

TDA BYLAWS 2024

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BYLAWS

Of
Tomahawk Destiny Association

ARTICLE I

Definitions, General Provisions, Applicability

Section 1. Definitions. The following terms shall have the following meanings:

- (a) "*Articles*" means Articles of incorporation of Tomahawk Destiny Association.
- (b) "*Association*" means Tomahawk Destiny Association.
- (c) "*Board*" means the Board of Directors of the Association.
- (d) "*CC&Rs*" means the Covenants, Conditions and Restrictions of the Tomahawk Destiny Association, as recorded in the Multnomah County Real Property records.
- (e) "*Boathouse*" means a floating structure for the exclusive use of housing a boat.
- (f) "*Exclusive Use Property*" means those portions of the Moorage designated for the exclusive use of members according to the designations made on individual Membership Certificates.
- (g) "*Float*" means any floating platform attached to the Moorage and includes the term "floating home."
- (h) "*Floating Home*" or "*Houseboat*" means any floating home upon which there is constructed a residential dwelling unit.
- (i) "*Moorage*" means all common elements, including gangways, floating walks, pilings, slips, garages, parking areas, roads, private portions of utility systems, upland property and other improvements. The Moorage consists of both personal property and real property.
- (j) "*Membership Certificate*" means one of the 71 (more or less) certificates evidencing ownership in the Association. (See Article II, section 2).
- (k) "*Owner*" or "*Member*" means the owner of one or more Membership Certificates, and includes the purchaser of a duly executed long-term contract for the purchase of a certificate. The singular term shall include multiple owners of the same certificate.
- (l) "*Slip*" means a berth for mooring a floating home or boathouse.
- (m) "*Transfer of Certificate*" or "*Transfer of Ownership*" means any transfer, voluntary or involuntary, of a member's interest in a Membership Certificate, and includes a transfer pursuant to a duly executed contract of sale, notwithstanding, that the seller's name shall remain on the certificate for the term of the contract pursuant to the agreement of the parties thereto (See Article II, Section 3).
- (n) "*A boat*" as defined in ORS 830.005. means every description of watercraft excluding a seaplane, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

Section 2. Principal Office. The principal office of the Association shall be located as may be designated by the Board of Directors.

Section 3. Purposes. The Association is organized under the provisions of the Oregon Nonprofit Organization Act primarily for the acquisition, management, operation, maintenance, care and improvement of Association property, and for the enforcement of the provisions of the Association's CC&Rs, Articles and these Bylaws, and may also engage in any other lawful activity, including the adoption of Rules and Regulations of the Moorage.

Section 4. Applicability of Bylaws. The Association Members using the Moorage shall be subject to these Bylaws and to all other Rules and Regulations, including the Association CC&Rs and articles.

Article II

Association Membership, Voting

Section 1. Membership in the Association. Upon becoming the legal owner or contract purchaser of a Membership Certificate, an "Owner" shall automatically be a member of the Association and shall remain a member of the association until such time as his ownership ceases for any reason. Ownership shall be determined from the record of ownership maintained by the Association for all purposes of the Bylaws and the administration of the Moorage.

Section 2. Membership Certificates. Membership Certificates of the Association shall be in the form adopted by the Board, shall be signed by the President and Secretary of the Association, and shall be DESIGNATED BY A SEQUENTIAL NUMBER REFERENCING THE TOMAHAWK ISLAND DRIVE SLIP NUMBER TO WHICH THE CERTIFICATE GRANTS THE EXCLUSIVE USE THEREOF. All certificates shall bear a legend reading as follows:

"The rights of any owner of this Certificate shall be subject to the CC&Rs, Articles and Bylaws of the Association, including Rules and Regulations adopted thereunder. One or more of these documents limit and restrict the title and rights of any transferee of this Certificate. Copies of the CC&Rs, Articles, Bylaws and Rules and Regulations are on file and are available for inspection at the office of the Association.

Pursuant to the Bylaws the Association has a continuing security interest of this Certificate to secure performance of all obligations imposed on the Certificate by the CC&Rs, Articles, Bylaws and Rules and Regulations adopted thereunder. The Association shall not consent to the transfer of this Certificate until any and all indebtedness of the owner to the Association is paid in full and until the transferee has agreed to be bound by the foregoing agreements with the Association."

Pursuant to the Bylaws, the Association has certain rights to revoke the exclusive use of property assigned to the owner of this Certificate, and to restrict the transfer of the right of the exclusive use.

Section 3. Transfer of Membership Certificate. As provided in Article X, Section 4, the Association shall have a continuous security interest in each Member's certificate as security for the obligations imposed on a Member by the CC&Rs, Articles, these Bylaws, and Rules and Regulations adopted hereunder. No member may transfer their certificate voluntarily or involuntarily, unless any or all of that Member's indebtedness to the Association has been paid in full and the transferee has supplied a satisfactory credit report and executed a security agreement with the Association. Subject to these limitations, a Member may voluntarily transfer ownership of the certificate, and such transfer shall be made upon the books of the Association. Upon presentation of the old certificate duly endorsed, a new Membership certificate shall be issued by the Association.

Section 4. Voting. There will be one (1) vote per Membership Certificate.

Section 5. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of those members holding at least fifty-one percent (51%) of the vote shall constitute a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a Member. A vote may be cast in person or by proxy. A signed proxy given by a Member to any other Member who represents such Member at meetings of the Association, shall be filed with the secretary. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy. Each proxy shall automatically cease upon revocation and upon sale or transfer of the Membership Certificate of its Owner.

Section 6. Majority Vote. The term "majority vote" or "majority approval" shall mean more than fifty percent (50%) of the votes cast by Members, present in person or by proxy, at a meeting when a quorum is constituted. The majority vote shall be binding on all members for all purposes except where a higher percentage vote is required by law, by the CC&Rs, Articles and these Bylaws.

Section 7. Fiduciaries. An executor, administrator, guardian or trustee may vote in person by signed proxy, with respect to any certificate held in such capacity, whether or not the same shall have been transferred to their name, provided they satisfy the Secretary that they are the executor, administrator, guardian or trustee, holding such certificate in such capacity.

Section 8. Vote Requirements. The following actions may only be taken by no less than a seventy-five (75) percent vote of the Members:

- (a) Sale, exchange or any other transfer of the Association property.
- (b) Changes to the nature of the Ownership created by a Membership certificate.

Article III

Administration, Meetings

Section 1. Association Responsibilities. The Association, through its Board, shall be responsible for enforcing the CC&Rs, Articles, these Bylaws and Rules and Regulations adopted hereunder; administering the Moorage; approving the Associations annual budget; establishing and collecting assessments; and arranging for the operation, management, and maintenance of the Moorage including negotiating and contracting with and supervising any person, persons, or business entity with respect to such matters.

Section 2. Place of Meetings. Formal meetings of the Association shall be held at such a suitable place as convenient to the Members as may be designated by the Board.

Section 3. Annual Meeting. The annual meeting of the Association shall be held in the last quarter of the fiscal year as scheduled by the Board. Notice of the annual meeting shall be given as required by these Bylaws. At the annual meeting, the Members shall elect Directors and Officers to replace those Directors whose terms will expire. The members may also transact such other business of the association as may properly come before them.

Section 4. Special Meetings. The President shall call a special meeting of the Members as directed by a resolution of the Board or upon presentation to the Secretary of a petition signed by members entitled to cast at least thirty percent (30%) of the Association votes. All meetings called because of a petition of Members shall be held at a formal gathering and not by written ballot. The notice of any such meeting shall state the time and place of such meeting, and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of all the Members present at such meeting, provided a quorum is met or as otherwise set out in these Bylaws.

Section 5. Action by Written Ballot. Unless these Bylaws provide otherwise, actions of the Association may be taken by written ballot rather than at a formal meeting, as the Board may elect. Written ballots shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals needed to approve each matter other than the election of directors and officers, and specify a time by which a ballot must be received by the Association in order to be counted. Written ballots must be properly executed and a sufficient number of votes returned to constitute a quorum to pass the proposal specifically propounded on the ballot. The vote by such written ballot shall be determined by the Board within forty-eight (48) hours after the deadline for return of ballots. Within ten (10) days after the ballots have been counted, each Member shall be notified by mail or other delivery of written notice of the results of the written ballot or that a quorum was not returned.

Section 6. Notice of Meeting. The Secretary shall notify all Members of record of each annual meeting, special meeting or action by written ballot. Each notice shall state the purpose of the meeting and the time and place where it is to be held, and shall be sent at least fifteen (15) days, but not more than fifty (50) days prior to the meeting or the date when ballots for an action by a written ballot are required to be returned. The notice shall be mailed or delivered to each Member's address last given the Secretary in writing, by the Member. If ownership of a Membership Certificate has been sold on contract, notice shall be sent to a single address of which the Secretary has been notified, in writing. The mailing or actual delivery of a notice in the manner provided in this Section shall be considered notice served. Any Member before or after the meeting may waive notice of the meeting, in writing.

Section 7. Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of the preceding meeting.
- (d) Reports of Officers.
- (e) Reports of committees, if any.
- (f) Elections of Directors and Officers, if appropriate.
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

Article IV

Board of Directors

Section 1. Number. The affairs of the Association shall be governed by a Board of a minimum of three (3) and not more than seven (7) Directors.

Section 2. Election and Term of Directors. Each Director shall be elected by the Membership for a three (3) year term, with one-third (1/3) of the terms retiring and being filled by vote of the Members each year at the annual meeting. The Board may appoint a nominating committee to submit the names of potential Directors to the Members for consideration at the annual meeting, and shall also accept nominations from the floor by the Association Membership. Directors will be limited to two consecutive terms.

Section 3. Vacancies. Vacancies on the Board caused by any reason other than the removal of a Director by a vote of the Members, shall be filled by a vote of the majority remaining Directors even though they may constitute less than a quorum, or by a sole remaining Director. Each person so elected shall be a Director until a successor is elected upon expiration of the term for which such person was elected to serve.

Section 4. Removal of Directors. At any annual or special meeting, any one or more of the Directors may be removed with or without cause, by a majority vote. A successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by a Member may be given an opportunity to be heard at the meeting. All meetings of the Board, shall be open to Members. Notice of the time and place of Board meetings shall be posted at a place or places on the Moorage at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform Members of such meeting.

Section 5. Organizational meetings. The first meeting of a newly elected Board shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally hold such meeting, providing the majority of the newly elected Directors are present.

Section 6. Regular Meetings. Regular monthly meetings of the Board shall be held at such time and place as shall be determined, by a majority of the Directors.

Section 7. Special Meetings. Special meetings of the Board may be called by the President or Secretary on the written request of at least two (2) Directors. Special meetings of the Board may be called on three (3) days' notice to each Director, given personally or by mail, telephone, telegraph, or facsimile, which notice shall state the time, place, and purpose of the meeting.

Section 8. Conference Call Meetings. Meetings of the Board may be conducted by telephonic, digital, or video communications.. Such meetings may be carried on by means of a "conference call", which require that all Directors participating in the meeting are able to hear and communicate simultaneously with each other. Participation in a meeting according to this section shall constitute presence in person at the meeting. The Directors shall keep telephone numbers on file with the President to be used for telephonic meetings.

Section 9. Waiver of Notice. Before, at or after at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof unless the Director, at the beginning of the meeting or promptly upon the Director's arrival, objects to holding the meeting or transacting business at the meeting and does thereafter vote for or assent to any action taken at the meeting.

Section 10. Board of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members.

Section 12. Other Duties. In addition to all other duties imposed and authority granted by these Bylaws or by resolutions of the Association, the Board shall have the authority to carry out and shall be responsible for overseeing the following matters:

- (a) Operation, care, upkeep, maintenance, repair and supervision of the Moorage.
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Association.
- (c) Collection of assessments of the Members, both apportioned assessments and Individual assessments.
- (d) Payment of all expenses of the Association, instituting and maintenance of a voucher system for such payment which shall require a sufficient number of signatories on checks and vouchers thereon as shall be reasonably necessary to present misuse of Association funds.
- (e) Employment and dismissal of such personnel as are necessary for the maintenance, upkeep and repair of the Moorage.
- (f) Employment of legal, accounting and other personnel to perform such services as may be required for the proper administration of the Association.
- (g) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- (h) Obtaining insurance or bonds pursuant to the provisions of these Bylaws.
Making additions and improvements to, or alterations of the Moorage, provided no such project may be undertaken by the Board if the total cost will exceed the amount of ten thousand dollars (\$10,000), unless the project has been approved by at least fifty-one percent (51%) of the votes of the Members. This limitation shall not be applicable to repairs or maintenance undertaken pursuant to paragraph (a) above.
- (i) Executing, acknowledging, delivering and recording leases, easements, rights of ways, licenses, and other similar interests affecting the Moorage.
- (j) Promulgation and adoption of reasonable Rules and Regulations deemed necessary or advisable for management, administration, or use of any part of the Moorage and to supplement, interpret or apply the Bylaws. The Rules and Regulations may be amended by the Board. The Rules and Regulations may provide for penalties to be charged against persons violating provisions of the Bylaws or Rules and Regulations, and for late charges which shall be paid in addition to interest if assessments are not paid when due. All such penalties and late charges shall be deemed special assessments imposed against the Member upon whom they are assessed. Each Owner, Member, resident and guest in the Moorage specifically covenants, by virtue of their interest in or use of any portion of the premises, that Association Rules and Regulations may be passed governing any portion of the Moorage and that all parties shall comply with such Rules and Regulations.
- (k) Enforcement by legal means of the provisions of the CC&Rs, Articles, Bylaws and such Rules and Regulations as may be adopted.

- (l) Arranging for all utility services for the Moorage (including, if deemed appropriate, utility services being separately metered and charged to individual Members) and determining formulas for apportioning if deemed necessary and feasible by the Board, where the same are not separately metered.

Section 13. Annual Budget. The Board will prepare a recommended annual budget to be presented at the annual general meeting for Membership approval.

Section 14. Reports and Audits.

- (a) The Board, or its designee, shall keep detailed, accurate records, in chronological order, of the receipts and expenditures affecting the Moorage, itemizing the maintenance and repair expenses of the Moorage and any other expenses incurred. Such records shall be available for examination by Members at convenient hours of weekdays.
- (b) An annual report of the receipts and expenditures of the Association shall be rendered by the Board to all Members within ninety (90) days after the end of each fiscal year. From time-to-time the Board, at the expense of the Association, may obtain an audit of the books and records pertaining to the Association and furnish copies thereof to the Members. UPON SIXTY DAYS PRIOR NOTICE any Member may, at their own expense, cause an audit or inspection to be made of the books and records of the Association.

Section 15. Managing Agent. The Board may employ a managing agent, to be compensated in an amount established by the Board, to perform such duties and services as the Board shall authorize.

Section 16. Compensation of Directors. No Director shall be compensated in any manner, except for out-of-pocket expenses. Board members may be reimbursed as needed, including for expenditures above \$100 when approved by majority vote of the Board.

Article V Officers

Section 1. Designation. The principal Officers of the Association shall be a President, Vice-President, Secretary and Treasurer. The Board may appoint any such Officers as its judgment may be necessary or desirable.

Section 2. Election and Term of Officers. The Officers of the Association shall be elected by the Board of Directors at the next scheduled Board meeting. All Officers must be Certificate holders and must reside in the Moorage. If any office shall become vacant, the Board shall appoint a successor to fill the unexpired term at any regular meeting of the Board, or at any special meeting of the Board called for that purpose.

Section 3. Removal of Officers. Both the removal of an officer and appointment of a successor require a majority vote of the Board.

The Board may remove any Officer, with cause, and appoint a successor at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and be a Member of the Board. The President shall have all of the powers and duties which are usually vested in the Chief Executive Officer of an Association.

Section 5. Secretary. The Secretary shall keep the minutes of all meetings of the Association. The Secretary shall attend to all of the giving and serving all notices to the Members and Directors. The membership records and such other records of the Association, as the Board may direct, shall be held in the Association office with a monthly backup of the records held off premises. Minutes of the Board meeting, annual meeting, and special meetings shall be posted within three (3) working days on the bulletin board for a minimum of fourteen (14) days.

Section 6. Treasurer. The Treasurer shall have the responsibility for overseeing Association funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate records of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for overseeing all required financial statements. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board. The Treasurer shall perform all other duties incidental to the office of Treasurer and oversee the managing officers bookkeeping.

Section 7. Compensation of Officers. No Officer shall receive any compensation from the Association for holding an office.

Article VI

Association Common Property, Association Exclusive Use Property, And Use Restrictions

Section 1. Association Common Property. The Association owns, as common property, held for the benefit of all of its Members, the real property and improvements that comprise the Moorage.

The commonly owned property is divided into those areas and improvements which are owned in common and intended for the general use of all Members (e.g., roads, parking areas, ramps, walkways, shared utilities) ("Common Use Property") and Exclusive Use Property which includes those areas and improvements which are owned in common but intended for the exclusive use of particular Members (e.g., the slip or area identified on each Membership Certificate and any improvements specifically associated with that slip or residence area as provided in the following sections):

- (a) The clear water area located between the designated exclusive use property shall be controlled as common use at the sole discretion of the Board of Directors.

- (b) Tender and swim floats are allowed only if the total depth of your floating home and attached floats do not exceed sixty (60) feet unless they were "granted a legacy exception" at the time of Moorage purchase, or if any addition thereof interferes, intrudes or hinders navigation and or access in the clear water areas. The mooring of personal boats may protrude beyond the individual's slip as long as it does not impede navigation or become a nuisance.

Section 2. Exclusive Use Property: Designation or Boundary. The Moorage includes certain property and improvements intended for the exclusive use of individual Members. This exclusive use property and improvements consist of not less than twenty-five feet (25') of walkway frontage.

Section 3. Exclusive Use Property: Use Rights. Each Membership Certificate shall identify the Exclusive Use Property assigned to the Owner of that Membership Certificate. Each Membership Certificate shall also state that the Bylaws include provisions under which (1) the right of exclusive use of such property can be revoked, and (2) the transfer of the right of exclusive use can be restricted.

Section 4. Revocation of Right to Occupy or Use Exclusive Use Property. The Association may revoke a Member's right to occupy and use Exclusive Use Property as provided in Article IX. In any event, such right shall be revoked automatically upon the earliest of the following events:

- (a) Subject to a vote of the Board of Directors and Oregon laws as they may apply.
- (b) Dissolution of the Association.

Section 5. Transfer of Right to Occupy or Use Exclusive Use Property. No Member shall transfer, assign, or lease any right of the Member to occupy or use Exclusive Use Property, other than by transferring the Membership Certificate, provided however that at the request of a Member the Board may, in its sole discretion, permit the Member to lease the Exclusive Use Property as provided in Article XI, Section 4.

Article VII

Parking

Section 1. Parking areas. Parking areas are provided unless the Rules and Regulations provide otherwise. Each slip certificate holder is entitled to the use of two (2) spaces. Unused parking spaces are available for the use of other Members and their guests subject to any parking policy defined by the Association.

Section 2. Garages. Each garage shall constitute one parking space allocation of the two parking spaces allocated to each Member. Garages are to be used for vehicles. Existing rental agreements will continue until terminated. Vacancies will be filled by the ongoing waiting list. Renters will not be allowed rental of a garage.

Article VIII

Expenses and Assessments

Section 1. Assessments. All Members are obligated to pay assessments imposed by the Board on behalf of the Association to meet all the Association expenses. Assessments may not be waived due to limited or non-use of a slip.

Section 2. Determination of Association Expenses. Association expenses shall include:

- (a) Expenses of administration.
- (b) Expenses of maintenance, repair or replacement of the Moorage.
- (c) Cost of insurance or bonds obtained in accordance with the Association Articles, these Bylaws, or any Association Rules and Regulations.
- (d) Costs of funding reserves.
- (e) Utilities with a common meter, or commonly billed such as trash collection or Moorage lighting.
- (f) Real or personal property taxes for Association property.
- (g) Any other items properly chargeable as an expense of the Association.
- (h) Any other item agreed upon as a common expense by a majority vote of the Members.

Section 3. Annual Budget. At least annually, the Board shall estimate the expenses to be incurred during the coming year or period, and determine the annual assessments and any special assessments to be paid during such year or period. Provisions may be made for funding and maintaining reasonable reserves for contingencies, operations and maintenance, repair, replacement and improvement of the Moorage, particularly those elements which must be replaced on a periodic basis.

An accounting shall be taken of any expected income and surplus available from the prior years operations. The determination of assessments for any initial or partial year of operation may be made by the Board at any reasonable time. The Board may also impose special assessments against one or more Members as provided herein. If any sums estimated and budgeted for any purpose at any time prove inadequate for any reason (including nonpayment for any reason of any Member's assessments), the Board may at any time levy a further assessment.

Section 4. Special Assessments. The Board may impose special assessments upon an individual Member or Members for expenses attributable to such Member or Members, including but not limited to damages, special repairs or improvements, penalties, late charges and interest for failing to make assessments on time.

Special assessments may also be imposed to recover Association costs and expenses for collecting or enforcing the Association Bylaws or Rules and Regulations.

Special assessments may be imposed as a result of uninsured casualty losses or other significant costs which are not funded by current revenues.

Section 5. Omission of Assessments. The omission by the Board before the expiration of any fiscal year to correct the budget estimate and assessments hereunder for the forthcoming year shall not be deemed a waiver or modification in any respect of the provisions of these Bylaws, or a release of the Members of the obligation to pay the assessments or any installment thereof.

Section 6. Assessments: Debt Payment by Member; Installments; Interest. Each assessment shall be the joint and several obligations of the Owner or Owners of the Membership Certificate to which it is assessed as of the time it is assessed. Each Member shall pay assessments to the Association in equal installments on or before the first day of each calendar month, which is the installment due date, or in such other reasonable manner as the Board may direct. Special assessments shall be paid in such installments and on such due dates as the Board may direct. Any assessment installment unpaid when due shall be delinquent and bear interest from its due date until paid at eighteen percent (18%) per annum (or the maximum allowed by law) and become subject to any and all remedies specified in Article IX.

Section 7. Separate Funds.

(a) Capital Improvements. In the case of any duly authorized addition, improvement or alteration to the Moorage exceeding a cost of ten thousand dollars (\$10,000), the Board may by resolution establish alteration to the Moorage exceeding a cost of two thousand five hundred dollars (\$2,500) in a separate fund, and by resolution and vote of the Membership, special assessments for the same, the proceeds of which shall be used only for the specific purposes described in the resolution.

(b) Reserve Fund. In establishing reserves for operations, maintenance, repair or replacement of those elements which must be replaced on a periodic basis, the Board may by resolution establish one or more separate funds for such purposes.

Section 8. Statement of Unpaid Assessments. The Board shall provide any Member who requests a written statement of their unpaid assessments, within 30 business days of the request.

Article IX

Collection of Assessments, Enforcement of Actions

Section 1. Authority to Enforce and Collect. The Board shall take prompt action to enforce the provisions of the CC&Rs, Articles, these Bylaws, and any Rules and Regulations adopted hereunder, against any violator, and to collect any unpaid assessment. The Board may exercise one or more of the remedies, separately or concurrently, specified in this Article, as well as any other remedies which may be available under the law. In any collection or enforcement action, the delinquent or violating Member shall pay the Association's costs and expenses of collection and/or enforcement, including reasonable attorney fees whether or not suit is actually commenced. All such costs and expenses shall be deemed a special assessment to the Member against which they are assessed and due and payable upon demand.

Section 2. Cumulative Remedies. In the event that a Member fails to pay an installment of an annual or special assessment for more than ten (10) days after it is due, or in the event that a

Member has violated a provision of the Association CC&Rs, Articles, these Bylaws or Rules and Regulations adopted hereunder and has failed to cure the violations within fifteen (15) days after receipt or written notice from the Board of the existence of the violation. The Board has the right (but not the obligation) to take one or more of the following actions upon giving the Member fifteen (15) days written notice of its intention to do so.

- (a) Acceleration of Assessment. The Board may declare the Member's entire amount of special assessment due immediately and interest shall thereafter accrue on the entire assessment at eighteen percent (18%) per annum (or the maximum allowed by law).
- (b) Termination of garage rental. The Board may immediately terminate the Member's right to park or to use the Member's rented garage.
- (c) Abatement of Violations. To the full extent of the law, the Board may enter any property owned by the Association or the Member on which or as to which the violation exists and summarily abate and remove, at the expense of the Member, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof and the Board shall not thereby be deemed guilty of any manner of trespass.
- (d) Revocation of Right to occupy and Use Exclusive Use Property. The Board may revoke the right of the Member to occupy and Use the Exclusive Use Property associated with the Member's Membership Certificate, and may demand immediate removal of the Member's Property from the Moorage. The Board may institute legal action to obtain injunctive or other equitable relief to require removal of Member's property from the Moorage.
- (e) Rental of Slip to Third Party. Upon revocation of the Member's right to occupy and use the Member's Designated Exclusive Use Property, the Association may rent or lease the slip to others at such rent and on such terms as the Board, in its sole discretion, deems appropriate. All rent collected from such a rental shall be applied in the following order: Cost of recovering possession, including reasonable attorneys' fees; expenses of renting; unpaid assessments, plus interest; and funding of the security deposit, if any, required by the Board. At such time as the Board has received sufficient funds to complete the above application, the excess rent, if any, shall be remitted to the Member.
- (f) Injunctive Relief. The Board may institute legal action to obtain injunctive or other equitable relief to correct any violation by the Member of the Association CC&Rs, Articles, Bylaws, or Rules and Regulations.
- (g) Money Judgment. The Board may institute legal action seeking compensation for any unpaid assessments and/or any and all damages incurred by the Association as a result of violations of the CC&Rs, Articles, these Bylaws or Association Rules and Regulations, and thereby obtain a money judgment against the Owner or Owners of the Membership Certificate.

Section 3. Security Deposit. The Board may require a Member to make and maintain a security deposit. This deposit shall not be in excess of six (6) months of estimated assessments. The deposit shall be held in a separate fund, for the amount of said Member. In the event a Member is ten (10) days or more delinquent in payment of their assessments, the Board may apply the Member's deposit to any outstanding delinquency. Security deposits required by the Board need not be uniform as to particular Members.

Section 4. Security Interests. Each Member, upon purchase of a Membership Certificate, agrees the Association shall have a security interest in the Membership Certificate as collateral for all

obligations imposed on the Member by the Association CC&Rs, Articles, Bylaws, and Rules and Regulations adopted hereunder.

Section 5. Disposition of Collateral. If a Member has failed to pay an annual or special assessment, plus any interest that may be due on unpaid installments thereof (or on the entirety thereof if accelerated), within ninety (90) days after it is due, or if a Member has violated a provision of the Association CC&Rs, Articles, the Bylaws or Rules and Regulations adopted hereunder and has failed to cure the violation within ninety (90) days after the receipt of notice from the Board of the existence of the violation, the Board may exercise any and all rights of a secured party in ORS Chapter 799 including the disposition of the collateral pursuant to ORS 79.5040 or ORS 79.5050(2). This right shall exist, notwithstanding that the Board may have previously exercised other rights against the Member for collection and enforcement.

Section 6. Waiver. Failure of the Board to exercise any of the rights described in this Article, or any right provided by law, in a specific action, shall in no way waive the right of the Board to exercise these rights in another action.

Article X

Architecture and Appearance

Section 1. Architectural Control. In order to ensure that the Moorage will remain a residential area of high standards, quality and value, the President shall cause an Architectural Review Committee (ARC) to be elected. The ARC shall consist of five (5) Members, each serving a three-year term. Each year at the general membership meeting, replacement ARC committee members shall be nominated and elected.

The ARC shall have the authority and responsibility to control matters such as exterior appearance of the Moorage, floating homes, carports, floats, structures, improvements or remodeling, or landscaping which may be a part of or connected to the Moorage. No structures, improvements or landscaping may be constructed or connected to the Moorage, or altered or changed after being constructed or connected to the Moorage without the prior written approval of the ARC. No ARC member can vote on their own project or complaint filed against them. Approval requires a majority vote. Such approval shall not be unreasonably withheld.

Approval or disapproval by the ARC may be made contingent upon county, city, state, and federal laws and regulations.

Section 2. Architectural Guidelines. The following criteria shall serve as guidelines for the ARC. However, the committee shall have the authority to approve or disapprove, consistent with applicable governmental requirements, any particular floating home, float, or other structure or improvement. Approval shall not be unreasonably withheld.

- (a) All floating homes must comply with governmental requirements regulating floating homes. All changes to, and new construction of, floating homes and upland structures that require a building permit must get such a permit from the City of Portland.

- (b) The ARC may regulate the nature and appearance of items on, moored to or attached to the floats and floating homes which are visible from the walkways, or from other floats or floating homes.

Section 3. Appeal Process. The ARC shall review all proposals, plans and complaints relative to architecture and appearance. If a Member's request is denied, or a complaint is upheld, a Member has the following options:

- (a) Request a re-hearing by the ARC within seven (7) days from final posting by ARC of its recommendations.
- (b) If a request is again denied, or the complaint upheld, the Member may, at the next membership meeting with a quorum present, refer the issue to the general membership for a vote. The Member shall first be given a reasonable time to present their case at this meeting. A majority approval shall override the ARC ruling.
- (c) If majority approval is still not received, recourse under Article XIX of TDA Bylaws can apply.

Article XI

Use Restrictions

Section 1. Occupants of Floating Homes. All floating homes shall be residential dwellings. No floating home shall be occupied by more than two persons per occupiable bedroom. Temporary social guests of the owner shall not be deemed occupants within the meaning of this section. Existing multiple dwellings shall be given a legacy exception.

Section 2. Live Aboard Use. No boat may be used as a residence. Article I, Section 1, (n).

Section 3. Residential Use. Floating homes shall be used primarily for residential purposes, unless otherwise approved by the Board.

Section 4. Lease of Slips, Floating Homes. There shall be no leases or subleases without Board approval.

Section 5. Miscellaneous.

- (a) No garbage, trash, building materials or other waste shall be deposited or maintained in any part of the Moorage or on any floating property, except in areas or containers designated for such items.
- (b) Members and their invitees shall exercise extreme care about creating disturbances, making noises, or amplifiers that may disturb other Members.
- (c) No Member or invitee shall carry on obnoxious or offensive activities which may be or become an annoyance or nuisance to other Members.
- (d) No boats or floating devices or any sort may be moored at the Moorage without the consent of the Board, with the following exceptions:

- (1) The boat is moored at a Member's slip and the Member has expressly consented to the mooring.
- (2) Temporary social guests.
- (3) Emergency purposes.

Article XII

Maintenance

Section 1. Maintenance of Moorage. The Association shall maintain the Moorage in good order and repair and in a clean and attractive appearance. The standard of such maintenance and appearance shall be at the Board's sole discretion. Neither the Association nor the Board shall be liable to a Member or third party for its failure to maintain any portion of the Moorage in a particular manner.

Section 2. Maintenance of Floats and Homes. Each Member shall maintain their floating home, boats, floats, and all other personal property belonging to them at the Moorage, in good order and repair and in a clean condition. If a Member fails to do so, the Board shall have the right, after notice to the Member, to perform such functions on behalf of the Member at the Member's expense. In such an event, the expense shall be deemed a special assessment against the Member. Each Member shall keep the Member's Floating Home and Boathouse free from liens, except for such liens which are mortgages for the purchase of the Slip. Any such liens which are also assessed against the Association shall be deemed a special assessment against that Member.

Article XIII

Association Responsibilities

Section 1. Dredging. The Association shall maintain adequate and reasonable water depths throughout the Moorage including individual slips to prevent grounding of floating homes.

Article XIV

Insurance and Bonds

Section 1. Fidelity Bonds. The Board may require that any person or entity who handles or is responsible for Association funds furnish such fidelity bond as the Board deems adequate. The premiums on such bonds shall be paid by the Association.

Section 2. Insurance. The Board shall secure and maintain in the name of the Association the following insurance coverage on the Moorage and shall pay for the same out of common expense funds.

- (a) Fire and Extended Coverage. If available, a policy or policies of property insurance written to one hundred percent (100%) of replacement value of the Moorage, including all

improvements and personal property of the Association. A policy of business interruption including loss of rents and extra expense shall be written to one hundred percent (100%) of anticipated annual revenues. Such insurance shall provide for protection against at least the following: Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, of debris removal, governmental ordinance and special form perils ("all risk"). Broader coverage represented by "Perils of the Sea" or "Difference in Conditions" should be diligently considered.

- (b) Liability Coverage. A comprehensive general liability policy or policies insuring the Association, its officers and directors (acting in that capacity), and their employees against any liability to the public, incident to the ownership and or use of the Moorage. Units of liability under such insurance policy or policies shall not be less than five million dollars (\$5,000,000) covering claims for bodily injury and/or property damage arising out of a single occurrence.
- (c) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' prior written notice to the insured. All policies of property insurance must provide that the Association has the right to restore damage on a replacement cost settlement or the right to take an actual cash value settlement without restoration.
- (d) Fidelity Coverage. In addition to the coverage outlined above, the Board shall secure and maintain in the name of the Association as obligee, fidelity insurance to protect the Association against dishonest acts by its employees responsible for handling the funds of the Association. All such insurance shall be written in an amount equal to at least ten percent (10%) of the estimated annual revenues of the Association. Insurance coverage shall be diligently sought extending the insurance to protect the Association against dishonest acts by its Owners, Directors and Trustees. Such insurance shall be subject to the condition that it may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days prior written notice to the insured other than by cancellation of an individual found to be dishonest.
- (e) In addition to all other insurance coverage required herein, the Board shall secure and maintain in the name of the Association, Workers' Compensation, and/or Longshoremen and Harbor workers and other applicable coverage to the extent necessary to comply with any applicable laws.
- (f) Directors and Officers Errors & Omissions. A Directors and Officers Errors and Omissions policy insuring the Association, its Officers and Directors (acting in that capacity), and their employees against any liability arising out of an error or omission by the above names parties. Limits of liability under such insurance policy or policies shall not be less than one million dollars (\$1,000,000) covering all claims for errors or omissions arising out of a single occurrence.

Section 3. Review of Insurance Policies. At least annually, the Board shall review all insurance carried by the Association. The review shall include all improvements made to the Moorage. A review by a representative of the insurance carrier writing the policy is preferred but a "Waiver of Coinsurance Penalties" or "Agreed Amount" should be strived for.

Section 4. Members Insurance. Each Member will be responsible for securing a personal liability policy that will indemnify the Association for damage to the Moorage caused by the Member's negligence and indemnify the Association for any actions taken by Members, guests or invitees

against the Association based upon negligent acts. Such insurance policy or policies shall name the Association as an additional insured to the extent of its interest and shall be in an amount determined by the Board but not less than three hundred thousand dollars (\$300,000) covering all claims for bodily injury and/or property damage arising out of a single occurrence. The member waives all rights of subrogation and holds the Association harmless for any losses incurred. The insurance must comply with the requirements that it cannot be canceled or substantially modified (even for nonpayment of premiums) without thirty (30) days' prior written notice to the insured and to the Association. Evidence of each Member's insurance will be kept on file with the Association. The Board may adopt a policy defining a system of review to ensure that Members' insurances are kept current.

Article XV

Damage and Destruction

Section 1. Insurance Proceeds Sufficient to Cover Loss. In case of fire, casualty, or any other damage and destruction the insurance proceeds of the policy, if sufficient to reconstruct the Moorage property damaged or destroyed, shall be applied to such reconstruction. Reconstruction of the damaged or destroyed property, as used in this Section, means restoring the property to substantially the same condition in which it existed prior to the fire, casualty, or disaster, with each slip having the same boundaries as before. Such reconstruction shall be accomplished under the direction of the Board.

Section 2. Insurance Proceeds Insufficient to Cover Loss. If the insurance proceeds are insufficient to reconstruct the damaged or destroyed property, the damage to, or destruction of, such property shall be promptly repaired and restored, using the proceeds of insurance, if any, for that purpose, and all the Members shall be liable for assessment for any deficiency for such reconstruction; provided, however, if seventy-five percent (75%) or more in value of all the Moorage property is destroyed or substantially damaged and if by seventy-five percent (75%) or more of the votes, the Members agree that the property shall not be repaired, reconstructed or rebuilt, then the Association shall be dissolved and the assets distributed pursuant to the Articles.

Article XVI

Condemnation

The Board shall have the sole authority to negotiate with any public or private body or person having the power of eminent domain and to sue or defend in any litigation involving such bodies or persons with respect to the Members. Prompt written notice of any such proceeding shall be given to the Members. With respect to a taking of a portion of the Moorage, the Board shall arrange for the repair or restoration out of the proceeds of the award unless by two-thirds (2/3) or more of the votes of the Association the Members agree not to repair or restore. In that event, and in the event of a total taking, the Association shall be dissolved and the Association assets distributed pursuant to the Articles.

Article XVII

Dissolution

Section 1. Dissolution Generally. If the Association is dissolved pursuant to the CC&Rs, Articles or these Bylaws, the Association assets will be distributed pursuant to the Articles but subject to the provisions below.

Section 2. Options Upon Dissolution. Prior to the distribution of Association assets upon dissolution, the Association shall have the options specified below as part of the Association's dissolution and liquidation activities:

The Association's debts shall be paid and its remaining assets shall be Distributed to its Members in proportion to the number of votes each Member has, all in accordance with the Articles.

Article XVIII

Indemnification of Directors, Officers, Employees and Agents

The Association shall indemnify any Director, Officer, employee or agent who was or is a party or is threatened to be made a party of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that they are or were a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees, judgments, fines, and amounts paid in settlement) incurred by said person in connection with such suit, action, proceeding, or appeal therefrom; if they acted in good faith and in a manner to reasonably believed to be in, or not opposed to, the best interest of the Association and, with respect to any criminal action, or proceedings, had no reasonable cause to believe their conduct was unlawful.

The termination of any action, suit, or proceeding by judgment, order settlement, conviction, or with a plea of 'nolo contendere' or its equivalent, shall not itself create a presumption that a person did not act in good faith and in a manner which they reasonably believed to be in, or not opposed to, the best interest of the Association and, with respect to any criminal actions or proceedings, had reasonable cause to believe their conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit, or proceedings as incurred, subject only to the right of the Association to seek reimbursement of any such payment, should it be proven at a later time that said person had no right to such payments. All persons are ultimately held liable for their actions on behalf of the Association as a Director, Officer, employees, or agents and Members of the Association who participated with or benefited from the acts which created said liability.

Article XIX

Disagreements, Suits and Actions

All disagreements including but not limited to: enforcement actions, exclusive use or common property, collections of assessments, architecture and appearance, use restrictions, and maintenance of Moorage, floats and homes shall be subject to mediation. Should litigation result from such disagreement the Owner or Owners of a Membership Certificate, jointly or severally, will in addition to all obligations, pay the costs of such suit or action, including reasonable attorneys' fees to be fixed by the trial court and, in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees in the appellate court to be fixed by such court.

In the event suit of action is commenced by the Board for the collection of any amount sue or enforcement of any rights of the Association pursuant to the Association CC&Rs, Articles, Bylaws, or Rules and Regulations adopted hereunder, the Owners of a Membership Certificate, jointly or severally, will in addition to all other obligations pay the costs of such suit or action, including reasonable attorneys' fees to be fixed by the trial court and, in the event of an appeal, the cost of the appeal, together with reasonable attorneys' fees in the appellate court to be fixed by such court.

Article XX

Miscellaneous

Section 1. Notices. All notices to the Association or the Board shall be sent in care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate.

All notices to any Member shall be sent to such address as may have been designated by them, in writing, to the Board, or if no address has been designated, then to the Member's slip.

Section 2. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

Section 3. Invalidity: Number, Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience or reference and shall in no way limit any of the provisions of these Bylaws.

Section 4. Administrative Charges. The Association may charge the member additional administrative charges incurred for, but not limited to, violation of the governing documents:

- (a) Fees charged by the Moorage to collect funds payable to the Association.

- (b) Owner bankruptcy.
- (c) Foreclosure action or deed in lieu of foreclosure.
- (d) Notification, filing and satisfying liens.
- (e) Enforcement of the Associates Rules, Bylaws, Declaration or Policies.
- (f) Litigation.
- (g) Coordinating repairs to the Association's common areas that result from the acts of members, their tenants or guests.

Article XXI

Amendments to Bylaws

The Bylaws may be amended by the Association in a duly constituted meeting or ballot meeting called for such purpose, if such amendment is adopted by affirmative vote of more than fifty percent (50%) of the total membership.