

EXHIBIT D

**BYLAWS OF
LODGES AT CANNON BEACH FRACTIONAL OWNERS ASSOCIATION**

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**BYLAWS OF
LODGES AT CANNON BEACH FRACTIONAL OWNERS ASSOCIATION**

Article 1

DEFINITIONS

1.1 **Association**. “Association” means **LODGES AT CANNON BEACH FRACTIONAL OWNERS ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Oregon.

1.2 **Articles of Incorporation**. “Articles of Incorporation” means the Articles of Incorporation of the Association.

1.3 **Declaration**. The “Declaration” means the Declaration of Fractional Program for Lodges at Cannon Beach Fractional Ownership Program to which these Bylaws are attached, as the same may be subsequently amended or supplemented pursuant to the terms thereof.

1.4 **Incorporation by Reference**. Except as otherwise provided herein, the terms that are defined in Section 1 of the Declaration are used in these Bylaws as therein defined.

Article 2

MEMBERSHIP

2.1 **Membership**. Every Owner in the Program shall, immediately upon creation of the Association and thereafter during the entire period of such ownership, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership. The Association shall have two classes of membership, Class A and Class B, as set forth in the Declaration.

2.2 **Membership List**. The Manager shall maintain a membership list showing the name and address of each Owner. The Manager may accept as satisfactory proof of such ownership a duly executed and acknowledged conveyance, a title insurance policy, or other evidence reasonably acceptable to the Manager.

Article 3

MEETINGS AND VOTING

3.1 **Place of Meetings**. Meetings of the members of the Association shall be held at such reasonable place as may be designated in the notice of the meeting.

3.2 **Turnover Meeting.** Declarant shall call the first meeting of the Owners to organize the Association no later than the next November after 90 percent of the Fractional Interests in Units have been sold by Declarant. Notice of such meeting shall be given to all Owners as provided in Section 3.5. If the Declarant fails to call the meeting, the meeting may be called and notice given by any Owner. The expense of giving notice shall be paid or reimbursed by the Association. In the event of a lack of quorum at such turnover meeting, it may be adjourned as provided in Section 3.6. Nothing in this section shall be construed as preventing Declarant from calling the turnover meeting before such date or from calling informal, informational meetings of the Owners.

3.3 **Annual Meeting.** The annual meeting of the Association for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such reasonable hour and on such reasonable day as may be established by the Board of Directors.

3.4 **Special Meetings.** A special meeting of the Association may be called at any time by the President or by a majority of the Board of Directors. A special meeting shall be called upon receipt of a written request stating the purpose of the meeting from members having at least 30 percent of the voting rights entitled to be cast at such meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

3.5 **Notice of Meeting.**

(a) Written or printed notice stating the place, day and hour of Association meetings, the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, any proposal to remove a director or officer and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting. Such notice shall be given either personally or by mail, by or at the direction of the Manager, to each member entitled to vote such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at his or her most recent address as it appears on the records of the Association.

(b) When a meeting is adjourned for 30 days or more, or when a redetermination of the persons entitled to receive notice of the adjourned meeting is required by law, notice of the adjourned meeting shall be given as for an original meeting. In all other cases, no notice of the adjournment or of the business to be transacted at the adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken.

3.6 **Quorum.** At any meeting of the Association, members having at least 20 percent of the voting rights entitled to be cast at such meeting, present in person or by proxy, shall constitute a quorum, except when a larger quorum is required by the Declaration. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a member or members. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time not less than 48 hours or more than 30 days from the time the original meeting

was called until a quorum is present. The quorum for the adjourned meeting shall be reduced to 10 percent of the voting rights entitled to be cast at the meeting, present in person or by proxy.

3.7 **Voting Rights**. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Fractional Interest owned. When more than one person holds an interest in any Fractional Interest, all such persons shall be members. The vote for such Fractional Interest shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Fractional Interest.

Class B. The Class B member shall be the Declarant and shall be entitled to three votes for each Fractional Interest owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When 90 percent of the Fractional Interests in the Program have been sold and conveyed to Owners other than a successor Declarant; or

(b) At such earlier time as Declarant may elect in writing to terminate Class B membership.

3.8 **Fiduciaries and Joint Owners**. An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Fractional Interest owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided that such person shall satisfy the Manager that he or she is the executor, administrator, guardian or trustee, holding such Fractional Interest in such capacity. Whenever any Fractional Interest is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such Fractional Interest may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of disagreement among the co-Owners, the vote of such Fractional Interest shall be disregarded completely in determining the proportion of votes given with respect to such matter, unless a valid court order establishes the authority of a co-Owner to vote.

3.9 **Tenants and Contract Vendors**. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Fractional Interest shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Fractional Interest shall be exercised by the vendee of any recorded land sale contract of such interest.

3.10 **Proxies**. Every member entitled to vote or to execute any waiver or consent may do so in person, by absentee ballot, or by written proxy duly executed and filed with the Manager. An Owner may not revoke a proxy given pursuant to this section, except by actual notice of revocation to the Manager or by attending and voting at the meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term. Mortgagees may designate a representative to attend any meeting of the Association.

3.11 **Majority Vote.** The vote of a majority of the voting rights entitled to be cast by the members present or represented by absentee ballot or proxy, at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws.

3.12 **Rules of Order.** Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Association shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

3.13 **Ballot Meetings.**

(a) At the discretion of the Board of Directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member who is entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of Owners has voted, and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected. If approval of a proposed action otherwise would require a meeting at which a specified percentage of Owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met. Votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(c) All solicitations for votes by written ballot shall state the number of responses needed to meet any applicable quorum requirement and the total percentage of votes needed for approval. All such solicitations for votes shall specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of (i) the date on which the Association has received a sufficient number of approving ballots to pass the proposal, (ii) the date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage, or (iii) a date certain by which all ballots must be returned to be counted. A written ballot may not be revoked.

Article 4

DIRECTORS: MANAGEMENT

4.1 **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors of three persons. All directors, other than interim directors appointed by Declarant, shall be Owners. For purposes of this section, the officers of any corporate Owner and the partners of any partnership shall be considered Owners of any Fractional Interests owned by such corporation or partnership.

4.2 **Interim Directors.** Upon the recording of the Declaration, Declarant shall appoint an interim board of one to three directors, who shall serve until replaced by Declarant or until their successors have been replaced by the Owners as provided below.

4.3 **Election and Tenure of Office.**

(a) At the turnover meeting described in Section 3.2, the interim directors shall resign and the members shall elect one director to serve for one year and two directors to serve for two years. The two nominees receiving the greatest number of votes shall serve for two years. In the event of a tie, term selection shall be by random means. Thereafter, the successors to each director shall serve for terms of two years each.

(b) All directors shall hold office until their respective successors shall have been elected by the members. Election shall be by plurality.

4.4 **Vacancies.**

(a) A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, or if the authorized number of directors is increased, or if the members fail at any annual or special meeting of members at which any director or directors are to be elected to elect the full authorized number of directors to be voted for at that meeting.

(b) Vacancies in the Board of Directors, other than interim directors, may be filled by a majority of the remaining directors even though less than a quorum, or by a sole remaining director. Each director so elected shall hold office for the balance of the unexpired term and until his or her successor is elected. Vacancies in interim directors shall be filled by Declarant.

4.5 **Removal of Directors.** All or any number of the directors, other than interim directors, may be removed, with or without cause, at any meeting of members at which a quorum is present, by a vote of a majority of the number of votes entitled to be cast at an election of directors. No removal of a director shall be effective unless the matter of removal was an item on the agenda and stated in the notice of the meeting as provided in these Bylaws.

4.6 **Powers.** Except as otherwise provided in the Declaration, the Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association.

4.7 Meetings.

(a) Meetings of the Board of Directors shall be held at such place as may be designated from time to time by the Board of Directors or other persons calling the meeting.

(b) Annual meetings of the Board of Directors for the purpose of electing the officers of the Association shall be held as soon as practical following the adjournment of the annual meetings of the members.

(c) Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the President or by any two directors.

(d) Unless other rules of order are adopted by resolution of the Association or the Board of Directors, all meetings of the Board of Directors shall be conducted according to the latest edition of *Robert's Rules of Order*, published by Robert's Rules Association.

4.8 Notice of Meetings.

(a) Notice of the time and place of meetings shall be given to each director orally, or delivered in writing personally or by mail or telecopy, at least 24 hours before the meeting. Notice shall be sufficient if actually received at the required time or if mailed or telecopied not less than 72 hours before the meeting. Notice mailed or telecopied shall be directed to the address shown on the Association's records or to the director's actual address ascertained by the person giving the notice. Such notice need not be given for an adjourned meeting if such time and place is fixed at the meeting adjourned.

(b) Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

4.9 Quorum and Vote.

(a) A majority of the directors shall constitute a quorum for the transaction of business. A minority of the directors, in the absence of a quorum, may adjourn from time to time but may not transact any business.

(b) The action of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors unless a greater number is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

4.10 Liability. Neither a member of the Board of Directors nor an officer of the Association or any committee established by the Board of Directors shall be liable to the Association, any Owner or any third party for any damages, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer or committee member of the Association is made a party to any

proceeding because the individual is or was a director, officer or committee member of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The Manager, and its officers and employees, shall not be liable to the Association, the Owners or any third parties on account of any action or failure to act in the performance of its duties as Manager, except for acts of gross negligence or intentional acts, and the Association shall indemnify the Manager and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

4.11 **Compensation**. No director shall receive any compensation from the Association for acting as such.

4.12 **Right Of Declarant To Disapprove Actions**. So long as Declarant or any member or affiliate of Declarant owns any Fractional Interest, directly or indirectly, Declarant shall have a right to disapprove any action, policy or program of the Association, the Board of Directors and any committee which, in the sole judgment of the Declarant, would tend to impair the rights of Declarant under the Declaration or these Bylaws, or interfere with marketing of any Fractional Interest, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board of Directors or any committee as may be granted to the Class B Member or Declarant in the Declaration or these Bylaws.

(a) The Declarant shall be given written notice of all meetings of the Association, the Board of Directors or any committee thereof and of all proposed actions of the Association, the Board of Directors or any committee thereof to be approved at such meetings or by written request in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies with the requirements for Board meetings set forth in these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not

include a right to require any action or counteraction on behalf of any committee, the Board or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations or to prevent any legal action in which Declarant or any member or affiliate of Declarant is an adverse party if such action has been approved by 75 percent of the voting rights of the Owners.

Article 5

OFFICERS

5.1 **Designation and Qualification.** The officers of the Association shall be the President, the Secretary and the Treasurer. Each officer shall be a member of the Board of Directors. Any two offices, except the offices of President and Secretary, may be held by the same person.

5.2 **Election and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board to serve for one year and until their respective successors are elected. If any office shall become vacant by reason of death, resignation, removal, disqualification or any other cause, the Board of Directors shall elect a successor to fill the unexpired term at any meeting of the Board of Directors.

5.3 **Removal and Resignation.**

(a) Any officer may be removed upon the affirmative vote of a majority of the directors whenever, in their judgment, the best interests of the Association will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

(b) Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective, provided, however, that the Board of Directors may reject any postdated resignation by notice in writing to the resigning officer. The effectiveness of such resignation shall not prejudice the contract rights, if any, of the Association against the officer so resigning.

5.4 **President.** The President shall be the chief executive officer of the Association and shall, subject to the control of the Board of Directors, have powers of general supervision, direction and control of the business and affairs of the Association. He or she shall preside at all meetings of the members and of the Board of Directors. He or she shall be an ex officio member of all the standing committees, including the executive committee, if any, shall have the general powers and duties of management usually vested in the office of president of a nonprofit corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.5 **Secretary.**

(a) The Secretary shall keep or cause the Manager to keep a book of minutes of all meetings of directors and members showing the time and place of the meeting, whether it was regular or special, and if special, how authorized, the notice given, the names of those present at directors' meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

(b) The Secretary shall give or cause the Manager to give such notice of the meetings of the members and of the Board of Directors as is required by these Bylaws or by law. The Secretary shall keep the seal of the Association, if any, and affix it to all documents requiring a seal, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

(c) In the absence or disability of the President, the President's duties and powers shall be performed and exercised by the Secretary.

5.6 **Treasurer.** The Treasurer shall keep and maintain, or cause the Manager to keep and maintain, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts and disbursements. The books of accounts shall at all reasonable times be open to inspection by any director. The Treasurer shall disburse or cause the Manager to disburse the funds of the Association as may be ordered by the Board, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

5.7 **Compensation of Officers.** No officer shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the members.

Article 6

EXECUTIVE AND OTHER COMMITTEES

Subject to law, the provisions of the Articles of Incorporation and these Bylaws, the Board of Directors, by a vote of a majority of the directors in office, may appoint an executive committee and such other standing or temporary committees as may be necessary from time to time, consisting of not less than one of the directors in office and having such powers as the Board of Directors may designate. Such committees shall hold office at the pleasure of the Board.

Article 7

GENERAL PROVISIONS

7.1 **Seal.** The Board of Directors may, by resolution, adopt a corporate seal.

7.2 **Notice.** All notices to the Association or to the Board of Directors shall be sent care of the Manager. All notices to members shall be sent to such address as may have been designated by the member from time to time in writing to the Manager.

7.3 **Waiver of Notice.** Whenever any notice to any member or director is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, a waiver of notice in writing signed at any time by the person entitled to notice shall be equivalent to the giving of the notice.

7.4 **Action Without Meeting.** Any action that the law, the Declaration, the Articles of Incorporation or the Bylaws require or permit the members or directors to take at any meeting may be taken without a meeting or ballot meeting if a consent in writing setting forth the action so taken is signed by all of the members or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the members or directors, shall be filed in the records of minutes of the Association.

7.5 **Conflicts.** These Bylaws are intended to comply with the Oregon Nonprofit Corporation Law, the Declaration and the Articles of Incorporation. In case of any irreconcilable conflict, such statutes and documents shall control over these Bylaws.

Article 8

AMENDMENTS TO BYLAWS

8.1 **How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board of Directors or by members holding at least 30 percent of the voting rights entitled to be cast for such amendment. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or be attached to any request for consent to the amendment.

8.2 **Adoption.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members and may be approved by the membership at a meeting called for such purpose or by ballot vote. Members not present at the meeting considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by members holding a majority of the voting rights, together with the written consent of the Class B member, if any. Any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration.

Notwithstanding the provisions of the preceding paragraph, Declarant shall have the right to amend these Bylaws in order to comply with the requirements of any applicable statute, ordinance or regulation of any department, bureau, board, commission or agency of the United States or the State of Oregon, or any other state in which the Program is registered, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon.

8.3 **Execution and Recording.** An amendment shall not be effective until certified by the President and Secretary of the Association as being adopted in accordance with these Bylaws and recorded in the Deed Records of Clatsop County, Oregon.