

BYLAWS

DESCHUTES COUNTY OFFICIAL RECORDS
NANCY BLANKENSHIP, COUNTY CLERK

2004-53197



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After Recording Return To:
Chris Hatfield
Hurley, Lynch & Re, P.C.
747 SW Mill View Way
Bend, Oregon 97701

**BYLAWS
OF
PAULINA PEAKS OWNERS ASSOCIATION, INC.,
an Oregon Nonprofit Corporation**

**ARTICLE 1
NAME**

The name of the Association is Paulina Peaks Owners Association, Inc., an Oregon nonprofit corporation (the "Association").

**ARTICLE 2
PURPOSE AND POWERS**

2.1 Purpose. The Association is organized in accordance with ORS 94.625 and 94.630, and shall be operated exclusively for the benefit of the Owners of property in the development known as Paulina Peak, Phase I, II, III and IV, in Deschutes County, Oregon.

2.2 Powers. Subject to the foregoing purposes and the powers and obligations set forth in the Planned Community Subdivision Declaration for Paulina Peaks, the Association shall have and may exercise all the rights and powers of a nonprofit corporation under the Oregon Nonprofit Corporation Act.

2.3 Definitions. For purposes of these Bylaws, any term will have the same meaning as used in the Planned Community Subdivision Declaration for Paulina, including the definitions as stated in Article I.

**ARTICLE 3
MEMBERS MEETINGS**

3.1 Initial Meeting. The initial meeting of the Association of Owners will be held at 6:30 p.m. on October 5, 2004, at the office of Hurley, Lynch & Re, P.C., 747 SW Mill View Way, Bend, Oregon. The initial meeting shall be called by notice as provided for in Section 3.5.

3.2 Annual Meeting. The annual meeting of the Members shall be held at 2 p.m. on the second Wednesday in December of every year at the principal office of the Association or at such

other time, date, or place as may be determined by the board of directors. At such meeting the Members entitled to vote shall elect a board of directors and transact such other business as may come before the meeting consistent with the notice provisions of ORS 65.214, which requires notice of the meeting to include a description of any matter or matters which must be approved by the Members under ORS 65.361, 65.404, 65.414(1)(a), 65.437, 65.464, 65.487, 65.534, or 65.624.

3.3 Special Meetings. The Association shall hold special meetings of Members at any time on the call of the president or the board of directors, or on demand in writing by Members of record holding at least 10 percent of the votes entitled to be cast on any matter proposed to be considered at the special meeting.

3.4 Turnover Meeting. At the initial meeting, administrative responsibility for Paulina Peaks Subdivision, Phases I, II, III and IV, shall be turned over to the Association. The secretary shall give notice of the meeting as provided in Section 3.5. If the board does not call a meeting required by this Section within the required time, an Owner may call a meeting and give notice as required in this Article. At the turnover meeting the interim directors shall resign and their successors shall be elected by the Owners.

3.5 Notice. The secretary will cause a notice of each meeting called under this Article to be sent to each Member and to each mortgagee that has requested notice. The notice will be sent not less than 10 or more than 50 days before any meeting. Notice shall be hand delivered or mailed to the mailing address of each Lot or to the mailing address designated by the Member. Notices to mortgagees shall be sent to the address designated by the mortgagee. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the current Member records of the Association, with postage prepaid. The notice shall state the place, date, and time of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes or any proposal to remove a director or officer.

3.6 Waiver of Notice. A Member may, at any time, waive any notice required by these bylaws or the Oregon Nonprofit Corporation Act. The waiver must be in writing, be signed by the Member, and be delivered to the Association for inclusion in the minutes or filing with the corporate records. A Member's attendance at a meeting waives any objection to: (a) lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (b) consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

3.7 Voting. The Association shall prepare on a current basis a list of the names, addresses, and membership dates of all the Members. The Association shall prepare on a current basis through the time of the membership meeting a list of Members who are entitled to vote at the meeting. The Association shall make the list of Members available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing

through the meeting, at the Association's principal office or at a reasonable place identified in the meeting notice. The Association shall make the list of Members available at the meeting, and any Member, the Member's agent or attorney shall be entitled to inspect the list for any proper purpose at any time during the meeting or any adjournment. Members shall have the voting rights as specified in the Declarations. An executor, administrator, guardian or trustee may vote, in person or by proxy, at a meeting of the Association with respect to a lot owned or held in a fiduciary capacity if the fiduciary satisfies the secretary of the board of directors that the person is the executor, administrator, guardian or trustee holding the lot. When a lot is owned by two or more persons jointly, according to the records of the Association, except as otherwise provided in this Section, the vote or proxy of the lot may be exercised by a Co-Owner in the absence of a protest by another Co-Owner. If the Co-Owners cannot agree upon the vote, the vote of the lot shall be disregarded completely in determining the proportion of votes given with respect to such matter. A valid court order may establish the right of Co-Owners' authority to vote.

3.8 Absentee and Proxy Voting. The vote of a lot may be cast by absentee ballot or pursuant to a proxy executed by the Owner. An Owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the Association or to the board of directors if a vote is being conducted by written ballot in lieu of meeting. A proxy is not valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term.

3.9 Quorum: Vote Required. A quorum of the Association is required for any meeting. A quorum shall consist of 20 percent of the number of persons who are entitled to vote at the meeting and who are present in person or by proxy. If a quorum is present, action on a matter, other than the election of directors, is approved if the votes cast in favor of the action exceed the votes cast in opposition, unless the vote of a greater number is required by the Oregon Nonprofit Association Act. Election of directors is governed by Article 4, Section 4.3.

3.10 Records. The Association shall maintain records as follows:

3.10.1. The Association shall retain at a location in Bend, Oregon, the documents, information and records delivered to the Association in the turnover meeting and all other records of the Association for not less than the period specified for the record in ORS 65.771 or any other applicable law except that: (a) The documents specified in ORS 94.616 (3)(o), if received, must be retained as permanent records of the Association, and (b) Proxies and ballots must be retained for one year from the date of determination of the vote.

3.10.2. All assessments, including Declarant subsidies, shall be deposited in a separate bank account, located within this state, in the name of the Association. All expenses of the Association shall be paid from the Association bank account.

3.10.3. The Association shall keep financial records sufficiently detailed for proper accounting purposes. Within 90 days after the end of the fiscal year, the board of directors shall:
(a) Prepare or cause to be prepared an annual financial statement consisting of a balance sheet and

income and expenses statement for the preceding fiscal year; and (b) Distribute to each Owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement.

3.10.4. The Association shall within 180 days after the Association receives a petition requesting review signed by at least a majority of the Owners cause the most recent financial statement required by Section 3.10.3 to be reviewed by an independent certified public accountant licensed in Oregon in accordance with the Statement on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

3.10.5. The Association shall provide, within 10 business days of receipt of a written request from an Owner, a written statement that provides: (A) The amount of assessments due from the Owner and unpaid at the time the request was received, including: (i) Regular and special assessments; (ii) Fines and other charges; (iii) Accrued interest; and (iv) Late payment charges; (B) The percentage rate at which interest accrues on assessments that are not paid when due; and, (C) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment. The Association is not required to comply with this requirement, however, if the Association has commenced litigation by filing a complaint against the Owner and the litigation is pending when the statement would otherwise be due.

3.10.6. The Association shall make the documents, information and records described in subsection 3.10 and all other records of the Association reasonably available for examination and, upon written request, available for duplication by an Owner and any mortgagee of a lot that makes the request in good faith for a proper purpose, except that records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- a. Personnel matters relating to a specific identified person or a person's medical records.
- b. Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- c. Communications with legal counsel that relate to matters specified in paragraphs (a) and (b) of this subsection.
- d. Disclosure of information in violation of law.
- e. Documents, correspondence or management or board reports compiled for or on behalf of the Association or the board of directors by its agents or committees for consideration by the board of directors in executive session held in accordance with ORS 94.640 (7).
- f. Documents, correspondence or other matters considered by the board of directors in executive session held in accordance with ORS 94.640(7).

- g. Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

3.10.7. The Association shall maintain a copy, suitable for the purpose of duplication, of the following:

- a. The declaration and bylaws, including amendments or supplements in effect, the recorded plat, if feasible, and the Association rules and regulations currently in effect, if any.
- b. The most recent financial statement prepared pursuant to Section 3.10.
- c. The current operating budget of the Association.
- d. The reserve study, if any, described in ORS 94.595.
- e. Architectural standards and guidelines, if any.

3.10.8. The Association, within 10 business days after receipt of a written request by an Owner, shall furnish the requested information required to be maintained under Section 3.10.7.

3.10.9. The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

ARTICLE 4 DIRECTORS

4.1 Powers. The board of directors shall manage the business and affairs of the Association and exercise or direct the exercise of all corporate powers.

4.2 Number. The number of directors shall be three.

4.3 Election and Term of Office. The initial directors shall be appointed by Declarant. New directors shall be elected at the Turnover Meeting. Thereafter, directors shall be elected at the annual meeting of the members by a majority vote of the members present at the meeting; provided however, that a quorum of members is present. Directors shall serve until the next annual meeting of the board of directors, or until their successors have been elected and take office, and may be elected for successive terms.

4.4 **Removal.** A director may be removed, with or without cause, by the affirmative vote of two-thirds of the directors then in office, at any meeting of the board of directors. The notice of such meeting shall state that the purpose or one of the purposes of the meeting is the removal of the director or directors involved. The Owners may remove any member of the board, other than members appointed by the Declarant, with or without cause, by a majority vote of all Owners present and entitled to vote at any meeting of the Owners at which a quorum is present. Removal of a director is not effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required by Section 3.5.

4.5 **Vacancies.** Any vacancy occurring in the board of directors for any reason, including a vacancy resulting from an increase in the number of directors, shall be filled by the affirmative vote of a majority of the directors then in office.

4.6 **Resignation.** Any director may resign at any time by delivering written notice of resignation to the President or Secretary. Such resignation shall be effective on receipt unless it is specified therein to be effective at a later time, and acceptance of the resignation shall not be necessary.

4.7 **Compensation.** Directors shall serve without compensation for services. A director may receive reimbursement for actual and reasonable expenses incurred in performing his or her duties upon the approval of the board of directors.

4.8 **Annual Meetings.** The annual meeting of the board of directors shall be held immediately after the adjournment of the annual meeting of members or at such date, time, and place determined by the board of directors upon notice as provided in Section 4.11.

4.9 **Regular Meetings.** The board of directors may from time to time establish monthly or other regular meetings of the board, the specific date, time, and place to be determined by the President.

4.10 **Special Meetings.** Special meetings of the board of directors may be called by the President or any two directors.

4.11 **Notice of Meetings.** Written notice of the annual meeting of the board of directors shall be given at least 10 days but not more than 50 days before the meeting. Written notice of special meetings of the board of directors shall be given at least two days before the meeting. Regular meetings of the board of directors may be held without notice. The notice shall in each case specify the date, time, and place of the meeting, and notice shall be sufficient if actually received at the required time or if mailed not less than five days before the required time. Mailed notices shall be directed to the director's address shown on the corporate records or to the director's actual address ascertained by the person giving notice. Oral notice may be delivered in person or by telephone. Except as otherwise required by law or these bylaws, neither the business to be transacted at nor the purpose of any meeting of the board of directors need be specified in the notice.

4.12 Waiver of Notice. Whenever any notice is required to be given to any director, a waiver thereof in writing, signed by the director entitled to such notice, whether before or after the event specified in the waiver, shall be deemed equivalent to the giving of such notice. Furthermore, the attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

4.13. Posting Notice. For other than emergency meetings, notice of board meetings shall be posted at a place or places on the Property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot Owners of such meetings. Emergency meetings, however, may be held without notice, if the reason for the emergency is stated in the minutes of the meeting.

4.13 Action Without a Meeting. Any action that is required or permitted to be taken by the directors at a meeting may be taken without a meeting if a consent in writing setting forth the action is signed by all of the directors entitled to vote on the matter. The action shall be effective on the date when the last signature is placed on the consent.

4.14 Meeting by Telephone Conference. Board Meetings may be held by telephone or similar means that allows all board members participating to hear each other simultaneously or otherwise be able to communicate during the meeting. Participation in such meeting shall constitute presence in person at the meeting.

4.15 Quorum: Majority Vote. A majority of the number of directors in office at the time of a meeting of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a different number is required by law or these bylaws. A minority of the directors, in the absence of a quorum, may adjourn and reconvene from time to time but may not transact any business.

4.16 Open Meetings. All meetings of the board shall be open to Owners, except that at the direction of the board the following matters may be considered in executive session: (1) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters; (2) personnel matters, including salary negotiations and employee discipline; (3) negotiation of contracts with third parties; and (4) collection of unpaid assessments. Except in the case of emergency, the board shall vote in open meeting whether to meet in executive session. If the board votes to meet in executive session, the presiding officer of the board shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting. A contract or an action considered in executive session does not become effective unless the board, following the executive session, reconvenes in open meeting and votes on the contract or an action which must be reasonably identified in the open meeting and included in the minutes. The meeting and notice requirements of this Article cannot be circumvented by

chance or social meetings or by any other means.

4.17 **Additional Duties.** The board shall have the additional duties:

A. Insurance. At least annually, the board shall review the insurance coverage of the Association.

B. Tax Returns. The board shall cause to be filed any necessary income tax return for the Association.

C. Address. The board, in the name of the Association, shall maintain a current mailing address of the Association.

D. Records. The board shall cause the information required to enable the Association to comply with Section 3.10 to be maintained and kept current.

E. Budget. The board shall adopt a budget for the community. Within 30 days after adopting the annual budget for the community, the board shall provide a summary of the budget to all Owners. If the board fails to adopt a budget, the last adopted annual budget shall continue in effect.

ARTICLE 5 OFFICERS

5.1 **Designation.** The officers of the Association shall be a President, a Secretary, and a Treasurer. Such other officers as may be deemed necessary may be elected by the board of directors and shall have such powers and duties as may be prescribed by the board. The same individual may hold two or more offices.

5.2 **Qualification.** An officer must be a member of the board of directors.

5.3 **Election and Term of Office.** The officers of the Association shall be elected annually by the board of directors at the annual meeting of the board of directors. Each officer shall hold office until a successor is duly elected or until the officer's resignation, death, or removal.

5.4 **Resignation.** An officer may resign at any time by delivering written notice of resignation to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at a later time. The board of directors may reject any postdated resignation by notice in writing to the resigning officer.

5.5 **Removal.** The board of directors may remove any officer, with or without cause, by the affirmative vote of a majority of the directors then in office, at any meeting of the board of directors. Removal shall be without prejudice to the contract rights, if any, of the person removed. Election of an officer shall not of itself create contract rights.

5.6 **Vacancies.** A vacancy in any office because of death, resignation, removal, or otherwise may be filled by the board of directors for the unexpired portion of the term.

5.7 **President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the board of directors, have general supervision, direction, and control of the business and affairs of the Association. The President shall preside at all meetings of the board of directors and shall with the Secretary execute on behalf of the Association all contracts, agreements, and other instruments. The President shall have the general powers of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors.

5.8 **Secretary.** The Secretary shall prepare and keep (or cause to be prepared and kept) the minutes of all meetings of the board of directors and any committees of the board of directors and shall have custody of the minute books and other records pertaining to corporate business. The Secretary shall give or cause to be given such notice of the meetings of the board of directors as is required by the bylaws. The Secretary shall be responsible for authenticating resolutions and other records of the Association and shall countersign on behalf of the corporation all contracts, agreements, and other instruments. The Secretary shall perform such other duties as may be prescribed by the board of directors.

5.9 **Treasurer.** The Treasurer shall be the chief financial and accounting officer of the Association and shall supervise and monitor the finances of the Association. The Treasurer shall (a) cause to be kept correct and complete records of account showing the financial condition of the Association, (b) be legal custodian of all moneys, notes, securities, and other valuables that may come into the possession of the Association, (c) cause all funds of the Association to be deposited in depositories that the board of directors may designate, (d) pay funds out only on the check of the Association signed in the manner authorized by the board of directors, (e) present to the board of directors regular statements of the Association's financial position and cash flows, (f) ensure that the Association files all necessary tax returns, and (g) maintain the record of all gifts, grants, contributions, gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business, and the sources of all the foregoing funds.

5.10 **Maintenance.** Within 30 days after construction of the common property is completed by Declarant, the Board shall cause to be adopted a program for maintenance, upkeep, repair and replacement of that **common property**. The program will include a method for payment of expenses and the method of approving payment vouchers.

5.11 **Employment.** The board shall have the authority to employ personnel necessary for the administration of the community and maintenance, upkeep, and repair of the common property.

ARTICLE 6
INDEMNIFICATION OF DIRECTORS AND OFFICERS

6.1 Generally. The Association shall to the fullest extent permitted under Oregon law indemnify any person who is or was a director or officer of the Association against any and all liability incurred by such person in connection with any claim, action, suit, or proceeding or any threatened claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director or officer of the Association, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal proceeding such person had no reasonable cause to believe the conduct was unlawful. Liability and expenses include reasonable attorney fees, judgments, fines, costs, and amounts actually paid in settlement. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent, shall not of itself create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal proceeding, had reasonable cause to believe that such conduct was unlawful. The foregoing right of indemnification shall be in addition to and not exclusive of any and all other rights to which any such director or officer may be entitled under any statute, bylaw, agreement, or otherwise.

6.2 Actions by or in the Right of the Association. In connection with any proceeding brought by or in the right of the Association, the Association may not indemnify any person who is or was a director or officer of the Association if such person has been adjudged by a court of law to be liable to the Association, unless the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability, in view of all of the circumstances of the case such person is fairly and reasonably entitled to indemnity.

6.3 Self-Interested Transactions. The Association may not indemnify any person who is or was a director or officer of the Association in connection with any proceeding charging improper personal benefit to such person in which such person has been adjudged liable on the basis that personal benefit was improperly received by such person, unless the court in which the action or suit was brought determines upon application that, despite the adjudication of liability, in view of all circumstances of the case such person is fairly and reasonably entitled to indemnity.

6.4 Determination of the Propriety of Indemnification. The determination that indemnification is proper shall be made by the majority vote of a quorum consisting of the directors who were not parties to the proceeding or, if such a quorum cannot be obtained, by the majority vote of a committee, duly designated by the board of directors, consisting of at least two directors who were not parties to the proceeding. If there are not two directors who were not parties to the proceeding, the full board of directors shall select special legal counsel to determine whether indemnification is proper.

6.5 Evaluation of Expenses. An evaluation as to the reasonableness of expenses shall be made by the majority vote of a quorum consisting of directors who were not parties to the

proceeding or, if such a quorum cannot be obtained, by the majority vote of a committee, duly designated by the board of directors, consisting of at least two directors who were not parties to the proceeding. If there are not two directors who were not parties to the proceeding, the full board of directors, including directors who were parties to the proceeding, shall evaluate the reasonableness of expenses.

6.6 Notice to the Attorney General. A director or officer shall not be indemnified by the Association until 20 days after the effective date of written notice to the Attorney General of the proposed indemnification.

6.7 Advance of Expenses. Expenses incurred with respect to any claim, action, suit, or other proceeding of the character described in this article may be advanced by the corporation prior to the final disposition of such proceeding if (a) the director or officer provides written affirmation to the Association of such person's good faith belief that such person satisfies the criteria for indemnification, and (b) the director or officer gives the Association a written undertaking to repay the advanced amount if it is ultimately determined that the director or officer is not entitled to indemnification under this article. The undertaking shall be a general obligation of the director or officer, but need not be secured and may be accepted by the board of directors without reference to the director or officer's financial ability to make repayment.

6.8 Insurance. The board of directors shall have the power to purchase insurance as follows:

6.8.1. On behalf of any individual who is or was an officer or director of the Association against liability asserted against or incurred by such individual arising out of such individual's status as a director or officer of the Association, whether or not the Association would have the power to indemnify such individual against liability under the provisions of this article;

6.8.2. For all insurable improvements in the common property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable costs;

6.8.3. A public liability policy covering all common property and all damage or injury caused by the negligence of the Association; and

6.8.4. Premiums for insurance obtained under this section shall be a common expense of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

ARTICLE 7 AMENDMENT AND ADMINISTRATIVE RULES

The Association may adopt, amend or repeal these bylaws or adopt new bylaws by the affirmative majority of the directors then in office, at any meeting of the board of directors. The meeting notice shall state that a purpose of the meeting is to consider an amendment to the bylaws and shall contain a copy or summary of the proposed amendment.

ARTICLE 8 RULES OF ORDER

8.1. Robert's Rules. Meetings of the Association and the board of directors shall be conducted according to the latest edition of Robert's Rules of Order published by the Robert's Rules Association.

8.2. Procedural Error. A decision of the Association or the board of directors may not be challenged because the appropriate rules of order were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting in which the right to be heard was denied. A decision of the Association or the board of directors is deemed valid without regard to procedural errors related to the rules of order one year after the decision is made unless the error appears on the face of a written instrument memorializing the decision.

ARTICLE 9 ASSESSMENTS

9.1. Purpose of Assessment. The assessments provided for in the declaration and these bylaws shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of common property, all as may be more specifically authorized from time to time by the board of directors.

9.2. Creation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of the declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of the declaration.

9.3. Computation of Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessments shall become effective unless disapproved at

a meeting by a Majority of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

9.4 **Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed Five Hundred Dollars (\$500) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessments is imposed.

9.5 **Lien for Assessments.** When the Association makes any assessment against a Lot or Lots, the Association shall have a lien upon the Lot or Lots for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws. The lien is prior to a homestead exemption and all other liens or encumbrances upon the lot except tax and assessment liens and a first mortgage or first trust deed of record. Recording of the declaration is record notice and perfection of the lien for assessments and no further recording of a claim of lien for assessments or notice of a claim of lien is required to perfect the lien. The Association shall record a notice of claim of lien for assessments in the deed records of Deschutes before any suit to foreclose may proceed. The notice shall contain:

- a. A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- b. The name of the owner of the lot, or reputed owner, if known;
- c. The name of the association;
- d. The description of the lot as provided in ORS 93.600; and
- e. A statement that if the Owner of the Lot thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments automatically continue to accumulate with interest without the necessity of further recording.

- f. The notice shall be verified by the oath of some person having knowledge of the facts and shall be recorded by the county recording officer. The record shall be indexed as other liens are required by law to be indexed.

The suit to foreclose a lien shall conform as nearly as possible to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. To determine the date the assessment is due in when subsequent unpaid assessments have accumulated under a notice recorded, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due. The lien may be enforced by the board of directors acting on behalf of the Association. An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. The Association may pursue an action to recover sums for which a lien is created or take a deed in lieu of foreclosure in satisfaction of the lien. An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.

9.6 Effect of Nonpayment of Assessments, Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessments or special

assessments which are the subject matter of suit in the order of their coming due.

9.7 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessments, as provided in Section 9.3. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

9.8 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

DATED this 31st day of August, 2004.

Paulina Peaks Owners Association, Inc

By: Dave Brown
Dave Brown, President

STATE OF OREGON)
) ss:
County of Deschutes)

August 31, 2004

Personally appeared before me the above-named Dave Brown, and acknowledged the

foregoing instrument as President of Paulina Peaks Owners Association, Inc.



A handwritten signature in blue ink, appearing to read "Bonnie F. Burkhart", written over a horizontal line.

Notary Public for California

My Commission Expires: 10-12-06