enforce. The failure of the Association or of any member to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or of any such member to enforce such right, provision, covenant or condition in the future.

Section 3. Rights Cumulative. All rights, remedies and privileges granted to the Association or any member or members pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Section 4. Hearing. Prior to the imposition of any fine or other penalty hereunder, the offending member shall be given a reasonable opportunity to appear before the Board and be heard. Following any such hearing the Board shall prepare a written decision and place it in the permanent records of the Association.

## ARTICLE XIV

### ARBITRATION

Section 1. Submission to Arbitration. Any dispute, claim or grievance arising out of or relating to the interpretation or application of the Master Deed, By-Laws or Management Agreement, if any, or to any disputes, claims or grievances arising among or between the members or between such members and the Association shall, upon the election and written consent of all the parties to any such dispute, claim or grievance, and written notice to the Association, be submitted to arbitration, and the parties thereto shall accept the arbiter's decision as final and binding, and it shall be enforceable against the party in a court of competent jurisdiction. The

Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect from time to time hereafter, shall be applicable to such arbitration.

The arbiter may be either an attorney acceptable to both parties or a panel of three (3) individuals, at least one (1) of whom shall be an attorney. The panel shall be composed of one (1) individual appointed by the member and one (1) individual appointed by the Board of Directors of the Association. These two panelists will then promptly agree on the third member of the panel. No member who is a natural person may appoint himself or a member of his household to the panel. No corporate member may appoint one of its directors, officers, shareholders or employees to the panel. Neither may a member serve on behalf of the Board.

The arbitration costs shall be borne by the losing party to the arbitration. The arbiter may require a reasonable deposit to ensure payment of costs. Such deposit shall be placed in escrow in the name of the arbiter as trustee in the name of the matter at issue.

Section 2. Effect of Election. Election by members or the Association to submit any such dispute, claim or grievance to arbitration shall preclude such parties from litigating such dispute, claim or grievance in the courts. Any appeal from an arbitration award shall be deemed a statutory appeal.

Section 3. Preservation of Rights. No member shall be precluded from petitioning the courts to resolve any dispute, claim or grievance in the absence of election to arbitrate.

## ARTICLE XV

### SEVERABILITY

If any of the terms, provisions, or covenants of these By-Laws or the Condominium Documents are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants of such documents or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

## ARTICLE XVI

### CONFLICTING PROVISIONS

In the event of a conflict between the provisions of the Act (or other laws of the State of Michigan) and any Condominium Document, the Act (or other laws of the State of Michigan) shall govern. In the event of any conflict between the provisions of any one or more Condominium Documents, the following order of priority shall prevail, and the provisions of the Condominium Document having the highest priority shall govern:

- (1) The Master Deed, including the Condominium Subdivision Plan;
- (2) These Condominium By-Laws;
- (3) The Articles of Incorporation of the Association;
- (4) The By-Laws of the Association; and
- (5) The Rules and Regulations of the Association.