

After Recording, Return To:

Michelle D. Da Rosa
Attorney at Law
1001 SW Fifth Avenue, Suite 1100
Portland, Oregon 97204

**TERMINATION OF FIRST AMENDMENT TO
DECLARATION AND BYLAWS OF IVY STREET CONDOMINIUMS**

THIS TERMINATION OF FIRST AMENDMENT TO DECLARATION AND BYLAWS OF IVY STREET CONDOMINIUMS (the "**Termination Agreement**") is executed by **CASA MODERNA LLC**, an Oregon limited liability company ("**Declarant**") and successor to Lartwo Properties LLC, the original declarant of the Ivy Street Condominiums as of July 10, 2014.

RECITALS

A. Ivy Street Condominiums (the "**Condominium**") is a condominium located in the City of Portland, Multnomah County, Oregon, established pursuant to Declaration of Condominium Ownership for the Ivy Street Condominiums recorded March 21, 2003 in the Records of Multnomah County, Oregon, as Document No. 2003-063471 (the "**Declaration**"). The Bylaws of the Association of Unit Owners of the Ivy Street condominiums (the "**Bylaws**") were recorded with the Declaration.

B. Declarant owns all of the units in the Condominium.

C. By First Amendment to Declaration and Bylaws of Ivy Street Condominiums recorded May 1, 2014 as Document No. 2014-041228 (the "**First Amendment to Declaration and Bylaws**"), Declarant amended the Declaration and Bylaws of Ivy Street Condominiums. The First Amendment to Bylaws of Ivy Street Condominiums was also recorded on May 1, 2014 as Document No. 2014-041229, with nearly identical provisions.

D. Declarant wishes to terminate the First Amendment to Declaration and Bylaws to correct the duplication.

NOW, THEREFORE, Declarant hereby declares that the First Amendment to Declaration and Bylaws of Ivy Street Condominiums recorded as Document No. 2014-041228 is hereby terminated and will have no force or effect hereafter.

[signature on next page]

Chicago Title 100714-9

CASA MODERNA LLC,
an Oregon limited liability company

By: *Ben May*
Ben May, Authorized Signer

STATE OF OREGON)
COUNTY OF Multnomah) ss

The foregoing instrument was acknowledged before me this 10 day of July, 2014 by Ben May, authorized signer of Casa Moderna LLC, an Oregon limited liability company, on its behalf.



Fara Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016

CERTIFICATION

STATE OF OREGON)
) ss
COUNTY OF Multnomah)

Come now Ben May and Gregory Terauchi who now depose and say that they are the Chairperson and Secretary, respectively, of the Association of Unit Owners of Ivy Street Condominiums and that the within Termination Agreement has been approved in accordance with the Declaration and ORS 100. 110 and ORS 100.410.

Ben May
Ben May, Chairperson

Gregory Terauchi
Gregory Terauchi, Secretary

Subscribed and sworn to before me this 10 of July, 2014 by Ben May, as Chairperson of the Association of Unit Owners of Ivy Street Condominiums

Fara J Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016



Subscribed and sworn to before me this 10 of July, 2014 by Gregory Terauchi, as Secretary of the Association of Unit Owners of Ivy Street Condominiums.

Fara J Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016



Multnomah County Official Records R Weldon, Deputy Clerk	2014-041229
	05/01/2014 01:57:07 PM
1R-AMBYLAWS Pgs=9 Stn=5 ATKRH \$45.00 \$11.00 \$10.00 \$20.00	\$86.00

AFTER RECORDING, RETURN TO:

Michelle D. DaRosa
 Attorney at Law
 1001 SW Fifth Avenue, Suite 1100
 Portland, Oregon 97204

Fidelity National Title of Oregon 20130688565-05

**FIRST AMENDMENT TO BYLAWS OF
 IVY STREET CONDOMINIUMS**

THIS FIRST AMENDMENT TO BYLAWS OF IVY STREET CONDOMINIUM is executed by **CASA MODERNA LLC**, successor to Lartwo Properties LLC, original declarant of the Condominium as defined below whose address is PO Box 20926, Portland, Oregon 97294

RECITALS

- A. **IVY STREET CONDOMINIUMS** (the "**Condominium**") is a condominium located in the City of Portland, Multnomah County, Oregon, established pursuant to Declaration of Condominium Ownership for the Ivy Street Condominiums recorded March 21, 2003 in the Records of Multnomah County, Oregon, as Document No. 2003-063471 (the "**Declaration**").
- B. Declarant owns all of the units in the Condominium.
- C. Declarant intends to amend the Bylaws for the purpose of clarifying that there will be no compensation to director except for out-of-pocket expenses, updating the language related to fidelity insurance, and including a dispute resolution provision.

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

- 1. Section 4.16 of the Bylaws is hereby amended to read as follows:
 "4.16 **Compensation of Directors.** No director shall be compensated in any manner, except for out-of-pocket expenses."
- 2. Section 4.18 of the Bylaws is hereby deleted and replaced with the following:
 "4.18 **Fidelity Insurance.**
 (i) The Association shall maintain fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association has retained a management agent, such agent shall maintain fidelity insurance for its

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officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance may be at the expense of the Association.

(ii) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the board of directors. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessments on all units plus reserve funds.

(iii) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and each servicer on behalf of the Federal National Mortgage Association ("Fannie Mae").

3. Section 9.3 of the Bylaws is hereby rescinded and replaced and superseded as follows:

A new article for Dispute Resolution is hereby added to the end of the Bylaws as Article XVI and is to read:

"Article XVI

DISPUTE RESOLUTION

16.1 Claims Other Than for Defective or Negligent Construction or Condition.
The following provisions of this Section 16.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more unit owners, or any of them, arising out of or related to the Declaration, these Bylaws or the Condominium, other than claims relating to defective or negligent construction or condition as provided in Section 16.2 below:

(a) **Mediation.**

(1) Except as otherwise provided in this Section 16.1(a), before initiating litigation, arbitration or an administrative proceeding in which the Association and an owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Multnomah County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(2) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt

requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(3) If a qualified dispute resolution program exists within Multnomah County, Oregon, and an offer to use the program is not made as required under paragraph (1) of this Section 16.1(a), litigation, arbitration or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under paragraph (3) of this Section 16.1(a), if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(6) The requirements of this Section 16.1(a) do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

(b) **Arbitration.** Any such claim, controversy or dispute shall be first subject to mediation as provided in Section 16.1(a) above or otherwise, and, if not timely settled by mediation, resolved by arbitration in accordance with this Section 16.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

(c) **Excluded matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Section 16.1 (but shall be subject to the applicable provisions of Section 16.1(d) below): (i) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (ii) actions to enforce any order, decision or award rendered by arbitration pursuant to Section 16.3. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Section 16.1.

(d) **Costs and attorneys' fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. In any suit or action brought by the

Association to foreclose its lien or to collect delinquent assessments or in any suit or action brought by Declarant, the Association or any owner or class of owners to enforce compliance with the terms and provisions of the Oregon Condominium Act, the Declaration or these Bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the Association, the prevailing party shall be entitled to recover reasonable attorney fees and costs and disbursements therein and in any appeal therefrom. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

16.2 **Claims for Negligent or Defective Construction or Condition.** The following alternative dispute resolution procedures shall apply to any claim by the Association or any unit owner against Declarant or its members or managers, or any contractor, subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Condominium, and their agents, brokers, successors, employees, representatives, officers, directors, managers and members, and any of their insurers and reinsurers, related to the design, construction or condition of the Condominium, including, but not limited to, claims for defective or negligent construction or design or failure to disclose a defective condition.

(a) **Initial dispute resolution procedures.** In the event of a claim for a construction defect governed by ORS 701.560 to 701.595, the parties shall first comply with the provisions contained therein. In the event the claim is not for a construction defect governed by such provisions, but relates to a claimed defect in the condition of the project, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis on which the recipient is claimed to be liable for the defect. Compliance with the procedures contained in this Section 16.2(a) shall be a condition precedent to mediation, arbitration or litigation of any such claims.

(b) **Mediation.** If the initial dispute resolution proceedings under Section 16.2(a) do not resolve the claims, the parties shall then engage in mediation to resolve the claims. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this section shall be a condition precedent to the filing of any arbitration or litigation proceedings or any claims relating to the matter with the Oregon Construction Contractors Board, and the Association and unit owners waive any right to file any such claims if the Association and unit owners have not fully complied with this Section 16.2(b). The mediation shall be conducted in accordance with the following procedures:

(1) Within 60 days after completion of the proceedings under Section 16.2(a) and delivery of a demand for mediation by one of the parties to the other parties, the parties shall agree on a neutral mediator. If the parties are unable to agree on a mediator within that period, upon application of any party, the presiding judge of the Circuit Court of Multnomah County, Oregon, shall designate the mediator.

(2) Within 60 days after delivery of the demand for mediation, the parties shall exchange with each other all inspection and consultant's reports in their possession pertaining to the claims.

(3) The parties shall have 90 days after exchanging reports in which to perform additional inspections. Any additional reports resulting from such inspections shall be furnished to the other parties prior to mediation.

(4) The mediation shall be conducted after completing parts (1) through (3) above, but within 180 days following delivery of the demand for mediation. The mediator may elect to adjourn the mediation to additional sessions if the mediator determines that further sessions would be beneficial in resolving the disputes.

(5) Each party shall send to the mediation a representative with authority to settle the dispute and will attempt in good faith to resolve all disputes in the mediation.

(6) Any settlement agreed on in mediation shall be documented and executed within 60 days following completion of the mediation.

(c) **Arbitration.** All claims that have not been resolved by mediation shall be resolved by arbitration in accordance with Section 16.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

(d) **Third parties.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of Section 16.2(c) above, if any claim involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the claim and the third party claim determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(e) **Attorney's fees.** Except to the extent otherwise provided by law, in the event of any claim determined by arbitration or by a court of law under Sections 16.2(c) or 16.2(d) above, each party shall bear its own costs, including, without limitation, filing fees, attorney's fees, investigation expenses, consultant's fees and expert's fees. The other costs of arbitration and other court costs shall be divided and paid equally by the parties. To the extent permitted by law, statutory attorney's fees under the Unlawful Trade Practices Act or any other applicable statute are hereby waived.

(f) **Confidentiality.** The parties shall keep all discussions of disputes, settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties other than their attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. In the event of a breach of this confidentiality obligation, the other party shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and

the breaching party waives any claim or defense that the other party has an adequate remedy at law for any such breach, and such party shall not be required to post any bond or other security in connection with any such equitable relief.

(g) **Time periods within which claims must be asserted**. Any claims under this Section 16.2, including, without limitation allegations of property damage or personal injury claims arising out of fungus, spores, or mold, any water intrusion or dampness, or otherwise, regardless of the legal theory or basis of alleged causation, including but not limited to, negligence, professional errors or omissions, strict liability or breach of contract, must be commenced under Section 16.2(a) above within 90 days after the date the Association or the unit owner knew or reasonably should have known of facts sufficient to put them on notice of the claim, **or if earlier**, with respect to the unit and related limited common elements, by no later than the first anniversary of the closing date of the sale of the unit to the first purchaser or, with respect to the general common elements, within 90 days after the date of the turnover meeting as described in Section 3.3 of these Bylaws. Any arbitration or litigation based upon such claims must be instituted within 90 days after completion of the mediation proceedings under Section 16.2(b), or if shorter, the applicable statute of limitations. Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or unit owners actually discovered the alleged basis for the claim.

2.3 **Arbitration**. Any arbitration under these Bylaws shall be conducted in the Portland, Oregon metropolitan area, or such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

(a) **Selection of arbitrator**. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent that the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree on the arbitrator within 30 days after a party's demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Multnomah County, Oregon shall designate the arbitrator.

(b) **Consolidated arbitration**. Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of Section 16.2(c), if any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(c) **Discovery**. The parties to the arbitration shall be entitled to the same discovery that would be available to them in an action in Multnomah County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including without limitation authority to issue orders to produce documents or other materials, to issue

CERTIFICATION

STATE OF OREGON)
)
COUNTY OF Multnomah) ss

COME NOW Ben May and Gregory Terauchi who now depose and say that they are the Chairperson and Secretary, respectively, Association of Unit Owners of Ivy Street Condominiums and that the within Amendment has been approved in accordance with the Declaration and ORS 100.410.

Ben May
Ben May, Chairperson

Gregory Terauchi
Gregory Terauchi, Secretary

Subscribed and sworn to before me this 28 day of April, 2014.
By Ben May, Chairperson



Fara J Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016

orders to appear and submit to deposition, and to impose appropriate sanctions, including, without limitation, award against a party for failure to comply with any order.

(d) **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator deems necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, unless any of the parties is absent, in default or has waived its right to be present.

16.4 **Survival.** The mediation and arbitration agreements set forth in this Article XVI shall survive the transfer by any party of its interest or involvement in the Condominium and any unit therein and the termination of the Declaration or these Bylaws.”

CASA MODERNA LLC,
an Oregon limited liability company

By: Ben May
Ben May, Authorized Signer

STATE OF OREGON)
)
COUNTY OF Multnomah) ss

The foregoing instrument was acknowledged before me this 28 day of April, 2014 by Ben May, authorized signer of Casa Moderna LLC, an Oregon limited liability company, on its behalf.



Fara J Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016

****ATTACHED TO CERTIFICATION****

State of OREGON
County of Multnomah

This instrument was acknowledged before me, Fara Laners, on **May 1, 2014**

By Gregory Terauchi, Secretary

Whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.



Fara Laners
Notary Public for State of Oregon
My commission expires: October 10, 2016

Multnomah County Official Records R Weldon, Deputy Clerk	2014-041228
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1R-AMBYLAWS Pgs=9 Stn=5 ATKRH \$45.00 \$11.00 \$10.00 \$20.00	\$86.00

AFTER RECORDING, RETURN TO:

Michelle D. DaRosa
Attorney at Law
1001 SW Fifth Avenue, Suite 1100
Portland, Oregon 97204

Fidelity National Title of Oregon 20130088565-05

**FIRST AMENDMENT TO DECLARATION AND BYLAWS OF
IVY STREET CONDOMINIUMS**

THIS FIRST AMENDMENT TO BYLAWS OF IVY STREET CONDOMINIUMS is executed by **CASA MODERNA LLC**, an Oregon limited liability company and successor to Lartwo Properties LLC, the original declarant of the Ivy Street Condominiums.

RECITALS

A. **IVY STREET CONDOMINIUMS** (the “**Condominium**”) is a condominium located in the City of Portland, Multnomah County, Oregon, established pursuant to Declaration of Condominium Ownership for the Ivy Street Condominiums recorded March 21, 2003 in the Records of Multnomah County, Oregon, as Document No. 2003-063471 (the “**Declaration**”). The Bylaws of the Association of Unit Owners of the Ivy Street Condominiums (the “**Bylaws**”) were recorded with the Declaration.

B. Declarant owns all of the units in the Condominium.

C. Declarant intends to amend the Declaration and Bylaws for the purpose of correcting the name of the homeowners association referred to in the Declaration, clarifying that there will be no compensation to director except for out-of-pocket expenses, updating the language related to fidelity insurance, and including a dispute resolution provision in the Bylaws.

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

1. Section 14.1 of the Declaration is corrected by removing the wrong name of the homeowners association to be formed by the declarant, and replacing it with the following: “Association of Unit Owners of Ivy Street Condominiums.”

2. Section 4.16 of the Bylaws is hereby amended to read as follows:

“4.16 **Compensation of Directors** No director shall be compensated in any manner, except for out-of-pocket expenses.”

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3. Section 4.18 of the Bylaws is hereby deleted and replaced with the following:

“4.18 Fidelity Insurance.

(i) The Association shall maintain fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association has retained a management agent, such agent shall maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The cost of such insurance may be at the expense of the Association.

(ii) The total amount of fidelity insurance coverage required shall be based upon the best business judgment of the board of directors. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessments on all units plus reserve funds.

(iii) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and each servicer on behalf of the Federal National Mortgage Association ("Fannie Mae").”

4. Section 9.3 of the Bylaws is hereby rescinded and replaced and superseded as follows:

A new article for Dispute Resolution is hereby added to the end of the Bylaws as Article XVI, which shall read:

“Article XVI

DISPUTE RESOLUTION

16.1 **Claims Other Than for Defective or Negligent Construction or Condition.**
The following provisions of this Section 16.1 shall apply to any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or one or more unit owners, or any of them, arising out of or related to the Declaration, these Bylaws or the Condominium, other than claims relating to defective or negligent construction or condition as provided in Section 16.2 below:

(a) **Mediation.**

(1) Except as otherwise provided in this Section 16.1(a), before initiating litigation, arbitration or an administrative proceeding in which the Association and an owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within

Multnomah County, Oregon, that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(2) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(3) If a qualified dispute resolution program exists within Multnomah County, Oregon, and an offer to use the program is not made as required under paragraph (1) of this Section 16.1(a), litigation, arbitration or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(4) Unless a stay has been granted under paragraph (3) of this Section 16.1(a), if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(5) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(6) The requirements of this Section 16.1(a) do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

(b) **Arbitration.** Any such claim, controversy or dispute shall be first subject to mediation as provided in Section 16.1(a) above or otherwise, and, if not timely settled by mediation, resolved by arbitration in accordance with this Section 16.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

(c) **Excluded matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Section 16.1 (but shall be subject to the applicable provisions of Section 16.1(d) below): (i) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (ii) actions to enforce any order, decision or award rendered by arbitration pursuant to Section 16.3. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy

described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Section 16.1.

(d) **Costs and attorneys' fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. In any suit or action brought by the Association to foreclose its lien or to collect delinquent assessments or in any suit or action brought by Declarant, the Association or any owner or class of owners to enforce compliance with the terms and provisions of the Oregon Condominium Act, the Declaration or these Bylaws, including all amendments and supplements thereto or any rules or regulations adopted by the Association, the prevailing party shall be entitled to recover reasonable attorney fees and costs and disbursements therein and in any appeal therefrom. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

16.2 **Claims for Negligent or Defective Construction or Condition.** The following alternative dispute resolution procedures shall apply to any claim by the Association or any unit owner against Declarant or its members or managers, or any contractor, subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Condominium, and their agents, brokers, successors, employees, representatives, officers, directors, managers and members, and any of their insurers and reinsurers, related to the design, construction or condition of the Condominium, including, but not limited to, claims for defective or negligent construction or design or failure to disclose a defective condition.

(a) **Initial dispute resolution procedures.** In the event of a claim for a construction defect governed by ORS 701.560 to 701.595, the parties shall first comply with the provisions contained therein. In the event the claim is not for a construction defect governed by such provisions, but relates to a claimed defect in the condition of the project, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis on which the recipient is claimed to be liable for the defect. Compliance with the procedures contained in this Section 16.2(a) shall be a condition precedent to mediation, arbitration or litigation of any such claims.

(b) **Mediation.** If the initial dispute resolution proceedings under Section 16.2(a) do not resolve the claims, the parties shall then engage in mediation to resolve the claims. The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this section shall be a condition precedent to the filing of any arbitration or litigation proceedings or any claims relating to the matter with the Oregon Construction Contractors Board, and the Association and unit owners waive any right to

file any such claims if the Association and unit owners have not fully complied with this Section 16.2(b). The mediation shall be conducted in accordance with the following procedures:

(1) Within 60 days after completion of the proceedings under Section 16.2(a) and delivery of a demand for mediation by one of the parties to the other parties, the parties shall agree on a neutral mediator. If the parties are unable to agree on a mediator within that period, upon application of any party, the presiding judge of the Circuit Court of Multnomah County, Oregon, shall designate the mediator.

(2) Within 60 days after delivery of the demand for mediation, the parties shall exchange with each other all inspection and consultant's reports in their possession pertaining to the claims.

(3) The parties shall have 90 days after exchanging reports in which to perform additional inspections. Any additional reports resulting from such inspections shall be furnished to the other parties prior to mediation.

(4) The mediation shall be conducted after completing parts (1) through (3) above, but within 180 days following delivery of the demand for mediation. The mediator may elect to adjourn the mediation to additional sessions if the mediator determines that further sessions would be beneficial in resolving the disputes.

(5) Each party shall send to the mediation a representative with authority to settle the dispute and will attempt in good faith to resolve all disputes in the mediation.

(6) Any settlement agreed on in mediation shall be documented and executed within 60 days following completion of the mediation.

(c) **Arbitration.** All claims that have not been resolved by mediation shall be resolved by arbitration in accordance with Section 16.3 below. The decision and award of the arbitrator shall be final, binding and nonappealable.

(d) **Third parties.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of Section 16.2(c) above, if any claim involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the claim and the third party claim determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(e) **Attorney's fees.** Except to the extent otherwise provided by law, in the event of any claim determined by arbitration or by a court of law under Sections 16.2(c) or 16.2(d) above, each party shall bear its own costs, including, without limitation, filing fees, attorney's fees, investigation expenses, consultant's fees and expert's fees. The other costs of arbitration and other court costs shall be divided and paid equally by the parties. To the extent

permitted by law, statutory attorney's fees under the Unlawful Trade Practices Act or any other applicable statute are hereby waived.

(f) **Confidentiality.** The parties shall keep all discussions of disputes, settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties other than their attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. In the event of a breach of this confidentiality obligation, the other party shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and the breaching party waives any claim or defense that the other party has an adequate remedy at law for any such breach, and such party shall not be required to post any bond or other security in connection with any such equitable relief.

(g) **Time periods within which claims must be asserted.** Any claims under this Section 16.2, including, without limitation allegations of property damage or personal injury claims arising out of fungus, spores, or mold, any water intrusion or dampness, or otherwise, regardless of the legal theory or basis of alleged causation, including but not limited to, negligence, professional errors or omissions, strict liability or breach of contract, must be commenced under Section 16.2(a) above within 90 days after the date the Association or the unit owner knew or reasonably should have known of facts sufficient to put them on notice of the claim, **or if earlier**, with respect to the unit and related limited common elements, by no later than the first anniversary of the closing date of the sale of the unit to the first purchaser or, with respect to the general common elements, within 90 days after the date of the turnover meeting as described in Section 3.3 of these Bylaws. Any arbitration or litigation based upon such claims must be instituted within 90 days after completion of the mediation proceedings under Section 16.2(b), or if shorter, the applicable statute of limitations. Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or unit owners actually discovered the alleged basis for the claim.

16.3 **Arbitration.** Any arbitration under these Bylaws shall be conducted in the Portland, Oregon metropolitan area, or such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens").

(a) **Selection of arbitrator.** The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent that the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree on the arbitrator within 30 days after a party's demand for arbitration, upon application of any party, the presiding judge of the Circuit Court of Multnomah County, Oregon shall designate the arbitrator.

(b) **Consolidated arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of Section 16.2(c), if any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree

to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

(c) **Discovery.** The parties to the arbitration shall be entitled to the same discovery that would be available to them in an action in Multnomah County Circuit Court. The arbitrator shall have all of the authority of the court incidental to such discovery, including without limitation authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions, including, without limitation, award against a party for failure to comply with any order.

(d) **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator deems necessary for an understanding and determination of the dispute. The arbitrator shall determine the admissibility of the evidence offered. All evidence shall be taken in the presence of the arbitrator and all of the parties, unless any of the parties is absent, in default or has waived its right to be present.

16.4 **Survival.** The mediation and arbitration agreements set forth in this Article XVI shall survive the transfer by any party of its interest or involvement in the Condominium and any unit therein and the termination of the Declaration or these Bylaws.”

CASA MODERNA LLC,
an Oregon limited liability company

By: Ben May
Ben May, Authorized Signer

STATE OF OREGON)
COUNTY OF Multnomah) ss

The foregoing instrument was acknowledged before me this 25 day of April, 2014 by Ben May, authorized signer of Casa Moderna LLC, an Oregon limited liability company, on its behalf.



Fara Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016

CERTIFICATION

STATE OF OREGON)
COUNTY OF Multnomah) ss

COME NOW Ben May and Gregory Terauchi who now depose and say that they are the Chairperson and Secretary, respectively, Association of Unit Owners of Ivy Street Condominiums and that the within Amendment has been approved in accordance with the Declaration and ORS 100.410.

Ben May
Ben May, Chairperson

Gregory Terauchi
Gregory Terauchi, Secretary

Subscribed and sworn to before me this 25 day of April, 2014.
By Ben May, Chairperson



Fara J Laners
Notary Public for Oregon
My Commission Expires: Oct. 10, 2016

4817-5017-5514, v. 2

****ATTACHED TO CERTIFICATION****

State of OREGON
County of Multnomah

This instrument was acknowledged before me, Fara Laners, on **May 1, 2014**

By Gregory Terauchi, Secretary

Whose identity was established to my satisfaction, and who executed the foregoing instrument, acknowledging to me that the same was executed freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.



Fara Laners

Notary Public for State of Oregon

My commission expires: October 10, 2016