

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 1 OF 22



### TABLE OF CONTENTS

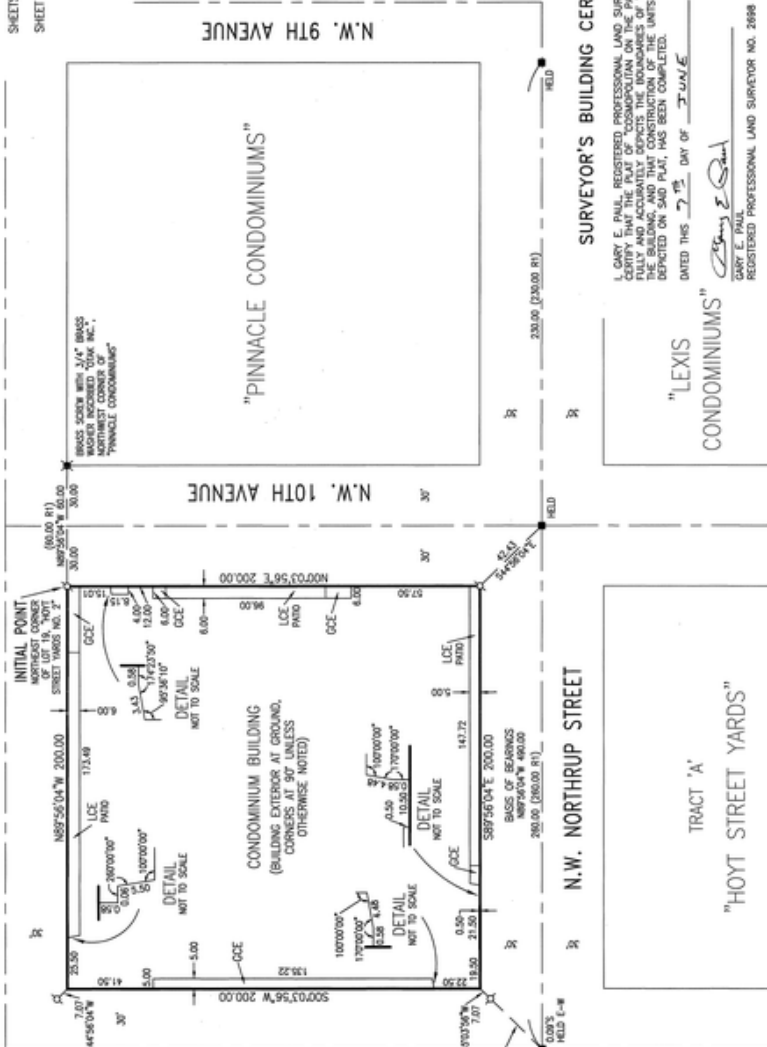
SHEET 1	BOUNDARY AND SURFACE
	BUILDING EXTERIOR LOCATION
	SURVEYOR'S BUILDING CERTIFICATE
SHEETS 2, 3	1ST FLOOR PLAN
SHEET 4	MD-LEVEL PLAN, PARKING SECTION B-B
SHEETS 5, 6	2ND FLOOR PLAN
SHEETS 7, 8	3RD FLOOR PLAN
SHEETS 9, 10	4TH FLOOR PLAN
SHEET 11	5TH FLOOR PLAN
SHEET 12	6TH TO 13TH FLOOR PLAN
SHEET 13	14TH, 16TH TO 18TH FLOOR PLAN
SHEET 14	15TH FLOOR PLAN
SHEET 15	19TH TO 25TH FLOOR PLAN
SHEET 16	26TH FLOOR PLAN
SHEET 17	27TH FLOOR PLAN
SHEET 18	28TH FLOOR PLAN
SHEET 19	BUILDING SECTIONS A-A, D-D, E-E
SHEETS 20, 21	STORAGE UNIT PLANS AND SECTION C-C
SHEET 22	APPROVALS SURVEYOR'S CERTIFICATE RESTRICTIONS DECLARATION ACKNOWLEDGMENT



"ENCORE CONDOMINIUMS"

TRACT 'C'  
TRACT 'D'  
YARDS NO. 2'

N.W. OVERTON STREET



N.W. 11TH AVENUE

HOYT STREET  
LOT 16  
LOT 15

N.W. 11TH AVENUE

N.W. 10TH AVENUE

N.W. 9TH AVENUE

"PINNACLE CONDOMINIUMS"

"BRIDGEPORT CONDOMINIUMS"

TRACT 'A'  
"HOYT STREET YARDS"

SURVEYOR'S BUILDING CERTIFICATE

I, GARY E. PAUL, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE PERSONALLY EXAMINED THE PLAT AND THAT I FULLY AND ACCURATELY DEPICT THE DIMENSIONS OF THE LOTS AND OF THE BUILDING, AND THAT CONSTRUCTION OF THE UNITS AND BUILDING, AS DEPICTED ON SAID PLAT, HAS BEEN COMPLETED.

DATED THIS 7<sup>th</sup> DAY OF JUNE, 2016.

GARY E. PAUL  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 2698

REGISTERED PROFESSIONAL LAND SURVEYOR

GARY E. PAUL  
JUNE 15, 1993  
2698

RENEWAL 12/31/2016

THIS IS AN EXACT COPY OF THE ORIGINAL SURVEY AS FILED IN THE COSMOPOLITAN ON THE PARK, A CONDOMINIUM.

### NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO CREATE CONDOMINIUMS ON THE LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2', TRACT 'C', LOT 25, HOYT STREET YARDS NO. 2', TRACT 'D', ALONG THE CENTERLINE OF N.W. NORTHROP STREET AND BASES OF BEARINGS (N89°56'04\"/>

### LEGEND

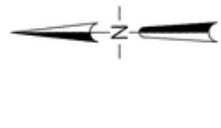
- β DENOTES 1" BRASS DODGEBALL MARKER
- DENOTES FOUND 5/8" IRON ROD WITH 1-1/2" ALUMINUM CAP MARKED "OLEA, INC." AS SET IN "HOYT STREET YARDS" RECORDS
- R1 DENOTES SURVEY NO. 64306, MULTNOMAH COUNTY SURVEY RECORDS
- OCE DENOTES ORIGINAL COMMON ELEMENT
- DOC. NO. DENOTES DOCUMENT NUMBER, MULTNOMAH COUNTY DEED RECORDS

LOT 25

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

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CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 2 OF 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
OREGON  
GARY E. PAUL  
2008  
RENEW 12/31/2016  
THIS IS AN EXACT COPY OF  
THE SURVEY RECORD FOR  
COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM.



NOTES:  
SEE SHEET 19 FOR BUILDING  
SECTION D-D AND E-E  
ALL UNIT AND COMMON ELEMENT  
BOUNDARIES ARE AT 90° UNLESS  
OTHERWISE NOTED

**otak**  
REGISTERED PROFESSIONAL ARCHITECT  
1111 S.W. 10TH AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 281-4821 FAX (503) 413-2384

PARKING UNIT ELEVATIONS	
UNIT NO.	ELEV.
P1	38.65
P2	38.45
P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P27	38.40
P28, P29, P30	38.46

STORAGE UNIT ELEVATIONS	
UNIT NO.	ELEV.
S1, S2	38.80

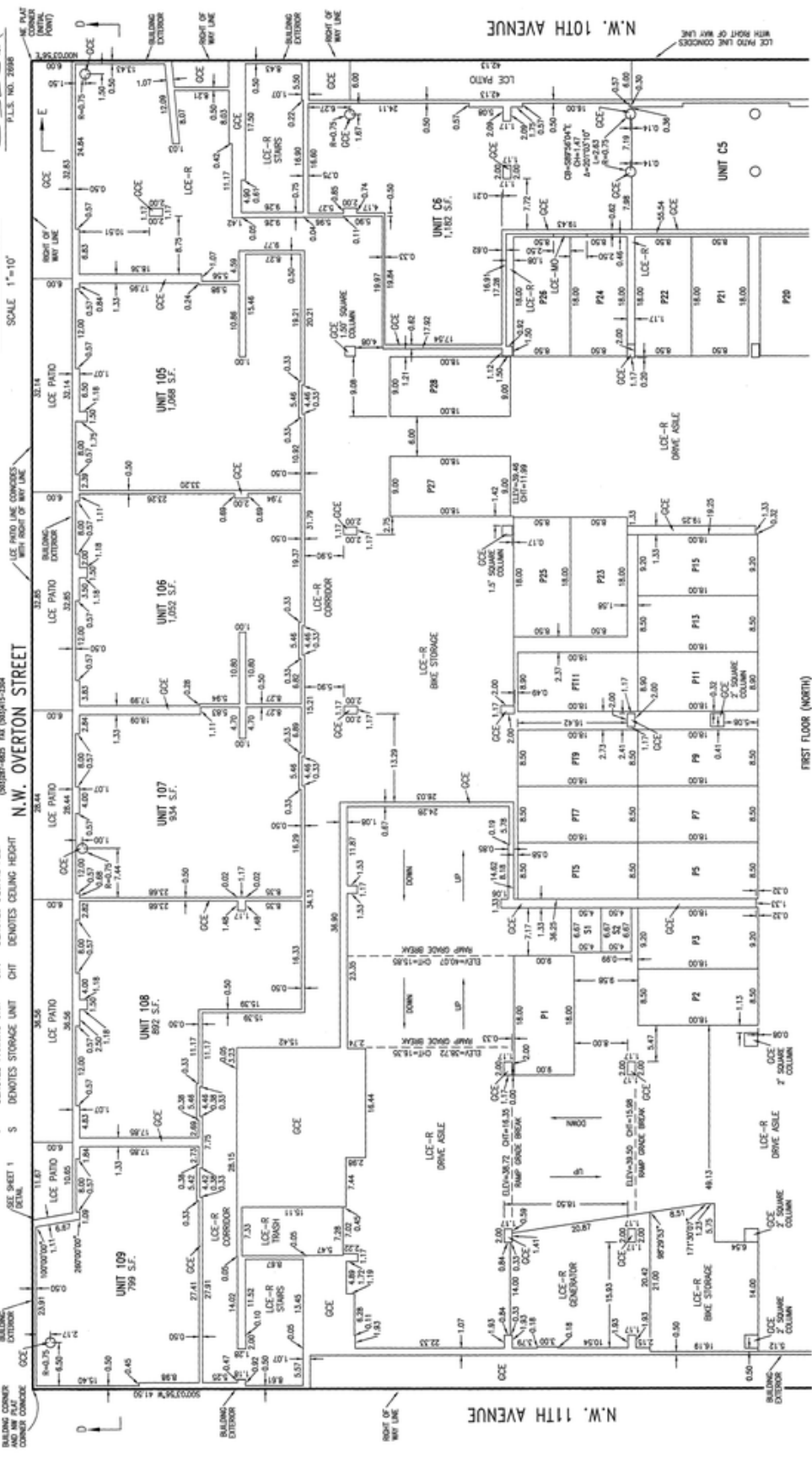
  

PARKING UNIT AREAS	
UNIT NO.	AREA (S.F.)
P1, P27, P28	182
P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P29, P30	153
P22, P23	185
P24, P25	180

STORAGE UNIT AREAS	
UNIT NO.	AREA (S.F.)
S1, S2	30

**LEGEND**  
 OCE DENOTES GENERAL COMMON ELEMENT  
 LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL  
 LCE-MO DENOTES LIMITED COMMON ELEMENT-METORIZED OUTLET  
 P DENOTES PARKING UNIT S.F. DENOTES SQUARE FEET  
 S DENOTES STORAGE UNIT CHT DENOTES CEILING HEIGHT



FIRST FLOOR (NORTH)

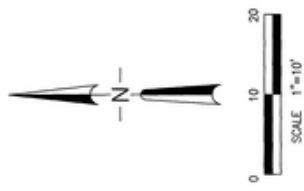
# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2\*  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 3 OF 22

**otak**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR  
1000 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 274-4625 FAX (503) 410-1204

BOOK 307 PAGE 100

REGISTERED PROFESSIONAL LAND SURVEYOR  
GARY E. PAUL  
JANUARY 9, 1988  
OREGON  
RENEWAL 12/31/2016  
THIS IS AN EXPLANATORY COPY OF THE SURVEY MAP FOR THE COSMOPOLITAN ON THE PARK, A CONDOMINIUM.  
FILE NO. 201605



**PARKING UNIT ELEVATIONS**

UNIT NO.	ELEV.
PA, PB, PC	38.48
PD, PE, PF, PG, PH	38.50
PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ	38.54

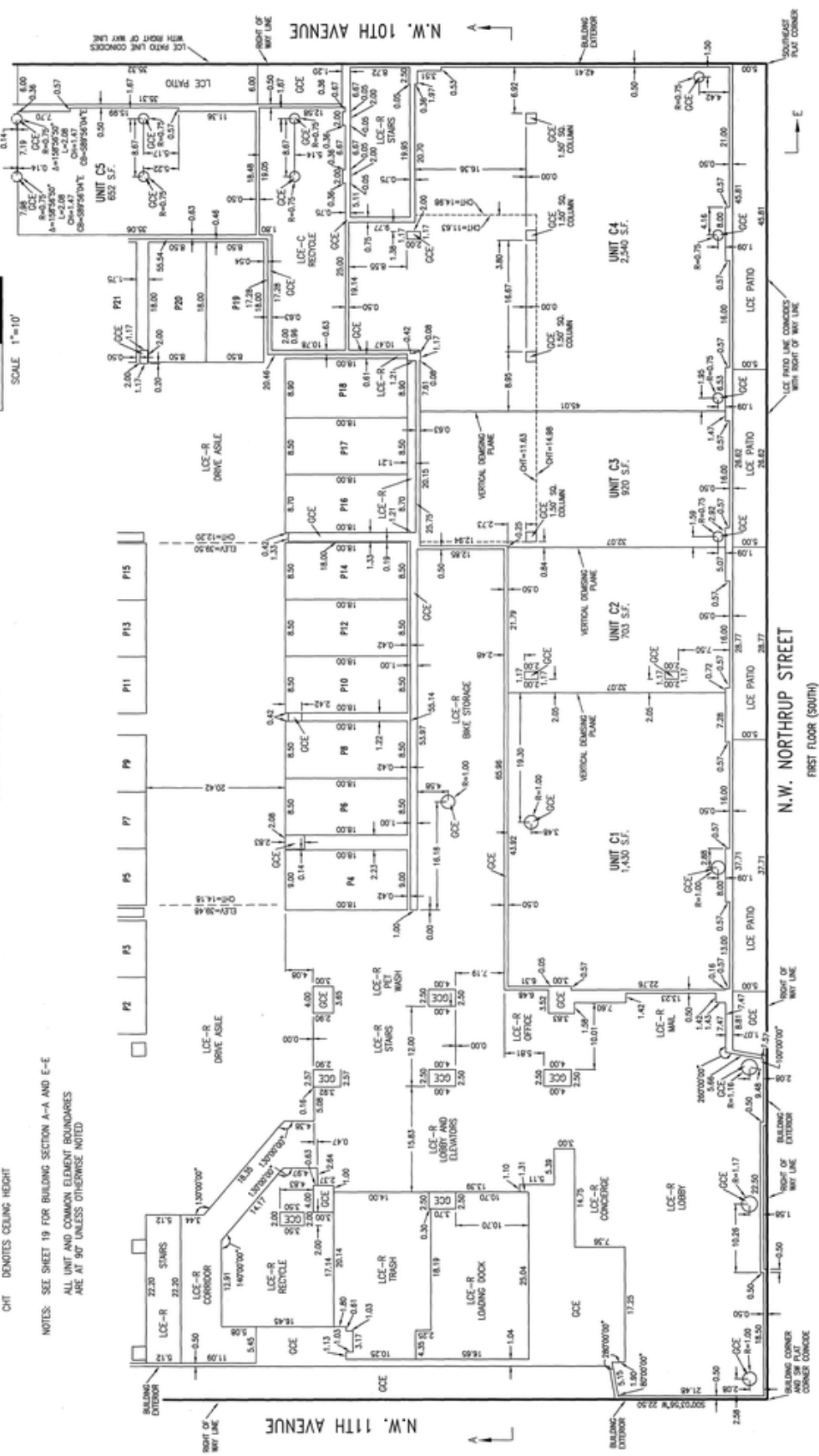
**PARKING UNIT AREAS**

UNIT NO.	AREA (S.F.)
PA	182
PB, PC, PD, PE, PF, PG, PH	153
PI, PJ, PK, PL, PM, PN, PO, PP, PQ, PR, PS, PT, PU, PV, PW, PX, PY, PZ	156

### LEGEND

- OCE DENOTES GENERAL COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- LCE-C DENOTES LIMITED COMMON ELEMENT-COMMERCIAL
- P DENOTES PARKING UNIT
- S.F. DENOTES SQUARE FEET
- CHT DENOTES CEILING HEIGHT

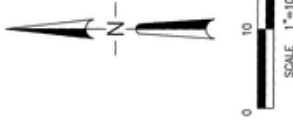
NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A AND E-E  
ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

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CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 4 OF 22

**otak**  
SURVEYORS  
1100 N.W. 10TH AVENUE, SUITE 300  
PORTLAND, OREGON 97224  
(503)587-4825 FAX (503)415-2384



### LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- P DENOTES PARKING UNIT
- S DENOTES STORAGE UNIT
- S.F. DENOTES SQUARE FEET
- CHT DENOTES CEILING HEIGHT

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A AND E-E  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED

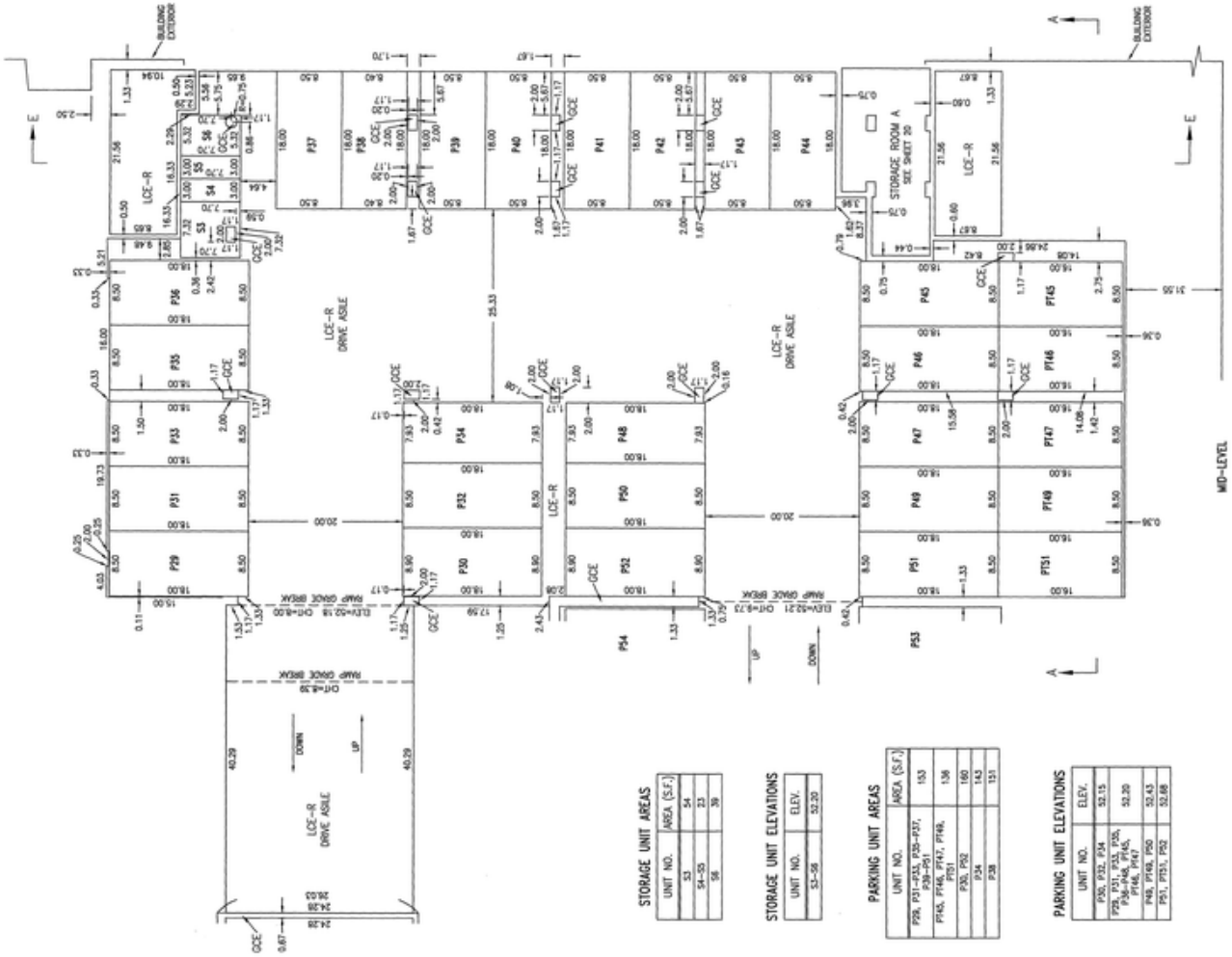
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Matthew J. Shaw*  
OREGON  
JANUARY 9, 1988  
GARY PAUL  
2008  
RENEWAL 12/31/2016

THIS IS AN EXACT COPY OF  
THE ORIGINAL PLAT OF  
COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM.  
*Matthew J. Shaw*  
P.L.S. NO. 2898



PARKING UNIT SECTION B-B  
NOT TO SCALE

BASIS OF ELEVATIONS: CITY OF PORTLAND BENCH 2015, A  
2008.500 MSL. THE CORNER OF THE INTERSECTION  
OF N.W. 12TH AVENUE AND N.W. MARSHALL STREET.  
ELEVATION = 33.762', CITY OF PORTLAND DATUM.



STORAGE UNIT AREAS

UNIT NO.	AREA (S.F.)
S3	54
S4-S5	23
S6	39

STORAGE UNIT ELEVATIONS

UNIT NO.	ELEV.
S3-S6	32.20

PARKING UNIT AREAS

UNIT NO.	AREA (S.F.)
P29, P31-P33, P39-P42	150
P43, P46, P47, P48, P49	156
P50, P51	160
P44	143
P45	151

PARKING UNIT ELEVATIONS

UNIT NO.	ELEV.
P30, P32, P34	32.15
P29, P31, P32, P33, P39-P43, P45, P46	32.20
P44, P46, P49	32.43
P51, P53, P50	32.68



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

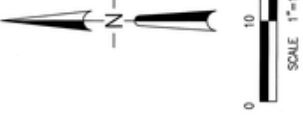
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CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 5 OF 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JAMES  
GARY E. PAUL  
2008

KEMAL 12/31/2016

THIS IS AN EXACT COPY OF  
THE ORIGINAL PLAT OF THE PARK,  
A CONDOMINIUM.



STORAGE UNIT AREAS

UNIT NO.	AREA (S.F.)
S15-S19	15
S20	27
S21	53
S22-S23	23
S24	38

**otak**

ENGINEERS

300 S.W. 10TH AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 227-4823 FAX (503) 241-2384

NOTES: SEE SHEET 19 FOR BUILDING  
SECTION D-D AND E-E

ALL UNIT AND COMMON ELEMENT  
BOUNDARIES ARE AT 90° UNLESS  
OTHERWISE NOTED

SEE SHEET 6 FOR LEGEND ABBREVIATIONS

LEGEND

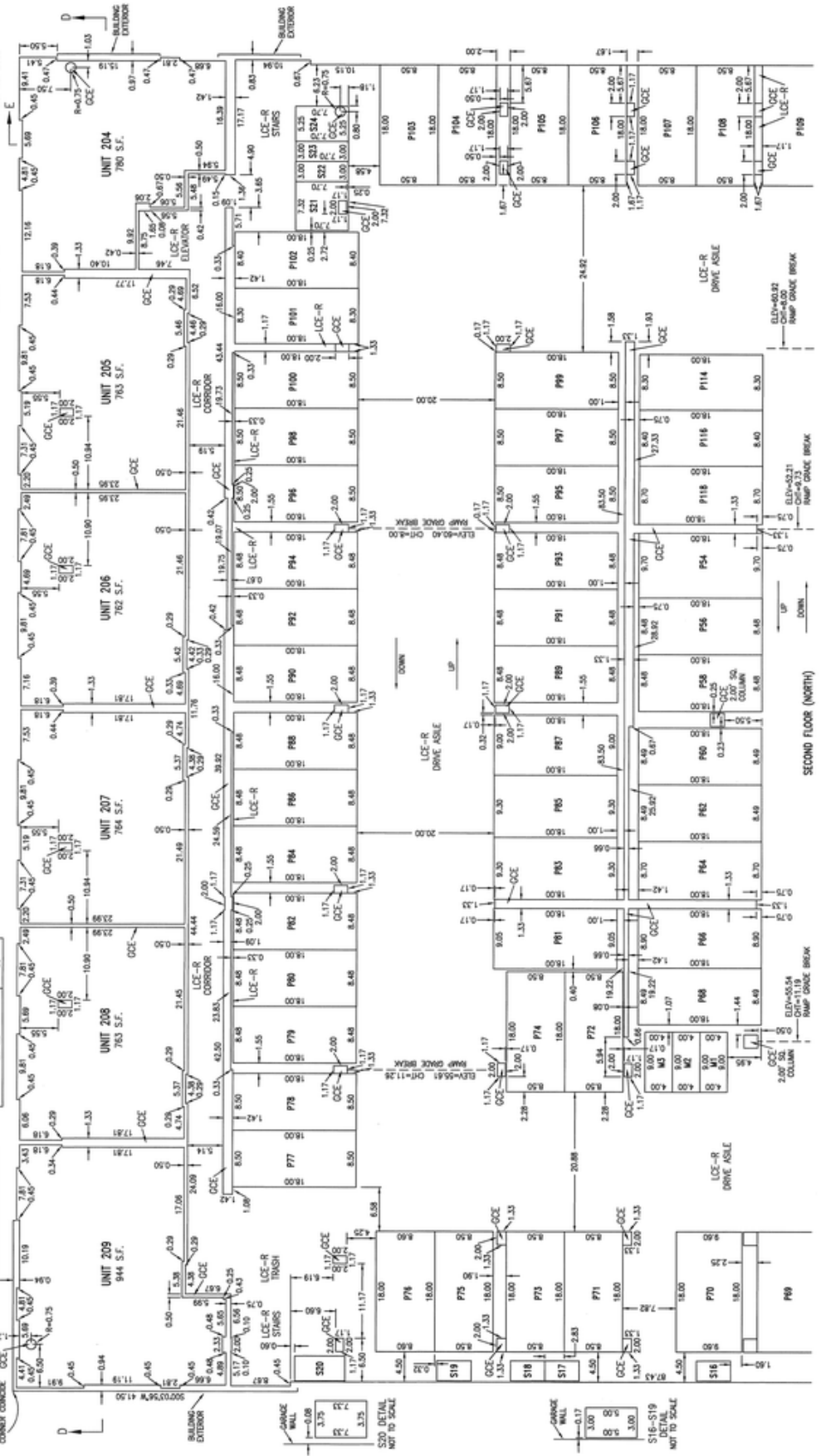
UNIT NO.	AREA (S.F.)
P54	174
P55, P56, P57, P58, P59, P60, P61, P62, P63, P64, P65, P66, P67, P68, P69, P70	153
P71, P72, P73, P74, P75, P76, P77, P78, P79, P80, P81, P82, P83, P84, P85, P86, P87, P88, P89, P90, P91, P92, P93, P94, P95, P96, P97, P98, P99, P100, P101, P102, P103, P104, P105, P106, P107, P108, P109, P110, P111, P112, P113, P114, P115, P116, P117, P118, P119, P120, P121, P122, P123, P124, P125, P126, P127, P128, P129, P130, P131, P132, P133, P134, P135, P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, 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PARKING UNIT ELEVATIONS (CONTINUED)

UNIT NO.	ELEV.
P65	56.22
P66	56.35
P67	56.48
P68	56.61
P69	56.74
P70	56.87
P71	57.00
P72	57.13
P73	57.26
P74	57.39
P75	57.52
P76	57.65
P77	57.78
P78	57.91
P79	58.04
P80	58.17
P81	58.30
P82	58.43
P83	58.56
P84	58.69
P85	58.82
P86	58.95
P87	59.08
P88	59.21
P89	59.34
P90	59.47
P91	59.60
P92	59.73
P93	59.86
P94	59.99
P95	60.12
P96	60.25
P97	60.38
P98	60.51
P99	60.64
P100	60.77
P101	60.90
P102	61.03
P103	61.16
P104	61.29
P105	61.42
P106	61.55
P107	61.68
P108	61.81
P109	61.94
P110	62.07
P111	62.20
P112	62.33
P113	62.46
P114	62.59
P115	62.72
P116	62.85
P117	62.98
P118	63.11
P119	63.24
P120	63.37
P121	63.50
P122	63.63
P123	63.76
P124	63.89
P125	64.02
P126	64.15
P127	64.28
P128	64.41
P129	64.54
P130	64.67
P131	64.80
P132	64.93
P133	65.06
P134	65.19
P135	65.32
P136	65.45
P137	65.58
P138	65.71
P139	65.84
P140	65.97
P141	66.10
P142	66.23
P143	66.36
P144	66.49
P145	66.62
P146	66.75
P147	66.88
P148	67.01
P149	67.14
P150	67.27

STORAGE UNIT ELEVATIONS

UNIT NO.	ELEV.
S15-S24	60.88
S25	60.88
S26	60.88
S27	60.88
S28	60.88
S29	60.88
S30	60.88
S31	60.88
S32	60.88
S33	60.88
S34	60.88
S35	60.88
S36	60.88
S37	60.88
S38	60.88
S39	60.88
S40	60.88
S41	60.88
S42	60.88
S43	60.88
S44	60.88
S45	60.88
S46	60.88
S47	60.88
S48	60.88
S49	60.88
S50	60.88
S51	60.88
S52	60.88
S53	60.88
S54	60.88
S55	60.88
S56	60.88
S57	60.88
S58	60.88
S59	60.88
S60	60.88
S61	60.88
S62	60.88
S63	60.88
S64	60.88
S65	60.88
S66	60.88
S67	60.88
S68	60.88
S69	60.88
S70	60.88
S71	60.88
S72	60.88
S73	60.88
S74	60.88
S75	60.88
S76	60.88
S77	60.88
S78	60.88
S79	60.88
S80	60.88
S81	60.88
S82	60.88
S83	60.88
S84	60.88
S85	60.88
S86	60.88
S87	60.88
S88	60.88
S89	60.88
S90	60.88
S91	60.88
S92	60.88
S93	60.88
S94	60.88
S95	60.88
S96	60.88
S97	60.88
S98	60.88
S99	60.88
S100	60.88



SECOND FLOOR (NORTH)

SCD DETAIL  
NOT TO SCALE

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 6 OF 22

PARKING UNIT ELEVATIONS

UNIT NO.	ELEV.
P03	52.83
P04	52.83
P05	53.18
P06	53.43
P07	53.43
P08	53.68
P09	54.03
P10	54.03
P11	54.28
P12	54.28
P13	55.00
P14	55.00
P15	60.08
P16	61.28
P17	61.28
P18	62.40

## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- P DENOTES PARKING UNIT
- S DENOTES STORAGE UNIT
- M DENOTES MOTORCYCLE UNIT
- T DENOTES TANNEN PARKING
- S.F. DENOTES SQUARE FEET
- CHT DENOTES CEILING HEIGHT

STORAGE UNIT AREAS

UNIT NO.	AREA (S.F.)
S15	15
S16	45
S17	15

STORAGE UNIT ELEVATIONS

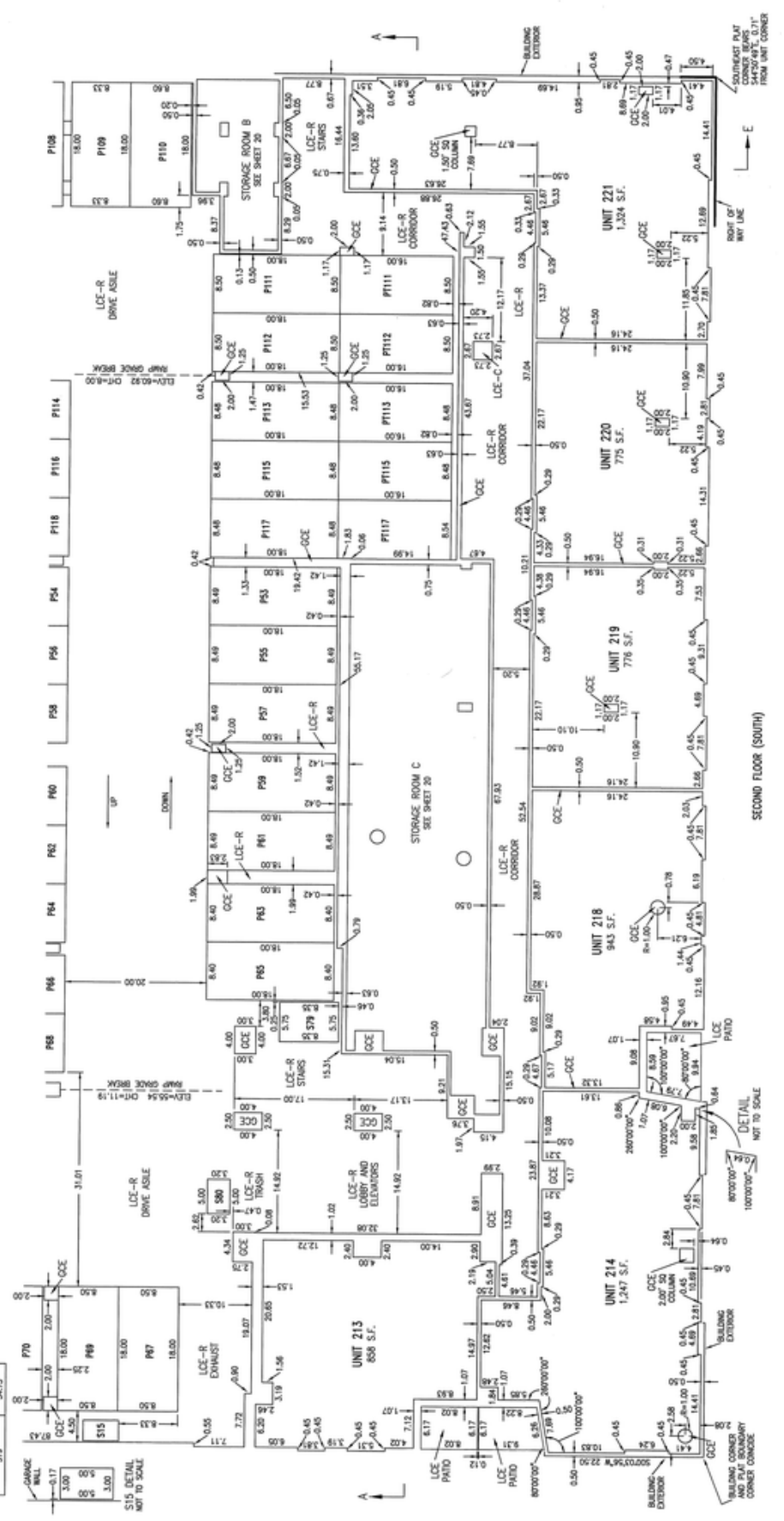
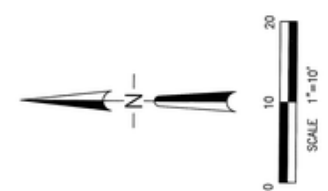
UNIT NO.	ELEV.
S15	55.00
S16	54.75
S17	54.75

PARKING UNIT AREAS

UNIT NO.	AREA (S.F.)
P03, P04, P05, P06, P07, P08, P09, P10, P11, P12, P13, P14, P15, P16, P17, P18	153
P19, P20, P21, P22, P23, P24, P25, P26, P27, P28, P29, P30, P31, P32, P33, P34, P35, P36, P37, P38, P39, P40, P41, P42, P43, P44, P45, P46, P47, P48, P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P59, P60, P61, P62, P63, P64, P65, P66, P67, P68, P69, P70, P71, P72, P73, P74, P75, P76, P77, P78, P79, P80, P81, P82, P83, P84, P85, P86, P87, P88, P89, P90, P91, P92, P93, P94, P95, P96, P97, P98, P99, P100	136

**otak**  
INCORPORATED  
LAND SURVEYORS  
1000 N. W. AVENUE, SUITE 300  
PORTLAND, OREGON 97227-4803 FAX (503)415-3304

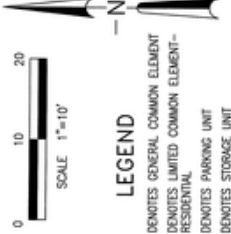
NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A AND E-E  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 7 OF 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
**GARY E. PAUL**  
RENEWAL 12/31/2016  
THIS IS AN EXACT COPY OF  
THE ORIGINAL SURVEY  
A CONDOMINIUM.  
P.L.S. NO. 2888



## LEGEND

UNIT NO.	AREA (S.F.)
S89-S92	15
S93	17
S94	16
S95	16
S96	24
S97	15

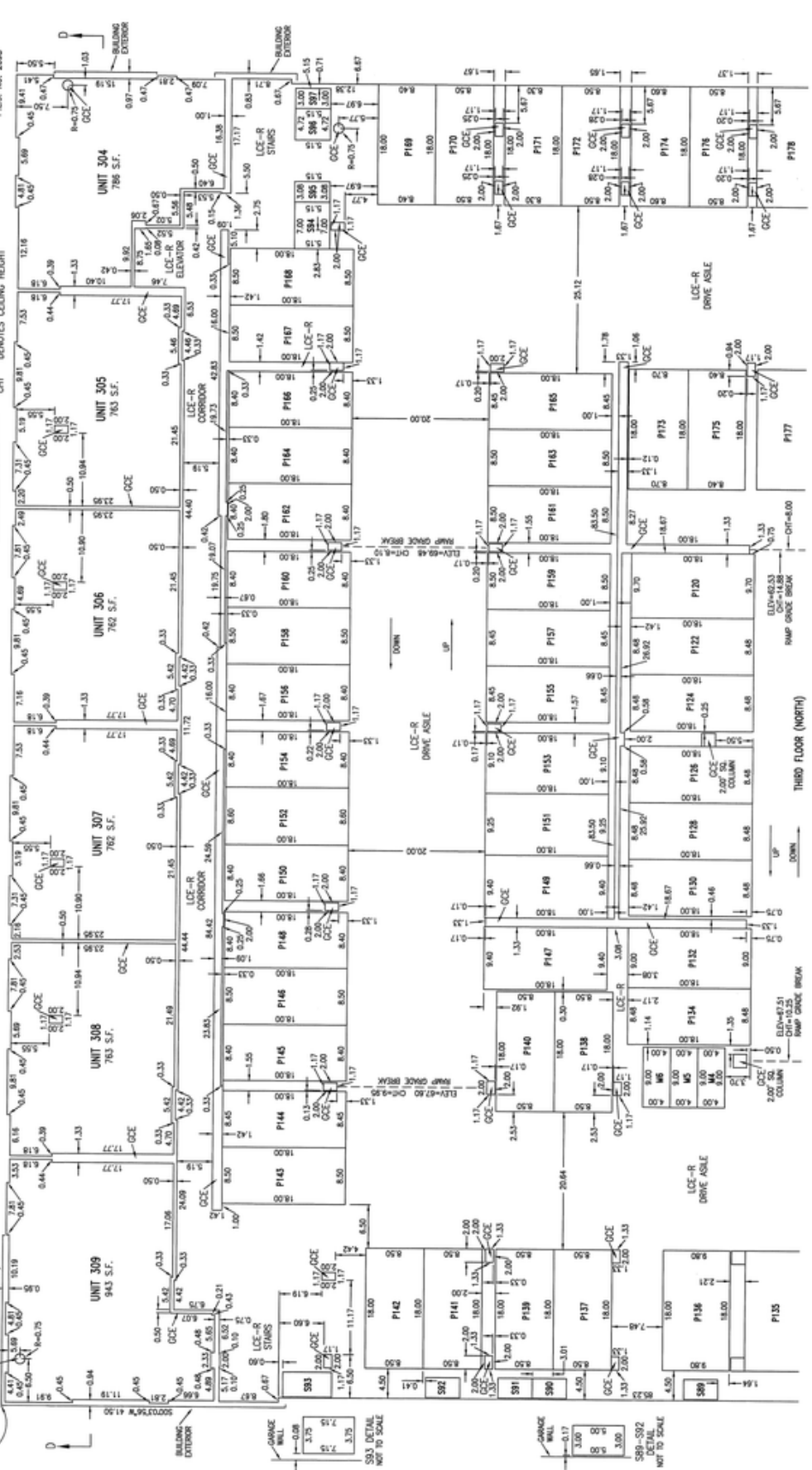
otak  
800 S.W. 100th AVENUE, SUITE 300  
PORTLAND, OREGON 97219  
(503) 297-4823 FAX (503) 415-1284

NOTES: SET SHEET 19 FOR BUILDING  
SECTION D-D  
ALL UNIT AND COMMON ELEMENT  
BOUNDARIES ARE AT 9" UNLESS  
OTHERWISE NOTED

UNIT NO.	AREA (S.F.)
P120	174
P121, P122, P123, P124, P125, P126, P127, P128, P129, P130, P131, P132, P133, P134, P135, P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251, P252, P253, P254, P255, P256, P257, P258, P259, P260, P261, P262, P263, P264, P265, P266, P267, P268, P269, P270, P271, P272, P273, P274, P275, P276, P277, P278, P279, P280, P281, P282, P283, P284, P285, P286, P287, P288, P289, P290, P291, P292, P293, P294, P295, P296, P297, P298, P299, P300	153
P132	162
P136	176
P140, P150, P157, P160, P162, P165, P182, P184, P185, P186, P175	152
P147, P148	189
P151	166
P152, P174	150
P153	164
P173	149
M1-M5	26

UNIT NO.	ELEV.
P120	62.78
P121, P122, P123, P124, P125, P126, P127, P128, P129, P130, P131, P132, P133, P134, P135, P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251, P252, P253, P254, P255, P256, P257, P258, P259, P260, P261, P262, P263, P264, P265, P266, P267, P268, P269, P270, P271, P272, P273, P274, P275, P276, P277, P278, P279, P280, P281, P282, P283, P284, P285, P286, P287, P288, P289, P290, P291, P292, P293, P294, P295, P296, P297, P298, P299, P300	68.74
P124	68.96
P125, P126, P127, P128, P129, P130, P131, P132, P133, P134, P135, P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251, P252, P253, P254, P255, P256, P257, P258, P259, P260, P261, P262, P263, P264, P265, P266, P267, P268, P269, P270, P271, P272, P273, P274, P275, P276, P277, P278, P279, P280, P281, P282, P283, P284, P285, P286, P287, P288, P289, P290, P291, P292, P293, P294, P295, P296, P297, P298, P299, P300	69.22
P128	65.17
P130, P131, P132, P133, P134, P135, P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251, P252, P253, P254, P255, P256, P257, P258, P259, P260, P261, P262, P263, P264, P265, P266, P267, P268, P269, P270, P271, P272, P273, P274, P275, P276, P277, P278, P279, P280, P281, P282, P283, P284, P285, P286, P287, P288, P289, P290, P291, P292, P293, P294, P295, P296, P297, P298, P299, P300	69.41
P132	66.54
P134	66.75
P136, P137, P138, P139, P140, P141, P142, P143, P144, P145, P146, P147, P148, P149, P150, P151, P152, P153, P154, P155, P156, P157, P158, P159, P160, P161, P162, P163, P164, P165, P166, P167, P168, P169, P170, P171, P172, P173, P174, P175, P176, P177, P178, P179, P180, P181, P182, P183, P184, P185, P186, P187, P188, P189, P190, P191, P192, P193, P194, P195, P196, P197, P198, P199, P200, P201, P202, P203, P204, P205, P206, P207, P208, P209, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251, P252, P253, P254, P255, P256, P257, P258, P259, P260, P261, P262, P263, P264, P265, P266, P267, P268, P269, P270, P271, P272, P273, P274, P275, P276, P277, P278, P279, P280, P281, P282, P283, P284, P285, P286, P287, P288, P289, P290, P291, P292, P293, P294, P295, P296, P297, P298, P299, P300	67.58
P138	67.68
P140, P145	67.76
P146	67.82
P147, P148	68.12
P149, P150	68.31
P151, P152	68.50

UNIT NO.	ELEV.
P120	62.78
P122	63.47
P124	64.04
P126	64.61
P128	65.17
P130	65.74
P132	66.31
P134	66.87
P136	67.44
P138	68.01
P140	68.58
P142	69.15
P144	69.72
P146	70.29
P148	70.86
P150	71.43
P152	72.00
P154	72.57
P156	73.14
P158	73.71
P160	74.28
P162	74.85
P164	75.42
P166	75.99
P168	76.56
P170	77.13
P172	77.70
P174	78.27
P176	78.84
P178	79.41
P180	79.98
P182	80.55
P184	81.12
P186	81.69
P188	82.26
P190	82.83
P192	83.40
P194	83.97
P196	84.54
P198	85.11
P200	85.68
P202	86.25
P204	86.82
P206	87.39
P208	87.96
P210	88.53
P212	89.10
P214	89.67
P216	90.24
P218	90.81
P220	91.38
P222	91.95
P224	92.52
P226	93.09
P228	93.66
P230	94.23
P232	94.80
P234	95.37
P236	95.94
P238	96.51
P240	97.08
P242	97.65
P244	98.22
P246	98.79
P248	99.36
P250	99.93
P252	100.50
P254	101.07
P256	101.64
P258	102.21
P260	102.78
P262	103.35
P264	103.92
P266	104.49
P268	105.06
P270	105.63
P272	106.20
P274	106.77
P276	107.34
P278	107.91
P280	108.48
P282	109.05
P284	109.62
P286	110.19
P288	110.76
P290	111.33
P292	111.90
P294	112.47
P296	113.04
P298	113.61
P300	114.18

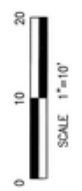
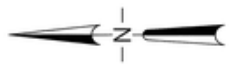


UNIT NO.	ELEV.
P120	62.78
P122	63.47
P124	64.04
P126	64.61
P128	65.17
P130	65.74
P132	66.31
P134	66.87
P136	67.44
P138	68.01
P140	68.58
P142	69.15
P144	69.72
P146	70.29
P148	70.86
P150	71.43
P152	72.00
P154	72.57
P156	73.14
P158	73.71
P160	74.28
P162	74.85
P164	75.42
P166	75.99
P168	76.56
P170	77.13
P172	77.70
P174	78.27
P176	78.84
P178	79.41
P180	79.98
P182	80.55
P184	81.12
P186	81.69
P188	82.26
P190	82.83
P192	83.40
P194	83.97
P196	84.54
P198	85.11
P200	85.68
P202	86.25
P204	86.82
P206	87.39
P208	87.96
P210	88.53
P212	89.10
P214	89.67
P216	90.24
P218	90.81
P220	91.38
P222	91.95
P224	92.52
P226	93.09
P228	93.66
P230	94.23
P232	94.80
P234	95.37
P236	95.94
P238	96.51
P240	97.08
P242	97.65
P244	98.22
P246	98.79
P248	99.36
P250	99.93
P252	100.50
P254	101.07
P256	101.64
P258	102.21
P260	102.78
P262	103.35
P264	103.92
P266	104.49
P268	105.06
P270	105.63
P272	106.20
P274	106.77
P276	107.34
P278	107.91
P280	108.48
P282	109.05
P284	109.62
P286	110.19
P288	110.76
P290	111.33
P292	111.90
P294	112.47
P296	113.04
P298	113.61
P300	114.18

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 8 OF 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
OREGON  
GARY E. PALL  
2008  
RENEWAL 12/31/2016  
THIS IS AN EXACT COPY OF  
THE ORIGINAL PLAT OF  
THE CONDOMINIUM ON THE PARK,  
A CONDOMINIUM.  
P.L.S. NO. 2698



**otak**  
ARCHITECTS  
1000 N. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97227-4822 FAX (503)451-3284

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED

**PARKING UNIT AREAS**

UNIT NO.	AREA (S.F.)
P113, P131, P133, P176, P177, P178, P179, P180, P181, P182, P183, P184	153
P117	151
P178	152
P180	154
P181	147
P182	152
P183	158
P184	152

**LEGEND**

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- P DENOTES PARKING UNIT
- S DENOTES STORAGE UNIT
- S.F. DENOTES SQUARE FEET
- CHT DENOTES CEILING HEIGHT

**PARKING UNIT ELEVATIONS**

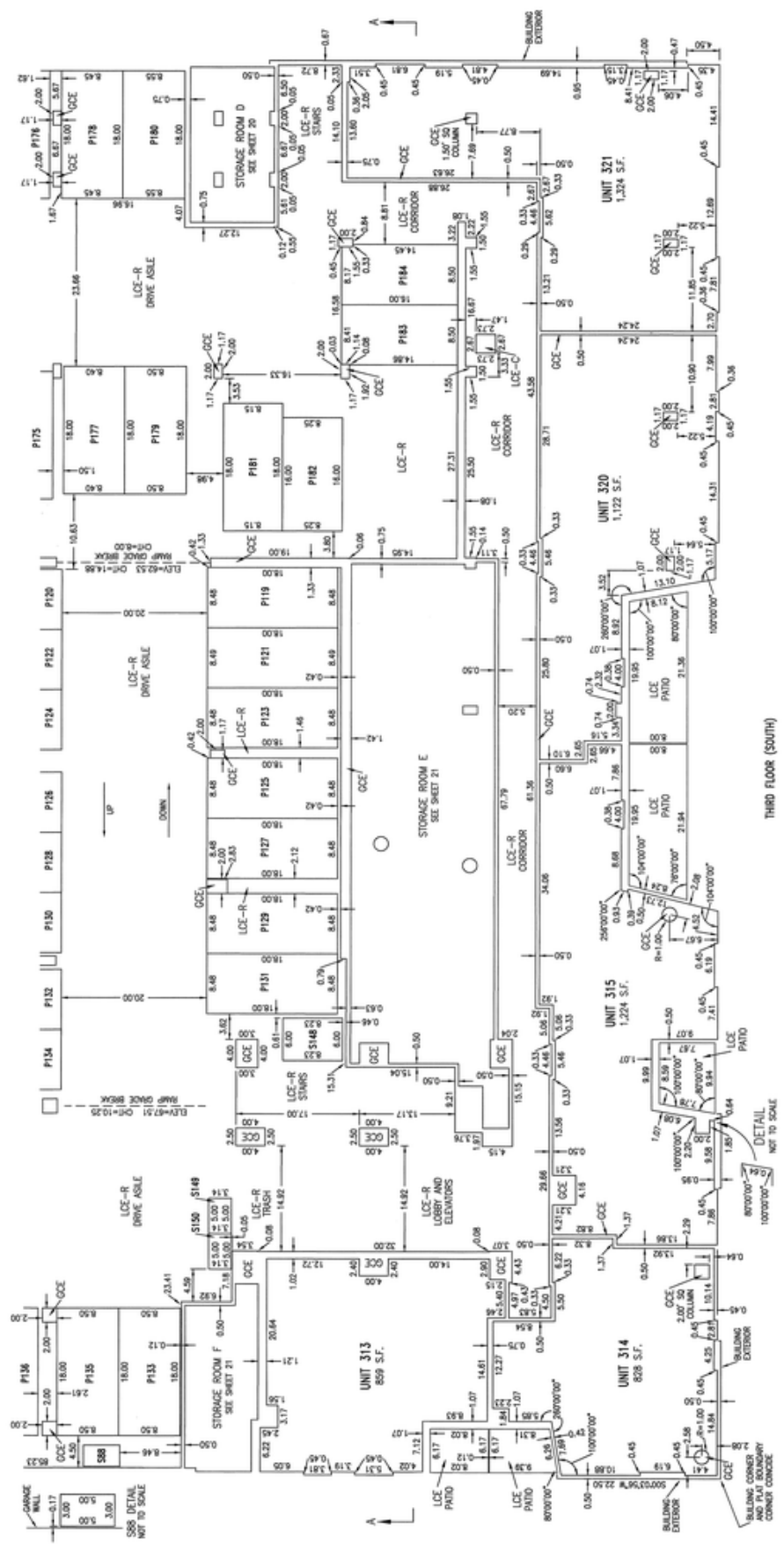
UNIT NO.	ELEV.
P119	62.75
P121	63.35
P123	64.35
P125	64.35
P127	64.84
P129	65.58
P131	66.20
P133, P135	67.58
P177-P184	69.54

**STORAGE UNIT AREAS**

UNIT NO.	AREA (S.F.)
S08	15
S148	49
S149, S150	16

**STORAGE UNIT ELEVATIONS**

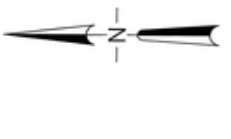
UNIT NO.	ELEV.
S08	67.60
S148	66.50
S149, S150	66.54



THIRD FLOOR (SOUTH)

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
 LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 SURVEYED APRIL 21, 2016  
 SHEET 9 OF 22

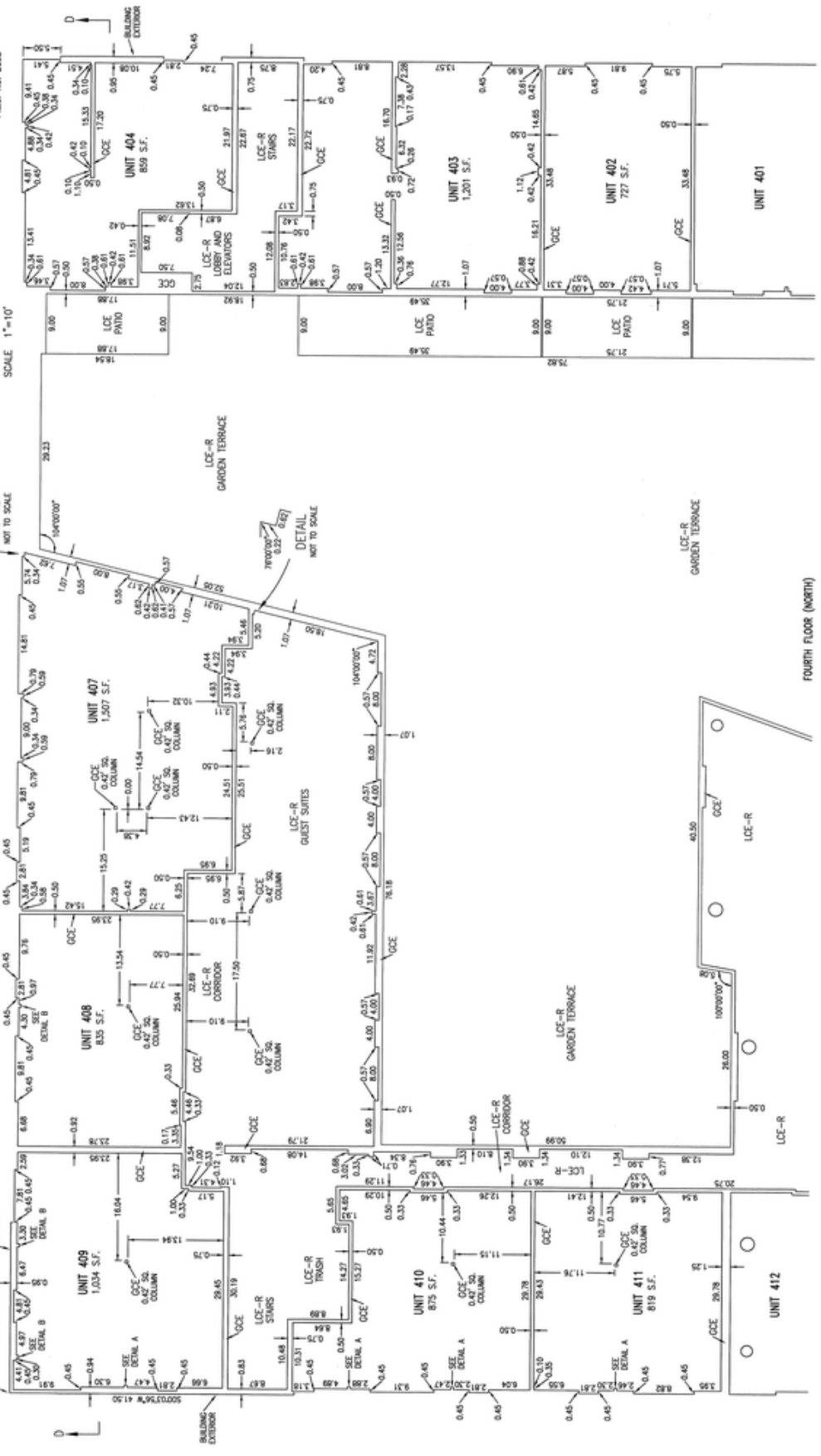


REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
 OREGON  
 JAMES E. PAUL  
 2898  
 EXPIRES 12/31/2018  
 THIS IS AN EXACT COPY OF  
 THE ORIGINAL PLAT OF  
 COSMOPOLITAN ON THE PARK,  
 A CONDOMINIUM.

- LEGEND**
- GCE DENOTES GENERAL COMMON ELEMENT
  - LCE DENOTES LIMITED COMMON ELEMENT
  - LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
  - S.F. DENOTES SQUARE FEET
  - SR DENOTES ROUND
  - SQ DENOTES SQUARE
  - DETAIL A NOT TO SCALE
  - DETAIL B NOT TO SCALE

NOTES: SEE SHEET 19 FOR BUILDING SECTION D-0  
 ALL UNIT AND COMMON ELEMENT BOUNDARIES  
 ARE AT 90° UNLESS OTHERWISE NOTED

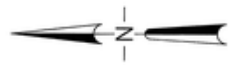
**otak**  
 architects  
 engineers  
 planners  
 808 S.W. THIRD AVENUE, SUITE 200  
 PORTLAND, OREGON 97204  
 (503) 274-4822 FAX (503) 474-3284



FOURTH FLOOR (NORTH)

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 10 OF 22



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
**OREGON**  
GARY E. PAUL  
2008

108 RENDON, 12/15/2016  
THIS IS AN EXACT COPY OF  
THE ORIGINAL PLAT OF  
COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM.

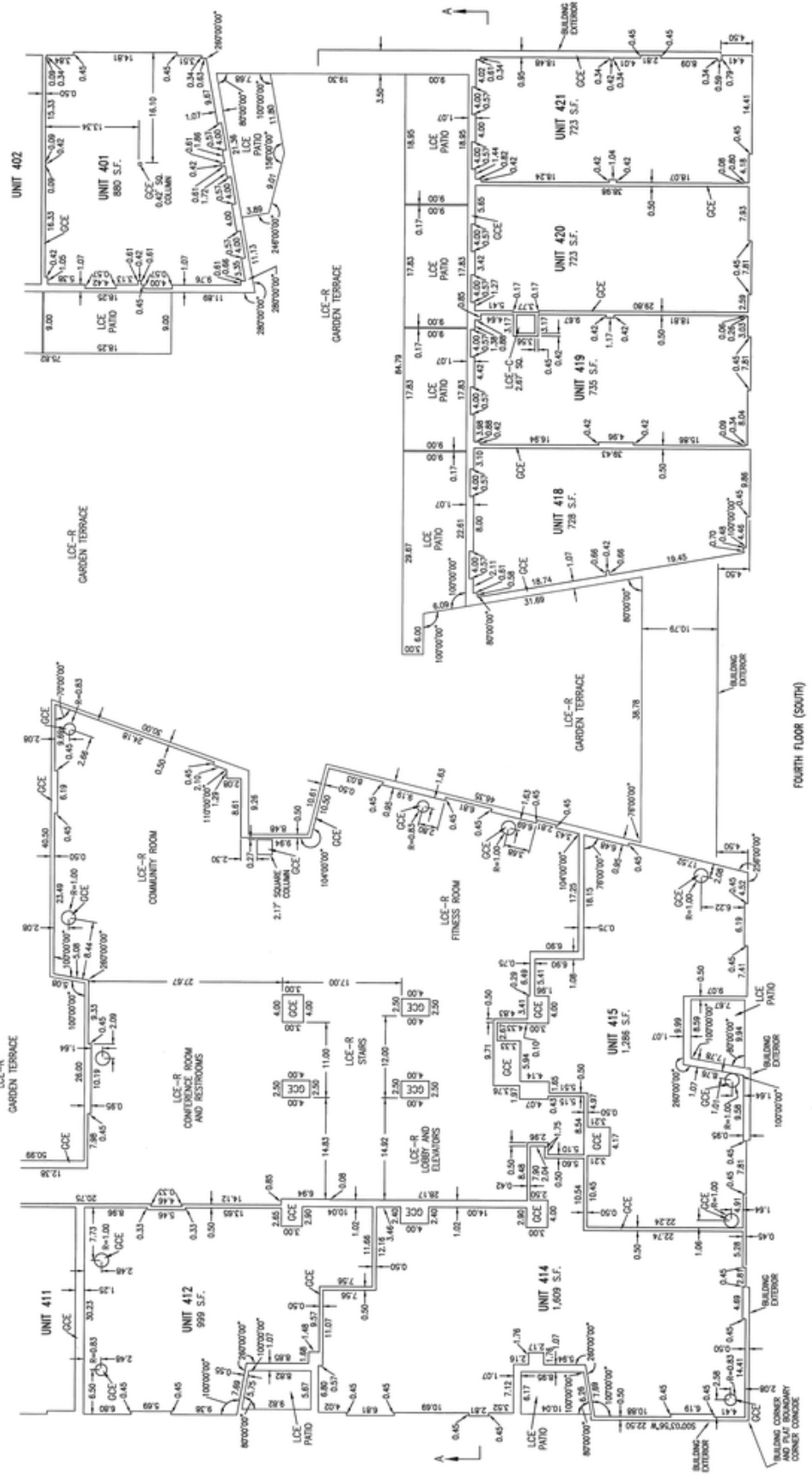
P.L.S. NO. 2658

- LEGEND**
- OCE DENOTES GENERAL COMMON ELEMENT
  - LCE DENOTES LIMITED COMMON ELEMENT
  - LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
  - S.F. DENOTES SQUARE FEET
  - R DENOTES RADIUS
  - SO. DENOTES SQUARE

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED

**otak**  
architects  
interiors  
planners

500 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 228-4622 FAX (503) 415-1304



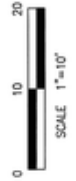
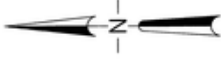
FOURTH FLOOR (SOUTH)

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 11 OF 22

**otak**  
REGISTERED PROFESSIONAL  
LAND SURVEYOR

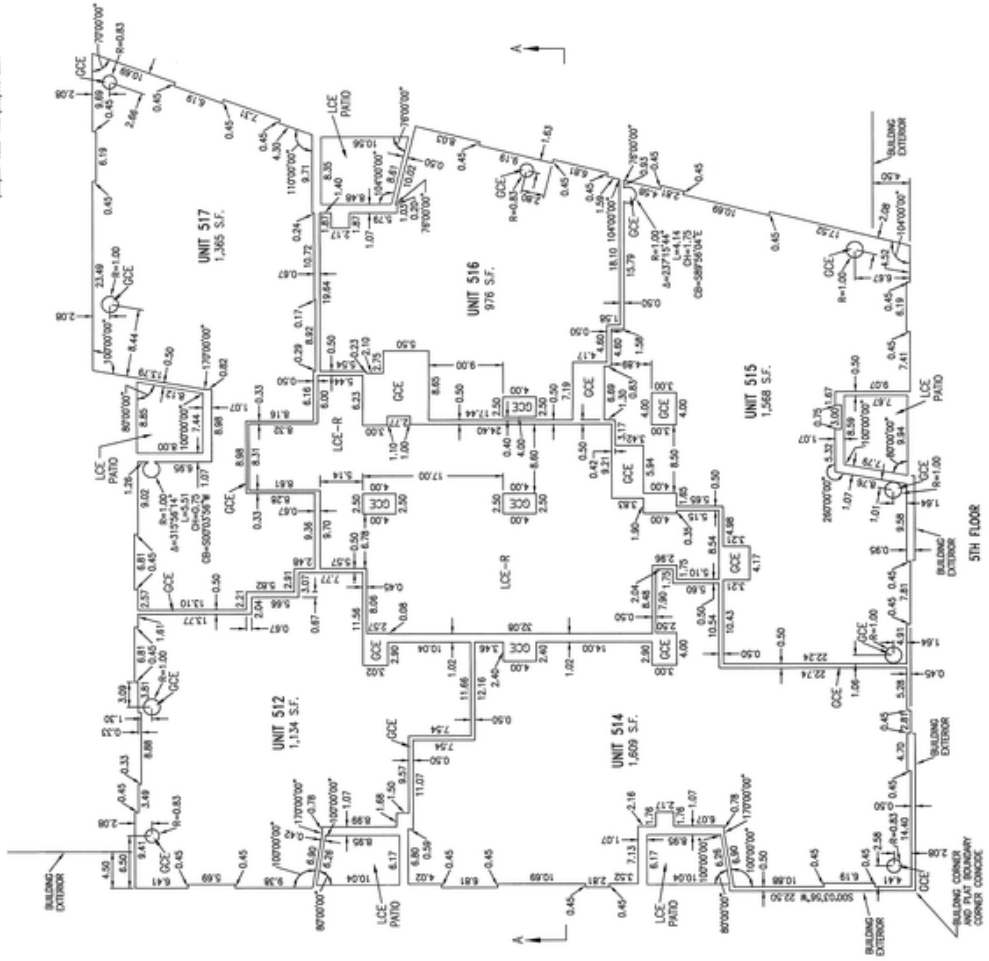
500 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503)227-4823 FAX (503)417-2384



## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

**OTAK**  
JAMES J. OTAK  
JANUARY 17, 1988  
GARY PAUL  
2008

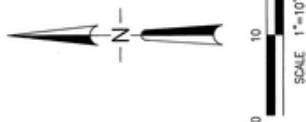
ISSUED 12/21/2016  
THIS IS AN EXCERPT OF  
THE ORIGINAL PLAT OF  
"COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM".

J. Paul  
P.L.S. NO. 2698

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 12 OF 22

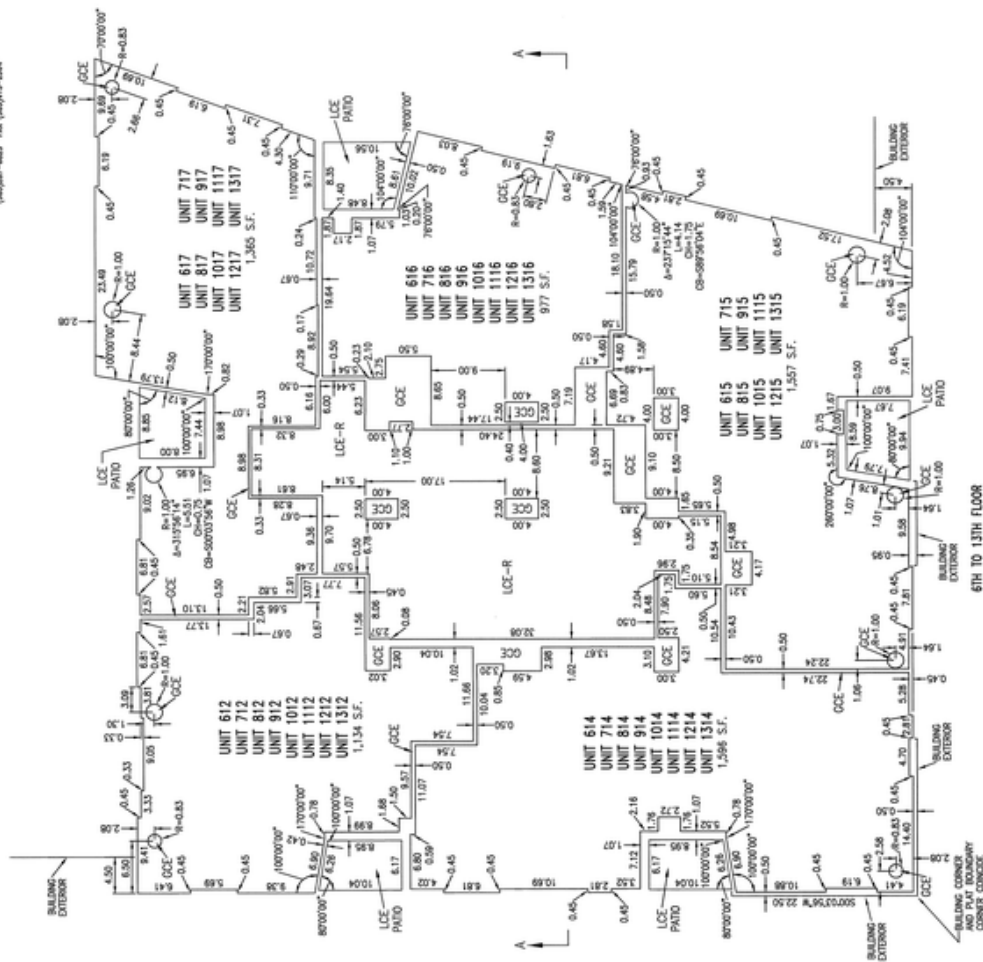
**otak**  
INCORPORATED  
REGISTERED PROFESSIONAL  
LAND SURVEYOR  
200 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 228-4822 FAX (503) 415-3384



## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Anthony J. Schell*

OREGON  
ANALYST ID: 1000  
GARY PAUL  
PAUL

REVISION: 12/31/2016  
THIS IS A COPY OF  
THE ORIGINAL PLAN OF  
CORRECTION ON THE PART  
A CONDOMINIUM.

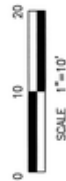
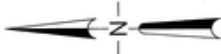
*Anthony J. Schell*

P.L.L. NO. 2688



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

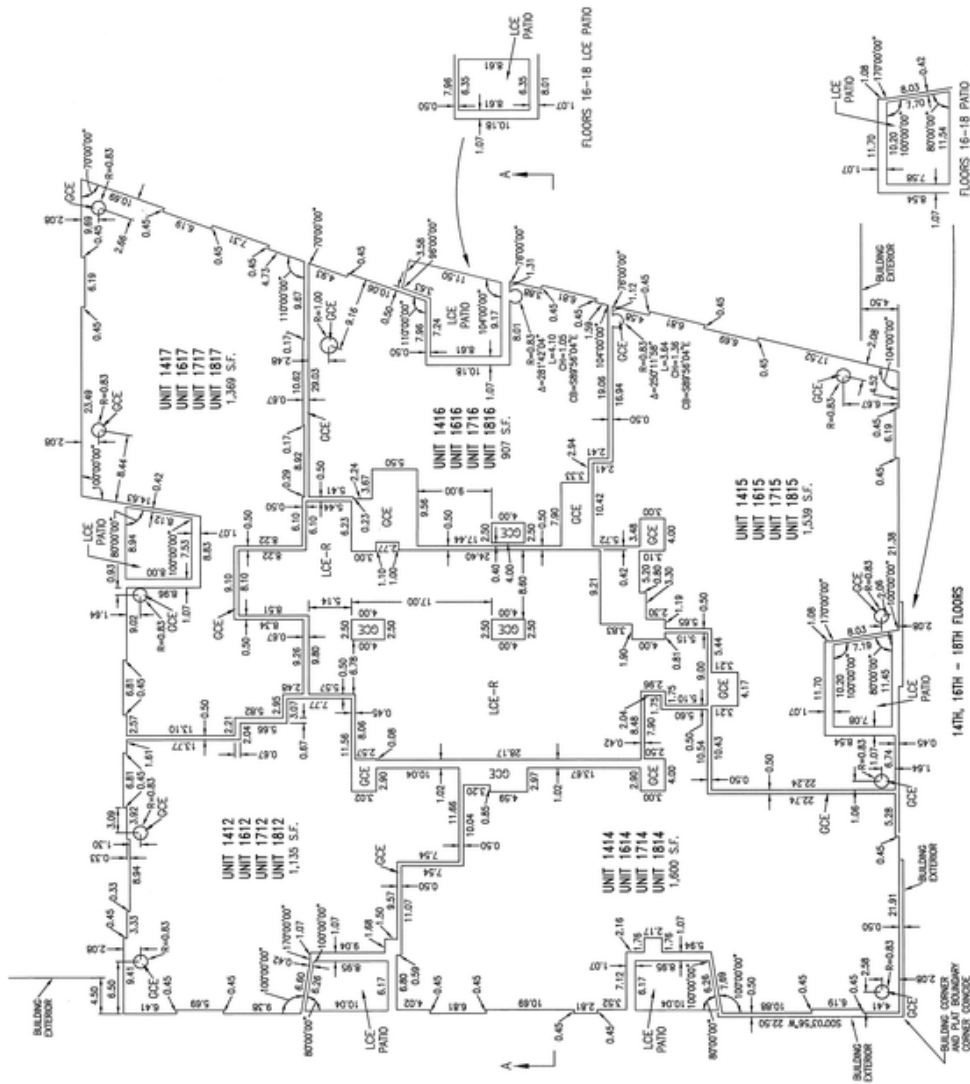
LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 13 OF 22



### LEGEND

- OCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

GARY T. PAUL  
JANUARY 17, 1988  
OREGON  
2016

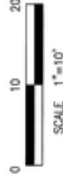
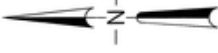
RECORDED 12/21/2016  
BY CLERK OF COUNTY OF  
MULTNOMAH  
THIS IS AN INSTRUMENT OF  
THE ORIGINAL PLAT OF  
"COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM".

Gary T. Paul  
P.L.L.C. NO. 2698

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N, R.1E, W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2018  
SHEET 14 OF 22

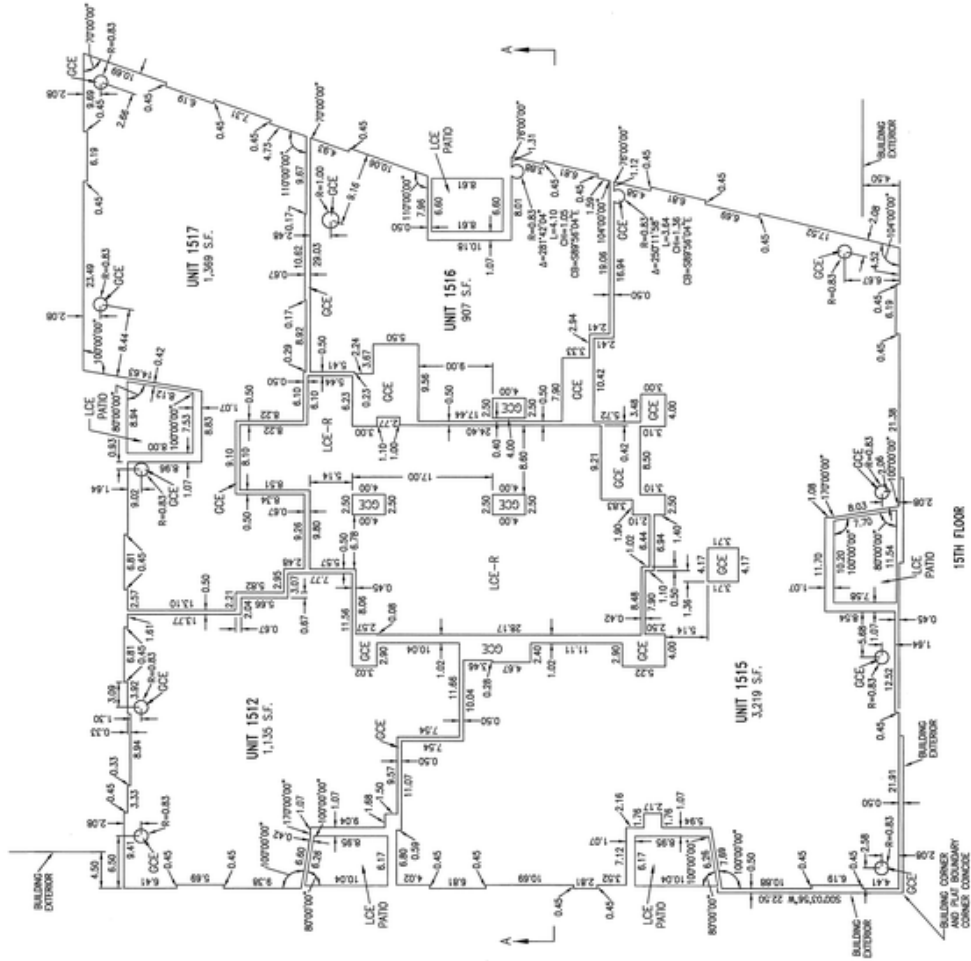
**otak**  
SURVEYING  
PROFESSIONAL  
LAND SURVEYORS  
500 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503) 241-4422 FAX (503) 441-2384



## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- A DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES  
ARE AT 90° UNLESS OTHERWISE NOTED

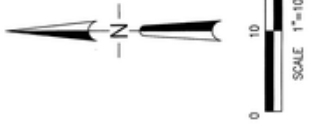


REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Gary E. Paul*  
OREGON  
JANUARY 9, 1988  
GARY E. PAUL  
2686  
RENEWAL 12/31/2018  
THIS IS AN EXACT COPY OF  
THE RECORD DRAWING AS FILED  
IN THE OFFICE OF THE CLERK,  
MULTNOMAH COUNTY, OREGON,  
A CONDOMINIUM.  
*Gary E. Paul*  
P.L.C. NO. 2686

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
 LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 SURVEYED APRIL 21, 2016  
 SHEET 15 OF 22

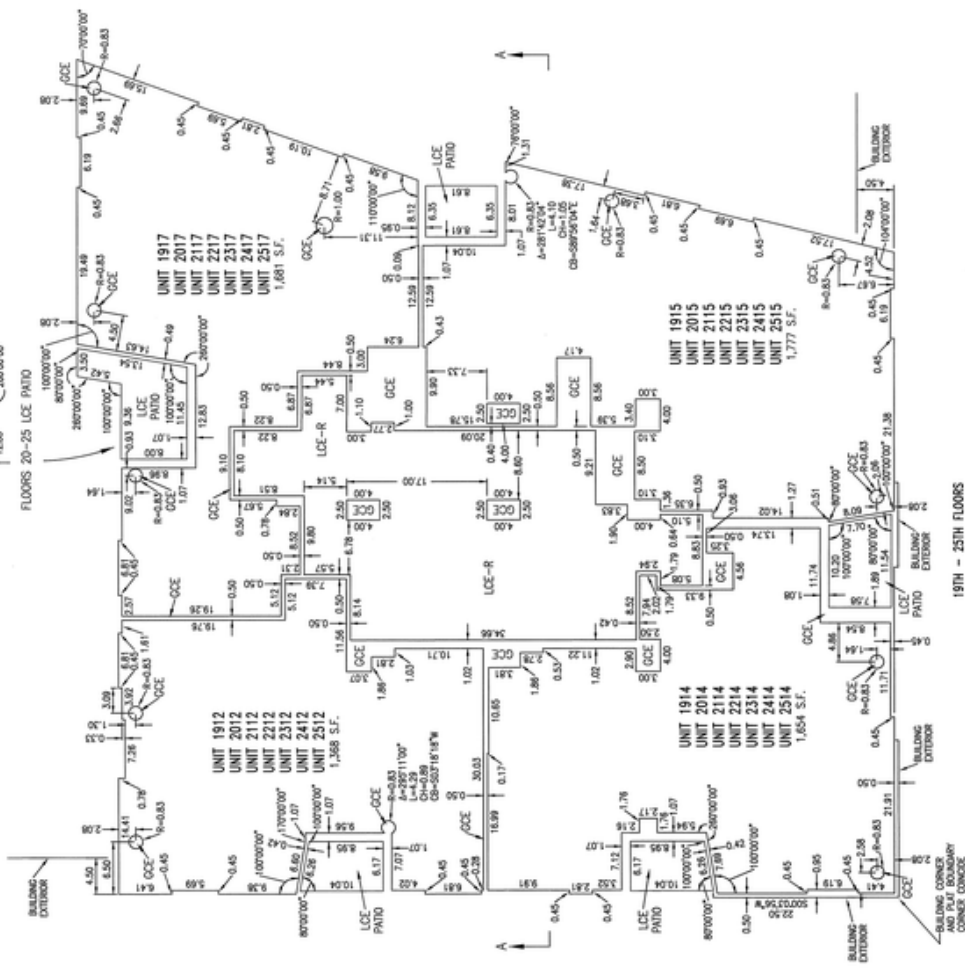
**otak**  
 L.L.C. S.P.A.  
 500 S.W. THIRD AVENUE, SUITE 300  
 PORTLAND, OREGON 97204  
 (503) 227-4822 FAX (503) 415-1304



- LEGEND**
- GCE DENOTES GENERAL COMMON ELEMENT
  - LCE DENOTES LIMITED COMMON ELEMENT
  - LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
  - S.F. DENOTES SQUARE FEET
  - R DENOTES RADIUS
  - Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
 ALL UNIT AND COMMON ELEMENT BOUNDARIES  
 ARE AT 90° UNLESS OTHERWISE NOTED

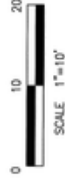
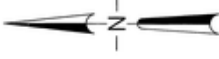
REGISTERED  
**PROFESSIONAL  
 LAND SURVEYOR**  
*Gary Lee Paul*  
 OREGON  
 JANUARY 6, 1988  
**GARY LEE PAUL  
 EESS**  
 EXPIRES 12/31/2016  
 THIS IS A LIMITED COPY OF  
 THE ORIGINAL PLAN OF  
 COSMOPOLITAN ON THE PARK,  
 A CONDOMINIUM.  
*Gary Lee Paul*  
 P.L.C. NO. 2695



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 16 OF 22

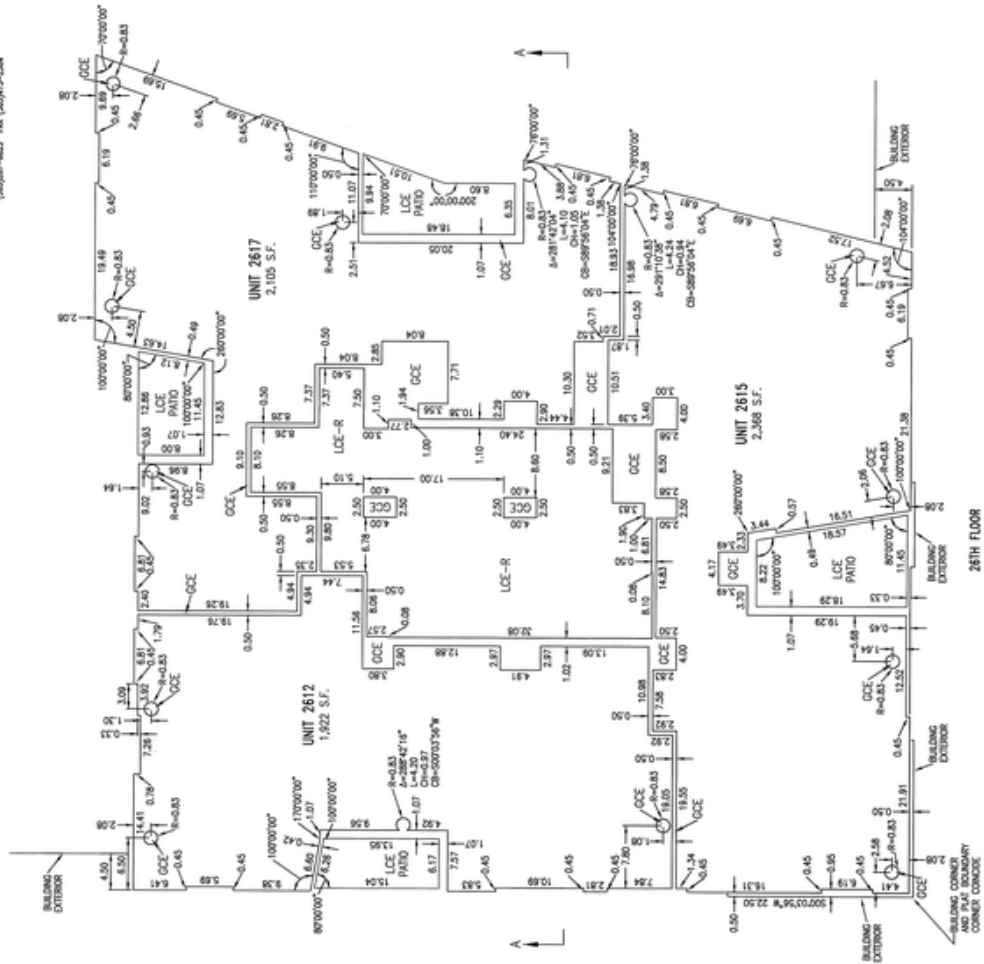
**otak**  
SURVEYING  
PROFESSIONALS  
11111 S.W. THIRD AVENUE, SUITE 200  
PORTLAND, OREGON 97209  
(503)237-4822 FAX (503)414-3304



### LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

GARY E. PALL  
JANUARY 10, 1989  
2008

RENEWAL 12/31/2016

THIS IS AN EXACT COPY OF  
THE ORIGINAL SURVEY  
"COSMOPOLITAN ON THE PARK,  
A CONDOMINIUM".

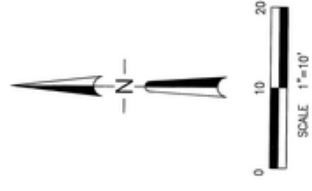
GARY E. PALL

P.L.E. NO. 2698

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2018  
SHEET 17 OF 22

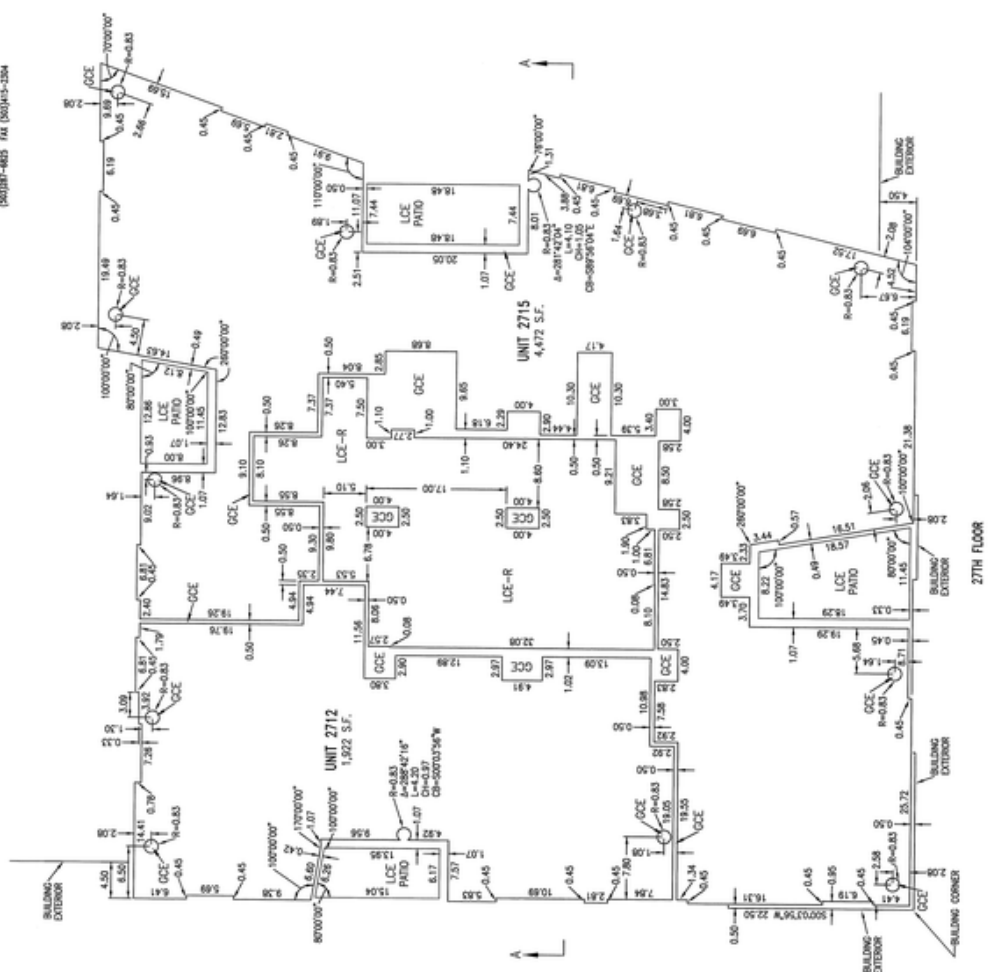
**otak**  
LAND SURVEYORS  
1100 S.W. THIRD AVENUE, SUITE 300  
PORTLAND, OREGON 97204  
(503)277-4625 FAX (503)419-3304



## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A-A  
ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED

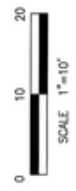
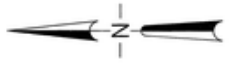


REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Gary E. Paul*  
OREGON  
JANUARY 1988  
GARY E. PAUL  
2080  
RENEWAL 12/31/2016  
THIS IS AN EXACT COPY OF  
THE ORIGINAL PART OF  
THIS SURVEY ON THE PARK,  
A CONDOMINIUM.  
*Gary E. Paul*  
P.L.S. NO. 2898

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 18 OF 22

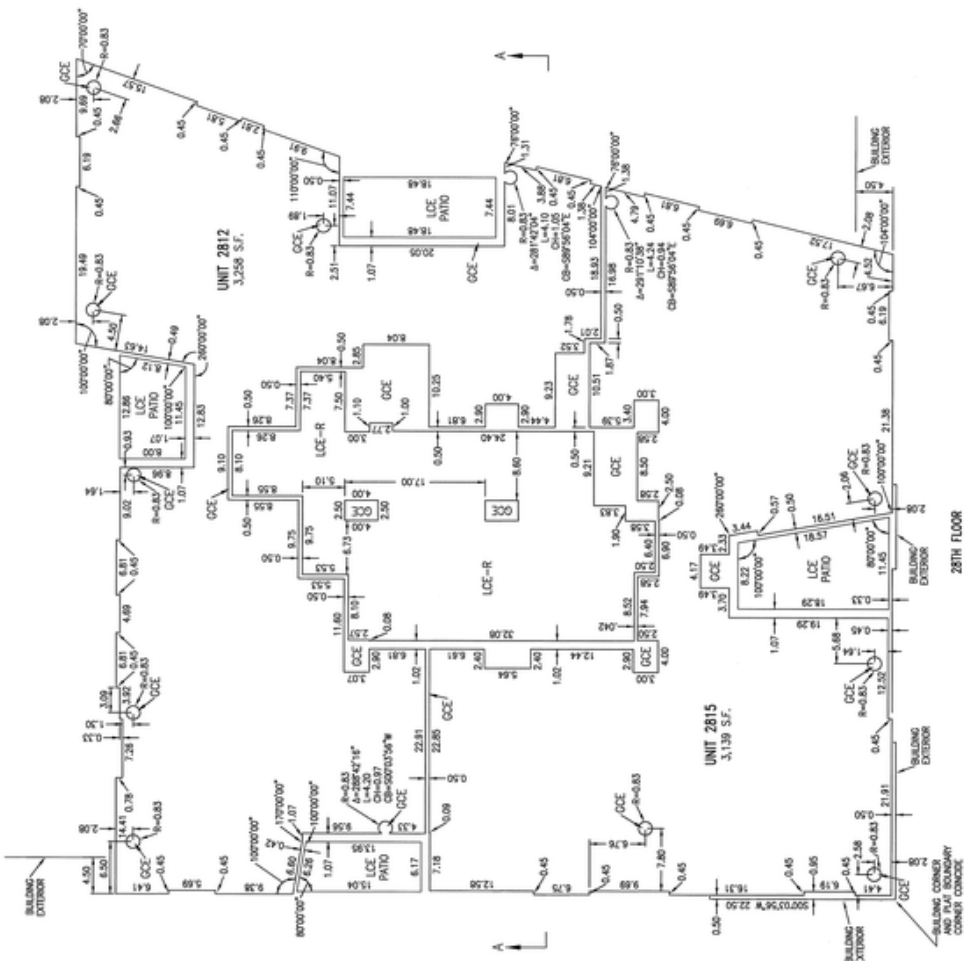
**otak**  
OREGON  
 PROFESSIONAL  
 LAND SURVEYORS  
 800 S.W. THIRD AVENUE, SUITE 500  
 PORTLAND, OREGON 97204  
 (503)281-8622 FAX (503)415-3284



## LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- S.F. DENOTES SQUARE FEET
- R DENOTES RADIUS
- Δ DENOTES CURVE DELTA (OR CENTRAL ANGLE)

NOTES: SEE SHEET 19 FOR BUILDING SECTION A--A  
 ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED



**REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR**  
*Gary E. Paul*  
**OREGON**  
 JANUARY 6, 1988  
**GARY E. PAUL**  
 2885  
 RENEWAL 12/31/2016  
 THIS IS AN EXACT COPY OF  
 THE ORIGINAL SURVEY FOR  
 COSMOPOLITAN ON THE PARK,  
 A CONDOMINIUM.  
*Gary E. Paul*  
 P.L.S. NO. 2598

# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

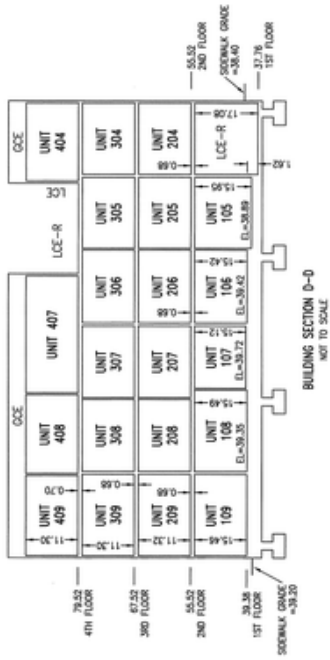
LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
 LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 SURVEYED APRIL 21, 2016  
 SHEET 19 OF 22

REDACTED  
 PROFESSIONAL  
 LAND SURVEYOR  
 OREGON  
 JANUARY 19, 1991  
 GARY E. PAUL  
 2888

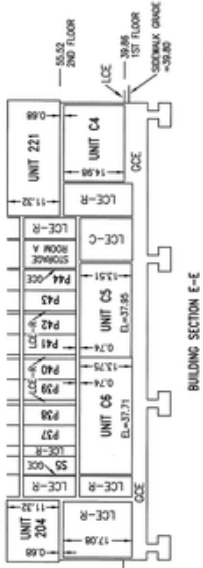
FEDERAL 12/31/2016  
 THIS IS AN EXACT COPY OF  
 THE ORIGINAL SURVEY AND  
 COSMOPOLITAN ON THE PARK,  
 A CONDOMINIUM.  
 [Signature]  
 P.L.L.C. NO. 2998

### LEGEND

- GCE DENOTES GENERAL COMMON ELEMENT
- LCE DENOTES LIMITED COMMON ELEMENT
- LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
- C DENOTES RETAIL UNIT
- P DENOTES PARKING UNIT
- S DENOTES STORAGE UNIT



BUILDING SECTION E-E GRAPHICALLY DEPICTS UNIT ELEVATIONS AND COMMON ELEMENT ELEVATIONS FOR THE 1ST FLOOR. THIS SECTION IS FOR REFERENCE AND SHOWN ON SECTIONS A-A AND D-D.

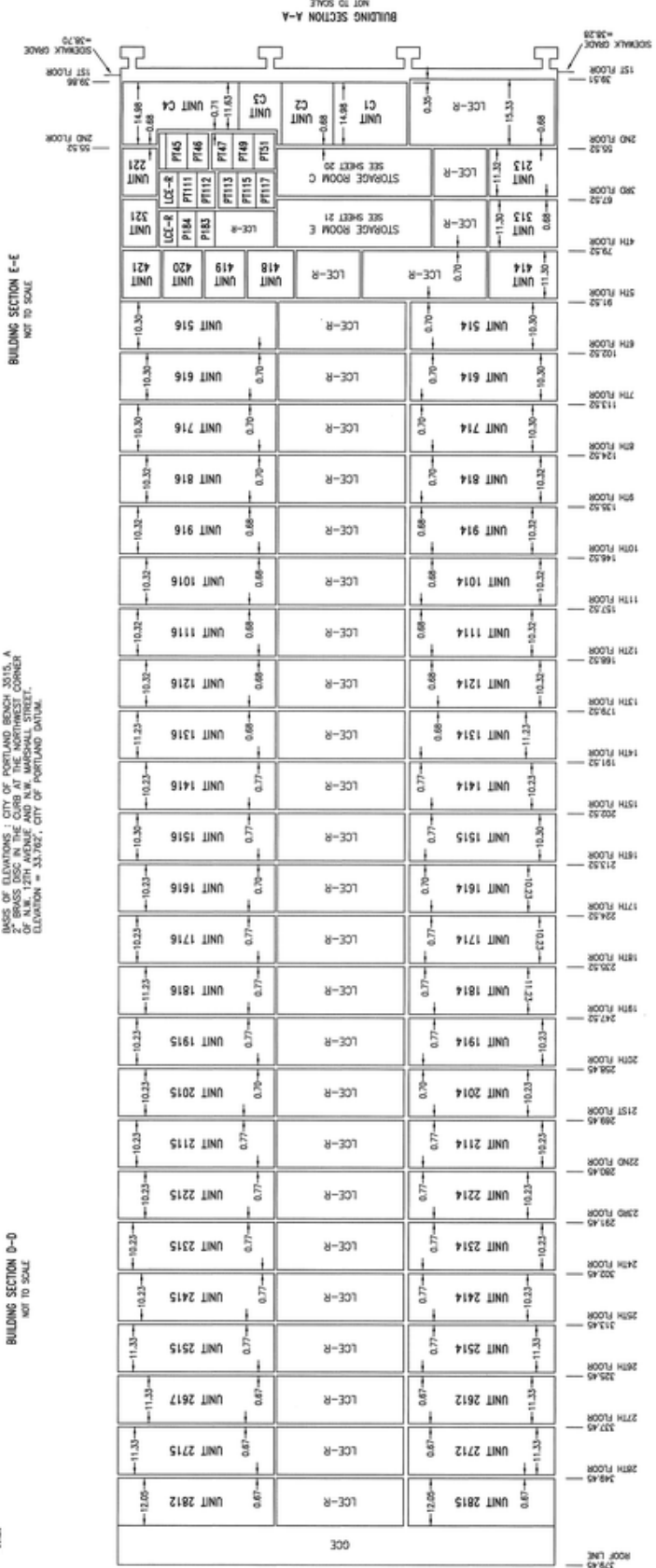


NOTES: SEE FLOOR PLAN SHEETS FOR ELEVATION OF PARKING UNITS

ALL UNITS ON A PARTICULAR FLOOR ARE AT THE SAME ELEVATION. THE 1ST FLOOR UNITS ARE SHOWN ON BUILDING SECTIONS A-A, D-D AND E-E.

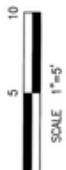
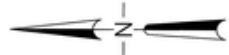
BASIS OF ELEVATIONS: CITY OF PORTLAND BENCH 3015, A 2' BRASS DISC IN THE CURB AT THE NORTHWEST CORNER OF SEASIDE AND 1ST AVENUE. MEAN SEA LEVEL ELEVATION = 33.702'. CITY OF PORTLAND DATUM.

**otak**  
 architects  
 interior designers  
 planners  
 1000 S.W. THIRD AVENUE, SUITE 200  
 PORTLAND, OREGON 97204  
 (503)241-4822 FAX (503)494-3204



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.1M.,  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 20 OF 22



STORAGE UNIT AREAS

UNIT NO.	AREA (S.F.)
57	20
58	20
59	15
511	15
512	15
513	15
514	14
525	21
526	20
527	15
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STORAGE UNIT ELEVATIONS

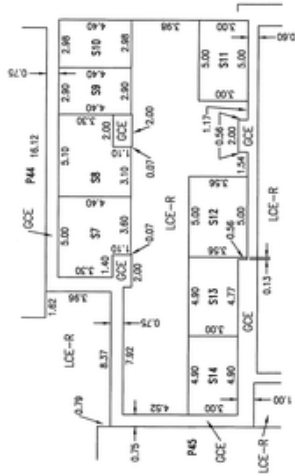
UNIT NO.	ELEV.
57-514	52.20
525-532	62.08
533-578	55.52
589-6105	49.54

REGISTERED PROFESSIONAL LAND SURVEYOR  
OREGON  
GARY E. PAUL  
2006

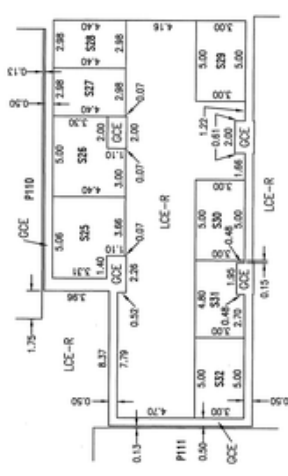
RENEWAL 12/31/2016

THIS IS AN EXACT COPY OF THE ORIGINAL PLAT OF THE COSMOPOLITAN ON THE PARK, A CONDOMINIUM.

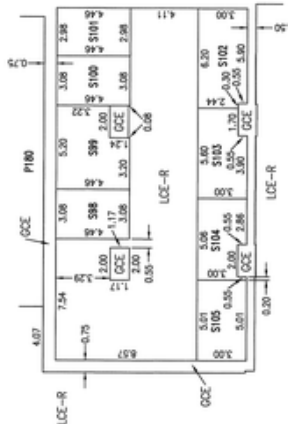
PLS. NO. 2868



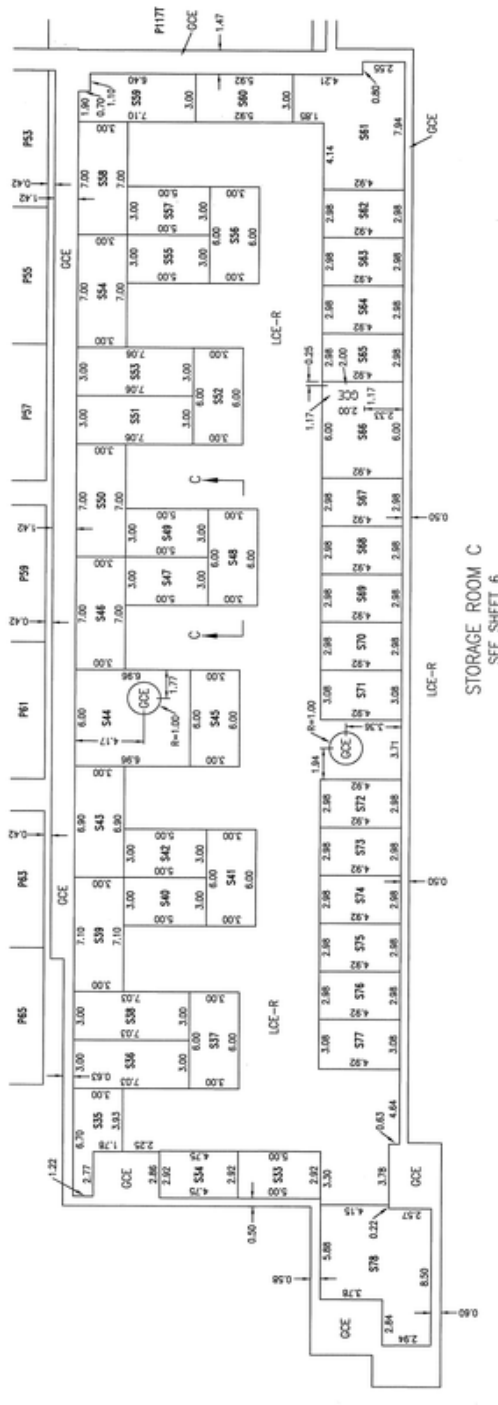
STORAGE ROOM A  
SEE SHEET 4



STORAGE ROOM B  
SEE SHEET 6



STORAGE ROOM D  
SEE SHEET 8



STORAGE ROOM C  
SEE SHEET 6

- LEGEND**
- OCE DENOTES GENERAL COMMON ELEMENT
  - LCE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
  - S DENOTES STORAGE UNIT
  - P DENOTES PARKING UNIT
  - T DENOTES TANDEM PARKING
  - S.F. DENOTES SQUARE FEET

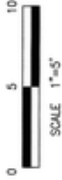
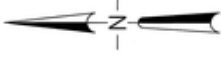
NOTES: SEE SHEET 21 FOR STORAGE SECTION C-C  
ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED



# COSMOPOLITAN ON THE PARK, A CONDOMINIUM

LOTS 17, 18, 19 AND 20, HOYT STREET YARDS NO. 2'  
LOCATED IN THE NW1/4 SECTION 34, T.1N., R.1E., W.M.  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED APRIL 21, 2016  
SHEET 21 OF 22

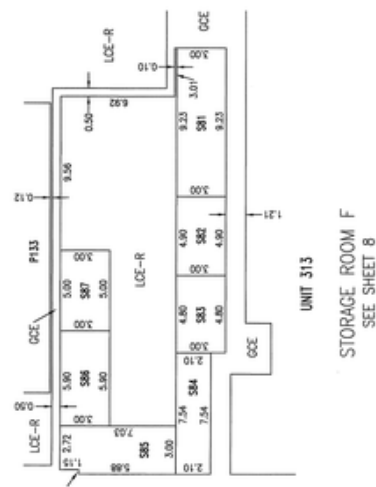
otak  
LAND SURVEYORS  
1000 S.W. THIRD AVENUE, SUITE 200  
PORTLAND, OREGON 97204  
(503) 224-4622 FAX (503) 415-1204



UNIT NO.	AREA (S.F.)
581	28
582	15
583	14
584	16
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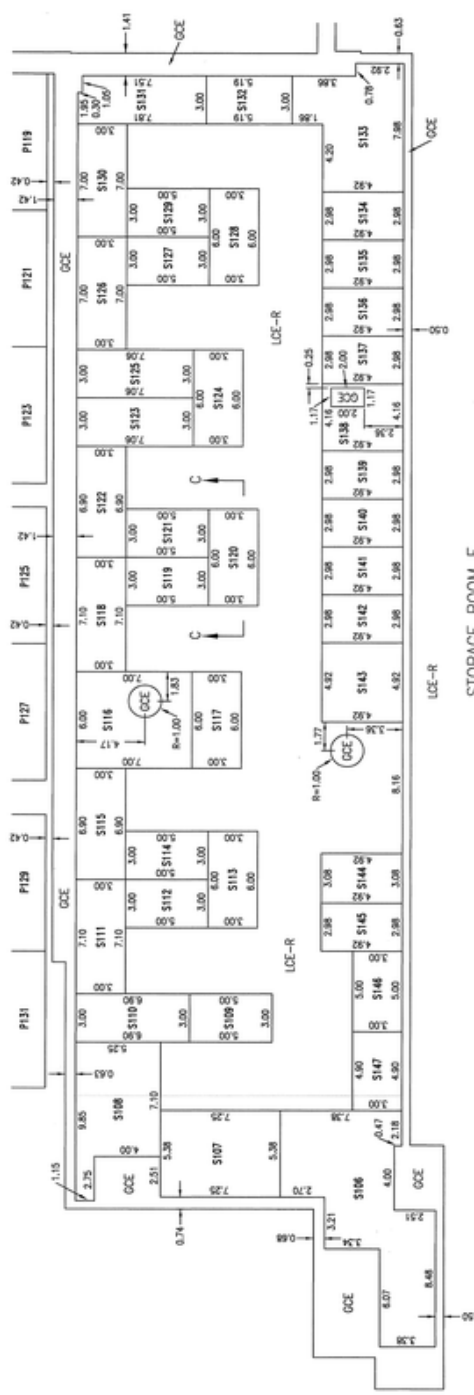
UNIT NO.	ELEV.
581-587	67.25
588-597	67.25
598-599	67.25

NOTES: ALL UNIT AND COMMON ELEMENT BOUNDARIES ARE AT 90° UNLESS OTHERWISE NOTED



STORAGE UNIT SECTION C-C  
NOT TO SCALE

BASIS OF ELEVATIONS - CITY OF PORTLAND BENCH 3015, CORNER OF NW 13TH AVENUE AND NW MARSHALL STREET, ELEVATION = 33.762', CITY OF PORTLAND DATUM.



STORAGE ROOM F  
SEE SHEET 8

STORAGE ROOM E  
SEE SHEET 8

- LEGEND**
- GCE DENOTES GENERAL COMMON ELEMENT
  - LOE-R DENOTES LIMITED COMMON ELEMENT-RESIDENTIAL
  - S DENOTES STORAGE UNIT
  - P DENOTES PARKING UNIT
  - T DENOTES TRAMPOLINE PARKING
  - S.F. DENOTES SQUARE FEET

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
OREGON  
GARY E. PAUL  
2008

RENEWAL 12/31/2016

THIS IS AN EXACT COPY OF THE ORIGINAL PLAT OF THE CONDOMINIUM ON THE PARK, A CONDOMINIUM.

P.L.S. NO. 2698



AV Ball Janik LLP  
7/9

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HOYT STREET YARDS COMMUNITY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HOYT STREET YARDS COMMUNITY (this "Declaration") is made and entered into effective this 9<sup>th</sup> day of July, 1998, by Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Declarant").

1. DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

- 1.1 Additional Property. "Additional Property" shall mean the real property in Multnomah County, Oregon legally described on the attached Exhibit B.
- 1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Community Association, as amended from time to time.
- 1.3 Assessment. "Assessment" shall mean any assessment levied against one or more Members by the Community Association for payment of expenses relating to the Property and shall include General, Special, and Limited Assessments.
- 1.4 Board. "Board" shall mean the Board of Directors of the Community Association.
- 1.5 Bylaws. "Bylaws" shall mean the Bylaws of the Community Association, as amended from time to time.
- 1.6 Common Area. "Common Area" shall mean those areas designated as common or open space on the attached Exhibit C or any other areas so designated by Declarant in an amendment to this Declaration recorded in accordance with Section 12.2.2, but shall exclude any common areas or common elements within any condominium, townhome, or apartment project formed within the Property and any park or other real property dedicated to the City of Portland or other governmental authority.
- 1.7 Community Association. "Community Association" shall mean the non-profit corporation formed or to be formed to serve as the association of Members as provided in this Declaration and such corporation's successors and assigns.
- 1.8 Declarant. "Declarant" shall mean Hoyt Street Properties, L.L.C., an Oregon limited liability company, and its successors and assigns if such successor or assign should acquire: (a) Declarant's interest in the Property or (b) all of Declarant's rights under this Declaration pursuant to a recorded instrument executed by Declarant.

24

Recorded in the County of Multnomah, Oregon  
C. Swick, Deputy Clerk



123.00

98121172 2:39pm 07/09/98

013 20018194 02 14  
C73 24 0.00 120.00 0.00 3.00 0.00

July 9, 1998

1.9 Design Guidelines. "Design Guidelines" shall mean the design guidelines and procedures adopted by the Design Review Committee pursuant to Article VIII.

1.10 The Design Review Committee. The "Design Review Committee" or "Committee" shall mean the committee appointed pursuant to Article VIII.

1.11 General Assessment. "General Assessment" shall mean an assessment levied against all Members for the common benefit of the Property and the Members, as determined by the Board in its sole discretion.

1.12 Improvement. "Improvement" shall mean every structure or improvement of any kind, including but not limited to buildings, sidewalks, fences, benches, walls, works of art, trees, hedges, plantings, poles, changes in exterior color or shape, and site work (such as, without limitation, excavation, grading, road construction, and utility improvements).

1.13 Limited Assessment. "Limited Assessment" shall mean an assessment levied against a Member by the Community Association (a) for costs and expenses incurred by the Community Association for corrective action performed pursuant to this Declaration which is required as a result of the willful or negligent actions or omissions of such Member or such Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the member's family members, tenants, guests, contractors, or invitees, or (b) to reflect the use of or benefit from one or more Common Areas by a Member or a Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the Member's family members, tenants, guests, contractors, or invitees, that is disproportionate to the percentage of the total General Assessments allocable to the Member.

1.14 Lot. "Lot" shall mean a platted or partitioned lot or block within the Property, with the exception of (a) any tract marked on any plat of the Property as common or open space, (b) any platted or partitioned lot, the owner of which by virtue of such ownership is a member of an Owners' Association, or (c) any townhome or condominium unit. In the event a Lot is replatted in connection with a townhome, condominium, or other project, the Lot that existed prior to the replatting shall continue to be treated as a Lot for purposes of this Declaration. In the case of townhome or condominium projects already existing within the Property, the real property containing each such project shall be considered a Lot.

1.15 Member. "Member" shall mean any person or entity, including Declarant, at any time owning a Lot and any Improvements thereon (including, but not limited to, buildings such as apartments or garages). Upon the formation of an Owners' Association with respect to a townhome or condominium project that is developed on a Lot or Lots, the Owners' Association shall be the Member with respect to that Lot or those Lots, as the case may be.

1.16 Owner. "Owner" shall mean any person or entity (including, without limitation, an Owners' Association) owning a Lot or Unit, as the case may be.

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1.17 Owners' Association. "Owners' Association" shall mean a non-profit corporation formed or to be formed to serve as the owners' association with respect to a townhome or condominium project developed on one or more Lots.

1.18 Property. "Property" shall mean the real property in Multnomah County, Oregon legally described on the attached Exhibit A.

1.19 Special Assessment. "Special Assessment" shall mean an assessment levied by the Community Association against the Members pursuant to Section 5.2.6.

1.20 Unit. "Unit" shall mean a townhome or condominium unit located on one or more Lots.

## 2. DECLARATION

2.1 Property Covered. The property which is covered by and is hereby made subject to this Declaration is the Property.

2.2 Purpose. The purpose of this Declaration is to provide services to the Common Area (including, without limitation, the maintenance, repair, restoration, replacement, and improvement thereof), to establish the Community Association, to provide for assessments of the Owners (including, without limitation, for those matters set forth in Section 5.2.2), and to set forth other terms and conditions governing the use and enjoyment of the Property.

## 3. THE ASSOCIATION

3.1 Organization. Declarant has organized the Community Association as a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act under the name "Hoyt Street Yards Community Association, Inc."

3.2 Membership. Every Owner of one or more Lots shall, immediately upon creation of the Community Association and thereafter during the entire period of such Owner's ownership of one or more Lots, be a Member. 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. As provided in Section 1.15 above, upon the formation of an Owners' Association with respect to a townhome or condominium project that is developed on one or more Lots, the Owners' Association shall be the Member with respect to that Lot or those Lots, as the case may be.

3.3 Voting Rights. The Community Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A Members shall be all Members, including Declarant).

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Class A Members shall be entitled to one vote for each quarter block within a Lot owned by a Class A Member (or, in the case of an Owners' Association, for each quarter block within the Lot on which the corresponding project is situated), regardless of the Improvements, if any, located on the Lot. There shall be no fractional votes. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall a Lot be allocated more than the voting power determined in accordance with the formula set forth in the second sentence of this Section 3.3.

Class B. The Class B Member shall be Declarant and shall be entitled to a number of votes equal to the sum of (a) the number of votes then held by Class A Members plus (b) one. The Class B membership shall cease and be converted to Class A membership upon Declarant's election in writing to terminate the Class B membership.

3.4 Powers and Obligations. The Community Association shall have, exercise, and perform (a) the powers, duties, and obligations granted to the Community Association by this Declaration; (b) the powers and obligations of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act; and (c) any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Community Association pursuant to this Declaration or otherwise promoting the general benefit of the Members within the Property.

3.5 Liability. Neither the Community Association nor any officer or member of the Board or the Design Review Committee shall be liable to any Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Community Association, any of its officers, or any member of the Board or the Design Review Committee, provided only that the officer or Board or Design Review Committee member has acted in good faith in accordance with the actual knowledge possessed by him.

3.6 Indemnification. The Community Association shall indemnify every officer, director, Design Review Committee member, or other member of a committee established under the Bylaws against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Community Association shall, as an expense subject to General Assessments under Section 5.2, maintain adequate officers' and directors' liability insurance to fund this obligation.

3.7 Community Association Rules and Regulations. The Community Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots, Units and the Common Area as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment,

modification, or revocation thereof, shall be delivered by the Board promptly to each Member and shall be binding upon all Members and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

4. MAINTENANCE AND INSURANCE

4.1 Maintenance. The Community Association shall be responsible for the maintenance, repair, restoration, replacement, and improvement of the Common Area (including any utilities thereon, to the extent not maintained by governmental authorities or public or private utility companies) in good order and condition. The Community Association's responsibilities shall include, but shall not be limited to, the cleaning, repaving, and replacing of any paved areas included in the Common Area (including streets and adjoining sidewalks forming part of any platted tract within the Common Area, but excluding any public streets and adjoining sidewalks, for which the Community Association shall have no responsibility), landscape maintenance, replacement, and repair of or to landscaped areas included in the Common Area, and the repair, repainting, restaining, and replacing of any benches, lights and lightposts, planters, fences, irrigation systems, works of art, and other Improvements located within the Common Area. The Community Association shall also arrange for snow and ice removal from the Common Area, but not from the Lots.

4.2 Insurance. The Community Association shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Community Association or otherwise; provided, however, that such liability policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence, and that such liability policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least 10 days' written notice to the Community Association. The Community Association may obtain such other and further policies of insurance as it deems advisable. Additionally, the Community Association shall obtain, and maintain in effect, from such companies fire and extended coverage casualty insurance with respect to all insurable Improvements within the Common Area in an amount equal to 100% of the replacement cost thereof.

5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Community Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses, or attorneys' fees imposed pursuant to Section 9.4, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was

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the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 9 below. Upon the creation of a townhome or condominium project on one or more Lots by the recordation of a subdivision or condominium plat therefor, each Unit within such project shall be subject to the lien described in this Section 5.1; provided that the owner of any Unit may obtain the discharge of the lien for any assessment or other charge payable by the applicable Owners' Association upon payment to the Community Association of an amount equal to (a) the total amount of such assessment or other charge multiplied by (b) the percentage of common area expense allocated by the applicable Owners' Association to that Unit.

## 5.2 General Assessments

5.2.1 Commencement. General Assessments against all Lots shall commence on a date selected by the Board, in its sole discretion.

5.2.2 Amount of Annual General Assessment. The total annual General Assessment against all Lots shall be based upon an annual budget prepared by the Board with respect to projected expenses for the common benefit of the Property and the Members, as determined by the Board in its sole discretion. Expenses that may be subject to General Assessments include, without limitation, costs and charges incurred in connection with:

- (a) Maintenance, repair, restoration, replacement, and improvement activities pursuant to Section 4.1 (including appropriate reserves);
- (b) Acquisition, installation, and maintenance of decorations and ornamentation for the Property;
- (c) Liaison and communication with the City of Portland, Multnomah County, and other governmental agencies with respect to issues of common concern to the Members;
- (d) Sponsorship and promotion of arts and cultural activities within or in the vicinity of the Property;
- (e) Meetings and other gatherings of residents of the Property for social, recreational, informational, or other purposes;
- (f) Professional management of the Community Association and the Property;
- (g) Legal and accounting services for the Community Association;
- (h) Public liability and property damage insurance pursuant to Section 4.2, officers' and directors' liability insurance coverage, errors and omissions coverage for members of the Board (and, if the Board deems appropriate, the Design



Review Committee), and such other insurance coverage as the Board may deem necessary or appropriate;

(i) Provision of security services for the Property, subject to Section 12.9, provided that the Community Association shall have no obligation whatsoever to provide such security services; and

(j) Other activities, events, or services for the common benefit of the Property and the Members, as determined by the Board from time to time in its sole discretion.

5.2.3 Allocation of Assessments. All General Assessments shall be allocated among Members in proportion to the number of quarter blocks within the Lot owned by each Member (or, in the case of an Owners' Association, in proportion to the number of quarter blocks within the Lot on which the corresponding project is situated).

5.2.4 Notice of General Assessments and Time for Payment. General Assessments shall be determined on an annual basis. Subject to amendment by the Board, the Community Association shall give written notice to each Member as to the amount of the General Assessment with respect to each Lot on or before December 15 for each year for the calendar year commencing January 1 of the next year. The General Assessment shall be due and payable monthly or on such other basis as the Board shall determine.

5.2.5 Limitation of Annual General Assessment; Contribution by Class B Member. The initial annual General Assessment shall not exceed \$5650.00 for each quarter block within a Lot. Each subsequent annual General Assessment shall not be increased over the General Assessment for the preceding year by a percentage exceeding the percentage increase in the Consumer Price Index - All Items published by the U.S. Bureau of Labor Statistics for the region including the Portland, Oregon metropolitan area (or any generally accepted substitute for such index, if such index shall be discontinued) for the 12-month period immediately preceding the month in which the annual General Assessment is determined without the written consent of holders of at least 60% of the Class A voting power of the Community Association and the Class B Member, if any. In the event the annual General Assessments are insufficient to pay the expenses for the common benefit of the Property as a result of the limitation set forth in this Section 5.2.5, the Class B Member, if any, agrees to contribute funds sufficient to satisfy the deficiency.

5.2.6 Special Assessments. In addition to the annual General Assessments, the Board shall have the authority, with the written consent of holders of at least 60% of the Class A voting power of the Community Association and the Class B Member, if any, to levy Special Assessments to satisfy any actual or projected deficiency between the expenses of the Community Association and the amounts realized through General Assessments. Special Assessments shall be allocated in the manner described in Section 5.2.3. Special Assessments are payable as the Board may from time to time determine, within 30 days after mailing notice thereof to the Members.

5.3 Limited Assessments. The Community Association may levy against any Member a Limited Assessment (a) equal to the costs and expenses incurred by the Community Association, including legal fees, for corrective action performed pursuant to this Declaration which is required as a result of the willful or negligent actions or omissions of such Member or such Member's agents, tenants, contractors, or invitees, or if the Member is an Owner's Association, of a member of that Owner's Association or of the member's family members, tenants, guests, contractors, or invitees, or (b) that equitably reflects use of or benefit from one or more Common Areas by a Member or a Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the member's family members, tenants, guests, contractors, or invitees, that is disproportionate to the percentage of the total General Assessments allocable to the Member.

#### 6. PROPERTY RIGHTS AND EASEMENTS

6.1 Members' Use and Occupancy. Except as otherwise expressly provided in this Declaration or in the plat in which a Lot was platted and partitioned, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. Declarant and any representative of the Community Association authorized by the Community Association may at any reasonable time, upon reasonable notice to the applicable Member, enter upon any Lot for the purpose of performing the maintenance, repair, restoration, replacement, and improvement activities described in Section 4.1 with respect to any Common Area adjoining such Lot. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the applicable Member. Declarant or the Community Association may grant or assign easements over or with respect to any Lot to municipalities or other utilities performing utility services and to communication companies, provided such easements do not unreasonably interfere with the use and enjoyment of the Lot by the Owner (or the Owners of Units thereon).

6.2 Members' Easements of Enjoyment. Subject to the provisions of this Declaration, every Member and the Member's agents, tenants, contractors, and invitees, or, if the Member is an Owners' Association, every member of that Owners' Association and the member's family members, tenants, guests, contractors, and invitees, shall have a right and easement of enjoyment in and to the Common Area, which easement shall be appurtenant to and shall pass with the title to every Lot and Unit. Use of the Common Area shall not result in unreasonable disturbance of occupants of the Units and shall be subject to such rules and regulations as may be adopted by the Board from time to time.

6.3 Title to Common Area. Fee title to all Common Area shall be conveyed to the Community Association by Declarant free and clear of liens and encumbrances at any time, in the discretion of Declarant prior to the date on which Class B membership in the Community Association ceases and is converted to Class A membership.

6.4 Extent of Members' Rights. The rights and easements of enjoyment in the Common Area created hereby shall be subject to the following and all other provisions of this Declaration:

6.4.1 Community Association's Easements. Declarant grants to the Community Association the following easements over, under, and upon the Common Area:

6.4.1.1 An easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or with the approval of the Board and any such easement shown on any plat of the Property.

6.4.1.2 An easement for construction, maintenance, repair, restoration, replacement, improvement, and use of the Common Area and any Improvements thereon.

6.4.2 Declarant's Easements. So long as Declarant owns any Lot or Unit, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Area in order to carry out development, construction, sales, and rental activities necessary or convenient for the development of the Property or the sale or rental of Lots, Units, or other units of the Property and for such other purposes as, in its sole discretion, may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

6.4.3 Utility and Other Municipal Easements. Declarant or the Community Association may (and, to the extent required by law, shall) grant or assign easements to municipalities or other utilities performing utility services and to communication companies, and the Community Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

6.5 Encroachments. If an encroachment results from construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Property, an easement for the encroachment shall exist to the extent that any Lot or Common Area encroaches on any other Lot or Common Area. An easement shall continue for the purpose of maintaining the encroachment so long as the encroachment exists. Nothing in this Section 6.5 shall relieve a Member of liability in case of a Member's willful misconduct or shall relieve Declarant or any other person of liability for failure to adhere to any plat of any portion of the Property.

## 7. ADDITIONAL RESTRICTIONS AND DUTIES

7.1 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, Unit, or Common Area, nor shall anything be done or placed on any Lot, Unit, or Common Area which unreasonably interferes with or jeopardizes the enjoyment of other Lots, Units, or the Common Area, or which is a source of unreasonable annoyance to residents. No unlawful use shall be made of any Lot, Unit, or Common Area or any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction thereof shall be observed.

7.2 Maintenance of Structures and Grounds. Each Owner shall maintain such Owner's Lot, Unit, and Improvements thereon in a clean and attractive condition, in good repair,

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and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, and replacement of and care for roofs, gutters, downspouts, exterior building surfaces, landscaping, driveways, sidewalks adjoining public streets, parking areas, walks and other exterior Improvements.

7.3 Parking. Parking of boats, trailers, motorcycles, trucks, truck campers, recreational vehicles, or similar vehicles or equipment shall be permitted only upon a Lot and only within the confines of an enclosed garage or screened area located thereon, which shall fully screen from view any such vehicle or equipment.

7.4 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of 48 hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the residents of the Property. Should any Owner fail to remove such vehicle within two days following the date on which notice is mailed to such Owner by the Community Association, the Community Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

7.5 Signs. No signs shall be erected or maintained on any Lot except signs which comply with the River District Design Guidelines, as amended, or signs which have been approved in writing by the Design Review Committee.

7.6 Rubbish and Trash. No Lot, Unit, or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other debris and waste shall be kept in appropriate sanitary containers for proper disposal.

7.7 Temporary Structures. No structure of a temporary character, trailer, tent, shack, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, without the prior written approval of the Design Review Committee.

7.8 Utilities and Antennae. No sewer, drainage, or utility lines, wires, satellite dishes, or other devices for the communication or transmission of electric current, power, or signals (including telephone, television, microwave, or radio signals) shall be constructed, placed, or maintained anywhere in or upon the Property other than within buildings or other structures unless contained in conduits or placed or maintained underground or concealed in or under Buildings or other structures, without the prior written approval of the Board. No device for the transmission or reception of telephone, television, microwave, or radio signals will be allowed within the Property unless the antenna is located and screened so as not to be visible from neighboring Lots and streets. Nothing contained in this Section 7.8 shall be construed to prohibit the erection or use of temporary power or telephone facilities during construction or repair of Improvements. The restrictions contained in this Section 7.8 shall be effective only to the extent permissible under applicable laws and regulations.

7.9 Activities of Declarant. This Article VII shall not apply to the activities of Declarant or its affiliates or their respective agents, employees, or contractors.

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8. DESIGN REVIEW COMMITTEE

8.1 Design Review. No Improvement shall be commenced, erected, placed, altered, added to, or maintained on, within, or beneath, or above the Property until design plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor have been submitted for review by the Design Review Committee and have been approved by the Board in writing. Notwithstanding the foregoing, any Owner may renovate, paint, or redecorate the interior of structures on the Owner's Lot without such approval. In addition, no approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements and location with respect to topography and finished grade elevations.

8.2 Procedure. In all cases which require Committee review and Board approval or consent pursuant to this Declaration, the provisions of this Article VIII shall apply. The procedure and specific requirements for Committee review and Board approval or consent may be set forth in Design Guidelines adopted from time to time by the Committee. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Property and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Committee. The Committee may charge a reasonable fee to cover the cost of processing an application for its approval. Compliance with the design review process set forth in this Declaration is not a substitute for compliance with governmental building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

8.3 Variance. The Board may, but is not required to, authorize variances from compliance with any of its Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no such variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the Board from denying a variance in other circumstances. For purposes of this Section 8.3, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

8.4 Expert Consultation. Each of the Committee and the Board may avail itself of technical and professional advice and consultants as it deems appropriate, at the requesting Member's expense.

8.5 Board Decision. The Board shall render its decision on an application for approval of an Improvement or any other proposal submitted to it for approval or consent within a reasonable period after the Committee has received a complete written application therefor. A complete application shall specify the approval or consent requested and be accompanied by all

06/27/98

material reasonably required or desired by it to make an informed decision on such application. The Board in making its decision shall consider, but shall not be bound by, the recommendations of the Committee. If the Board approves an application, it may not thereafter revoke, rescind, or materially modify its approval without the consent of the affected Owner.

8.6 Board Discretion. The Board may, at its sole discretion, withhold consent to any proposed Improvement if the Board finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the design standards that the Board intends for the Property. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Lots, effect on the enjoyment of other Lots or the Common Area, environmental impact, and any other factors which the Board reasonably believes to be relevant, may be taken into account by the Board in determining whether or not to approve or condition its approval of any proposed Improvement.

8.7 Membership, Appointment and Removal. The Committee shall consist of as many persons, but not less than three, as the Board may from time to time appoint. The Board may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Community Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee.

8.8 Majority Action. The affirmative vote of a majority of the members of the Board shall govern its actions and constitute the act of the Board under this Article 8. A quorum of the Board shall consist of a majority of the Board's members. The Board may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

8.9 Limitation of Liability. The Board and the Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Board nor the Committee nor any individual Board or Committee member shall be liable to any person or entity for any official act of the Board or the Committee in connection with submitted plans and specifications, except to the extent the Board or Committee or any individual Board or Committee member acted with malice or wrongful intent. Approval by the Board does not necessarily assure approval by any governmental agency. Notwithstanding that the Board has approved plans and specifications, neither the Board nor the Committee nor any of their respective members shall be responsible or liable to any Owner, contractor, or other person or entity with respect to any loss, liability, claim, or expense which may arise by reason of such approval. Neither the Board, the Committee, or any agent thereof, nor Declarant or any of its members, managers, employees, agents, or consultants, shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. The Community Association shall indemnify, hold harmless, and defend the Board, the Committee, and their respective members in any suit or proceeding which may arise by reason of any of the Board's decisions under this Article 8. The Community Association, however, shall not be obligated to indemnify any member of the Board or the Committee to the extent such member shall be adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the Board or the Committee.

unless (and then only to the extent that) the tribunal in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense. The Community Association shall use all reasonable efforts to procure errors and omissions insurance coverage with respect to members of the Board and, if determined by the Board, the Committee.

8.10 Nonwaiver. Consent by the Board to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

8.11 Effective Period of Consent. The Board's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Board.

8.12 Estoppel Certificate. Within 30 working days after written request therefor is delivered to the Board by any Owner, and upon payment to the Board of a reasonable fee, if any, fixed by the Board to cover its costs, the Board shall provide such Owner with an estoppel certificate executed by a member of the Board and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (i) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (ii) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any Mortgagee, shall be entitled to rely conclusively on such certificate with respect to the matters set forth therein.

8.13 Activities of Declarant. This Article VIII shall not apply to the activities of Declarant, or its affiliates, nor to Improvements to the Common Area by or on behalf of the Community Association.

## 9. ENFORCEMENT

9.1 Use and Improvement Restrictions. In the event any Member shall violate any provision of this Declaration, the Bylaws, or any rules or regulations adopted by the Community Association governing the use or improvement of Lots or the Common Area, then the Community Association, acting through the Board, may notify the Member in writing that the violations exist and that such Member is responsible for them, and may, after affording the Member reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Member's voting rights for the period that the violations remain unabated, or for any period not to exceed 60 days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Member, in the manner and amount the Board deems appropriate in relation to the violation, (c) bring suit or action against such Member to enforce this Declaration, or (d) if the Community Association has notified the Member of required remedial or abatement action and the Member is unable or unwilling to comply with the Community Association's specific directives for remedy or abatement, or the Member and the Community Association cannot agree on a mutually acceptable solution within the framework and intent of this

01/28/98

Declaration, within 60 days after such notice, enter the offending Lot (which entry shall not subject the Community Association, the directors of the Community Association, or any agent or representative thereof to liability for trespass or any other claim for damages) and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto and assess such Member for the entire cost of the work done, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings. Nothing in this Section, however, shall give the Community Association the right to deprive any Member (or if the Member is an Owners' Association, any member of that Owners' Association) of access to and from such Member's Lot (or, if the Member is an Owners' Association, to and from the Unit of any member of that Owners' Association).

9.2 Default in Payment of Assessments; Enforcement of Lien. If an assessment or other charge levied under this Declaration is not paid within 30 days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Community Association may exercise any or all of the remedies described in Section 9.1, as well as any other remedy available to it by law or in equity. The Community Association shall have a lien against each Lot for any assessment levied against such Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine, or charge is due (or, upon the creation of a townhome or condominium project on one or more Lots by the recordation of a subdivision or condominium plat therefor, against the owner of each Unit within such project, subject to the provisions of Section 5.1). The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Community Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Community Association, through its duly authorized agents, may bid on the Lot or Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot or Unit. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the Assessment becomes due. The Community Association may bring an action to recover a money judgment for unpaid assessments, fines, and charges under this Declaration without foreclosing or waiving its lien. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

9.3 Subordination of Lien to Mortgages. The lien for assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot or Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot or Unit shall not affect the assessment lien, provided that the sale or transfer of any Lot or Unit which is subject to a mortgage or deed of trust pursuant to a decree of foreclosure thereunder or pursuant to a proceeding, deed, or assignment in lieu of foreclosure shall extinguish the lien of an assessment, notice of which was recorded after the recording of the mortgage or trust deed. Any such sale or transfer, however, shall not release the Lot or Unit from liability for any assessments or charges thereafter becoming due or from the lien of such subsequent assessments or charges.



9.4 Interest, Expenses, and Attorneys' Fees. Any amount not paid to the Community Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the "prime rate" or "reference rate" offered by Bank of America as of the due date therefor, or at such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board not to exceed 30% of such assessment. In the event the Community Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board. In the event the Community Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Member-defendant shall pay to the Community Association all costs and expenses incurred by the Community Association in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

9.5 Nonexclusiveness and Accumulation of Remedies. An election by the Community Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of any other remedy permitted hereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Community Association. In addition, any aggrieved Member may bring an action against another Member or the Community Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

#### 10. CASUALTY AND CONDEMNATION

10.1 Casualty. In the event of damage to or destruction of a part of the Common Area, the Community Association shall repair and restore the damaged or destroyed portions of the Common Area, unless holders of at least 75% of the Class A voting power of the Community Association and the Class B Member, if any, agree that the damaged or destroyed portions shall not be repaired or restored. All repair, reconstruction, rebuilding, or restoration shall begin within six months following the damage or destruction and shall be diligently pursued to completion within 12 months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Community Association. If the proceeds of the insurance policies held by the Community Association are insufficient to fund the full cost of repair and/or restoration of the Common Area, the difference between the amount of such proceeds and such cost shall be charged to the Members as a Special Assessment pursuant to Section 5.2.6.

10.2 Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or shall be sold under threat of condemnation), each Member shall be entitled to notice of such event. The Community

Association shall represent the Members in negotiations with the condemning authority. The condemnation award shall be applied first to restoration of the Common Area not so taken (unless holders of at least 75% of the Class A voting power of the Community Association and the Class B member, if any, agree that the remaining Common Area shall not be restored) and then to such other purposes as the Board may determine in its discretion (including payment to the Members).

#### 11. ANNEXATION

11.1 Annexation Without Approval of Membership. Declarant may from time to time and in its sole discretion unilaterally subject to the provisions of this Declaration any real property, including, but not limited to, all or any portion of the Additional Property by recording in the official records of Multnomah County, Oregon a Supplemental Declaration describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. The right reserved in the preceding sentence shall continue until the termination of the Class B membership. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. There are no limitations (except those imposed by applicable governmental authorizations) on the number of Lots that may be annexed hereunder, nor on the right of Declarant to annex additional Common Area. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

11.2 Annexation With Approval of Membership. In addition to the rights of Declarant pursuant to Section 11.1, the Community Association or Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of holders of at least 75% of the Class A voting power of the Community Association, and the consent of the Class B Member, if any. Such annexation shall be accomplished by filing a Supplemental Declaration in the official records of Multnomah County, Oregon describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and Secretary of the Community Association and by the owner of the annexed property. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

11.3 Voting Rights. Upon annexation, additional Lots so annexed shall be entitled to voting rights in accordance with Section 3.3.

11.4 Adjustment of Community Association Expenses. The Community Association shall have the right to adjust prior General Assessments, and to levy additional General Assessments if additional Common Area is annexed, upon any annexation of property under this Article 11, subject to the limitations contained in Section 5.2.5.

11.5 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Community Association to maintain and insure such property. Such additional covenants and easements

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shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

11.6 Assignment of Rights. Declarant may transfer or assign its right to annex property pursuant to this Article 11, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

## 12. MISCELLANEOUS

12.1 Term. The covenants, conditions and restrictions of this Declaration shall run until December 31, 2028, unless amended as herein provided. After December 31, 2028, such covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by holders of at least 75% of the Class A voting power of the Community Association and by the Class B Member, if any, which is recorded in the deed records of Multnomah County, Oregon.

### 12.2 Amendment and Repeal.

12.2.1 This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the Class B Member, for so long as there is Class B membership in the Community Association, provided the amendment or repeal does not materially and adversely affect the Class A Members. Any amendment or repeal that materially and adversely affects the Class A Members shall also require the vote of holders of at least 50% of the Class A voting power of the Community Association. After there is no longer Class B membership in the Community Association, amendment or repeal of this Declaration shall require the vote of holders of at least 75% of the Class A voting power of the Community Association. Any exercise of Declarant's rights pursuant to Sections 1.6, 11.1, or 11.5 shall be conclusively deemed not to materially and adversely affect the Class A Members.

12.2.2 Any such amendment or repeal shall become effective only upon recordation in the deed records of Multnomah County, Oregon of a certificate of Declarant, for so long as there is Class B membership in the Community Association, and thereafter of the president or secretary of the Community Association setting forth in full the amendment, amendments, or repeal so approved and certifying that said amendment, amendments, or repeal have been approved in the manner required by this Declaration.

12.3 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Community Association for the purpose of service of such notice, or to the residence of such person (or, in the case of an entity, the registered agent for such entity) if no

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address has been given to the Community Association. Such address may be changed from time to time by notice in writing to the Community Association.

12.4 Right of Enforcement. Except as otherwise provided herein, any Member covered by this Declaration shall have the right to enforce any or all of the provisions hereof against any property covered by this Declaration, the Members thereof, and the Members.

12.5 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.6 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Community Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

12.7 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the rights to enforce any such provision or any other provision of said restrictions.

12.8 No Partition. There shall be no judicial partition of the Common Area. No person or entity shall seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of this Declaration.

12.9 Security. THE COMMUNITY ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR SAFETY AND SECURITY MATTERS WITHIN THE PROPERTY, ALTHOUGH THE COMMUNITY ASSOCIATION MAY, IN ITS DISCRETION, ELECT TO PROVIDE SECURITY SERVICES FOR THE PROPERTY. NEITHER THE COMMUNITY ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY FOR THE PROPERTY NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY MEASURES CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE PROTECTION FOR WHICH THE MEASURES ARE INTENDED. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE COMMUNITY ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

01/25/98

12.10 Restrictions Severable. Each of the provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the undersigned, as Declarant, has set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

HOYT STREET PROPERTIES, L.L.C. an Oregon  
limited liability company

By: Hoyt Street Investors, L.L.C.,  
Managing Member

By: [Signature]  
Title: \_\_\_\_\_

STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me on this 9<sup>th</sup> day of July, 1998 by Homee S. Williams who is the Managing Member of Hoyt Street Investors, L.L.C., Managing Member of Hoyt Street Properties, L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



[Signature]  
Notary Public for Oregon  
My Commission Expires: 2/23/00

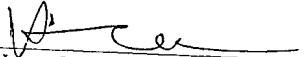
0131705

July 9, 1998

RIVERSTONE ASSOCIATES L.L.C., an Oregon limited liability company, executes this Declaration for the limited purpose of subjecting the real property owned by it and legally described on the attached Exhibit A to the provisions of this Declaration. Such property shall be considered part of the Property for all purposes.

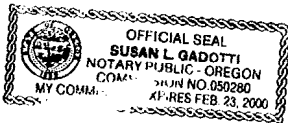
RIVERSTONE ASSOCIATES L.L.C., an Oregon limited liability company

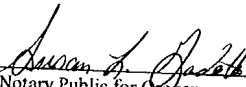
By: Hoyt Street Investors, L.L.C., an Oregon limited liability company, Manager

By:   
Homer G. Williams, Managing Member

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on July 9<sup>th</sup>, 1998, by Homer G. Williams as the Managing Member of Hoyt Street Investors, L.L.C., an Oregon limited liability company, a Manager of Riverstone Associates L.L.C., an Oregon limited liability company.



  
Notary Public for Oregon  
My Commission Expires: 2/23/00

**EXHIBIT A**

Property  
Legal Description

Lots 51, 52, 53, and 54, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lot 2, PARTITION PLAT 1996-73, in the City of Portland, County of Multnomah and State of Oregon.

Lots 47, 48, 49, and 50, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lots 39, 40, 41, and 42, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Tract D and Tract E, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lots 43, 44, 45, and 46, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lot 3, PARTITION PLAT 1996-73, in the City of Portland, County of Multnomah and State of Oregon.

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July 9, 1998

**EXHIBIT B**

Additional Property  
Legal Description

013787204

July 9, 1998



**EXHIBIT B**

Additional Property  
Legal Description

**LEGAL DESCRIPTION OF PROPERTY**

**PART A - NORTH OF LOVEJOY**

All of Blocks 186, 187, 199, 201, 216, 217, 218, 225, 226, 241 and 246, also a portion of Block 224, a portion of Block 242, a portion of Block 243, a portion of Block 244, a portion of Block 245, all within Couch's Addition to the City Portland, recorded November 16, 1872 in Town Plat Book 1, Pages 51 and 52; also including a portion of Block 1, a portion of Block 2, a portion of Block 3, a portion of Block 14 and a portion of Block 15 of Watson's Addition to the City of Portland, recorded March 7, 1871 in Town Plat Book 2, Page 60, Multnomah County, Oregon; also including portions of the vacated N.W. Marshall Street from N.W. 9th to N.W. 12th; and vacated N.W. Overton Street from N.W. 9th to N.W. 12th; and vacated N.W. Overton Street from N.W. 9th to N.W. 12th; and vacated N.W. Pettygrove from N.W. 9th Street to N.W. Front Avenue and N.W. Quimby from N.W. 9th to N.W. Front Avenue; and N.W. Raleigh from N.W. 13th to N.W. Front Avenue; and a portion of N.W. Savier, and a portion of N.W. Thurman; also vacated N.W. 10th from N.W. Lovejoy to Front Avenue; vacated N.W. 11th from Lovejoy to Front Avenue; vacated N.W. 12th from N.W. Quimby to Front Avenue; vacated N.W. 13th from N.W. Raleigh Street to N.W. Front Avenue.

Contains 26.543 acres.

And

PEARL LOFTS CONDOMINIUMS, Units 101A and 101B, 102 through 111, inclusive, and 201 through 216, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 2, Lots 4 through 13, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

HOYT COMMONS CONDOMINIUMS, Units 100 through 104, inclusive, 201 through 217, inclusive, 301 through 317, inclusive, and 401 through 414, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 3, Lots 25 through 38, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 2, Units 14 through 23, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

Tract C, PEARL BLOCK NO. 3, in the City of Portland, County of Multnomah and State of Oregon.

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July 9, 1998

**EXHIBIT C**

Common Area

Tract D and Tract E, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

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July 9, 1998

Recorded in the County of Multnomah, Oregon  
C. Swick, Deputy Clerk



98223156 2:22pm 12/07/98

013 431337 04 03 000205  
G11 25 0.00 125.00 0.00 3.00 0.00

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HOYT STREET YARDS COMMUNITY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HOYT STREET YARDS COMMUNITY (this "Declaration") is made and entered into effective this 7<sup>th</sup> day of DECEMBER, 1998, by Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Declarant").

**RECITALS:**

A. Declarant previously executed a Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, dated July 9, 1998 and recorded on July 9, 1998 in the Official Records of Multnomah County, Oregon as Document No. 98121172 (the "Original Declaration").

B. Declarant desires to amend and restate the Original Declaration on the terms and conditions contained in this Declaration.

**1. DEFINITIONS**

The following terms shall have the following meanings when used in this Declaration:

1.1 Additional Property. "Additional Property" shall mean the real property in Multnomah County, Oregon legally described on the attached Exhibit B.

1.2 Articles. "Articles" shall mean the Articles of Incorporation of the Community Association, as amended from time to time.

1.3 Assessment. "Assessment" shall mean any assessment levied against one or more Members by the Community Association for payment of expenses relating to the Property and shall include General, Special, and Limited Assessments.

1.4 Board. "Board" shall mean the Board of Directors of the Community Association.

1.5 Bylaws. "Bylaws" shall mean the Bylaws of the Community Association, as amended from time to time.

1.6 Common Area. "Common Area" shall mean those areas designated as common or open space on the attached Exhibit C or any other areas so designated by Declarant in an amendment to this Declaration recorded in accordance with Section 12.2.2, but shall exclude any common areas or common elements within any condominium, townhome, or apartment project formed within the Property and any park or other real property dedicated to the City of Portland or other governmental authority.

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1.7 Community Association. "Community Association" shall mean the non-profit corporation formed or to be formed to serve as the association of Members as provided in this Declaration and such corporation's successors and assigns.

1.8 Declarant. "Declarant" shall mean Hoyt Street Properties, L.L.C., an Oregon limited liability company, and its successors and assigns if such successor or assign should acquire: (a) Declarant's interest in the Property or (b) all of Declarant's rights under this Declaration pursuant to a recorded instrument executed by Declarant.

1.9 Design Guidelines. "Design Guidelines" shall mean the design guidelines and procedures adopted by the Design Review Committee pursuant to Article VIII.

1.10 The Design Review Committee. The "Design Review Committee" or "Committee" shall mean the committee appointed pursuant to Article VIII.

1.11 General Assessment. "General Assessment" shall mean an assessment levied against all Members for the common benefit of the Property and the Members, as determined by the Board in its sole discretion.

1.12 Improvement. "Improvement" shall mean every structure or improvement of any kind, including but not limited to buildings, sidewalks, fences, benches, walls, works of art, trees, hedges, plantings, poles, changes in exterior color or shape, and site work (such as, without limitation, excavation, grading, road construction, and utility improvements).

1.13 Limited Assessment. "Limited Assessment" shall mean an assessment levied against a Member by the Community Association (a) for costs and expenses incurred by the Community Association for corrective action performed pursuant to this Declaration which is required as a result of the willful or negligent actions or omissions of such Member or such Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the member's family members, tenants, guests, contractors, or invitees, or (b) to reflect the use of or benefit from one or more Common Areas by a Member or a Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the Member's family members, tenants, guests, contractors, or invitees, that is disproportionate to the percentage of the total General Assessments allocable to the Member.

1.14 Lot. "Lot" shall mean a platted or partitioned lot or block within the Property, with the exception of (a) any tract marked on any plat of the Property as common or open space, (b) any platted or partitioned lot, the owner of which by virtue of such ownership is a member of an Owners' Association, or (c) any townhome or condominium unit. In the event a Lot is replatted in connection with a townhome, condominium, or other project, the Lot that existed prior to the replatting shall continue to be treated as a Lot for purposes of this Declaration. In the case of townhome or condominium projects already existing within the Property, the real property containing each such project shall be considered a Lot.

1.15 Member. "Member" shall mean any person or entity, including Declarant, at any time owning a Lot and any Improvements thereon (including, but not limited to, buildings such as apartments or garages). Upon the formation of an Owners' Association with respect to a townhome or condominium project that is developed on a Lot or Lots, the Owners' Association shall be the Member with respect to that Lot or those Lots, as the case may be.

1.16 Owner. "Owner" shall mean any person or entity (including, without limitation, an Owners' Association) owning a Lot or Unit, as the case may be.

1.17 Owners' Association. "Owners' Association" shall mean a non-profit corporation formed or to be formed to serve as the owners' association with respect to a townhome or condominium project developed on one or more Lots.

1.18 Property. "Property" shall mean the real property in Multnomah County, Oregon legally described on the attached Exhibit A.

1.19 Special Assessment. "Special Assessment" shall mean an assessment levied by the Community Association against the Members pursuant to Section 5.2.6.

1.20 Unit. "Unit" shall mean an apartment, townhome, or condominium unit located on one or more Lots. In the case of an apartment building containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

## 2. DECLARATION

2.1 Property Covered. The property which is covered by and is hereby made subject to this Declaration is the Property.

2.2 Purpose. The purpose of this Declaration is to provide services to the Common Area (including, without limitation, the maintenance, repair, restoration, replacement, and improvement thereof), to establish the Community Association, to provide for assessments of the Owners (including, without limitation, for those matters set forth in Section 5.2.2), and to set forth other terms and conditions governing the use and enjoyment of the Property.

## 3. THE ASSOCIATION

3.1 Organization. Declarant has organized the Community Association as a nonprofit corporation pursuant to the Oregon Nonprofit Corporation Act under the name "Hoyt Street Yards Community Association, Inc."

3.2 Membership. Every Owner of one or more Lots shall, immediately upon creation of the Community Association and thereafter during the entire period of such Owner's ownership of one or more Lots, be a Member. 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. As provided in Section 1.15 above, upon the formation of an Owners' Association with respect to a townhome or condominium project that is developed on one or more Lots, the

Owners' Association shall be the Member with respect to that Lot or those Lots, as the case may be.

3.3 Voting Rights. The Community Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of Declarant (except that beginning on the date on which the Class B membership is converted to Class A membership, and thereafter, Class A Members shall be all Members, including Declarant). Class A Members shall be entitled to one ten-thousandth (0.0001) of a vote for each net usable square foot within any building located on a Lot owned by a Class A Member (or, in the case of an Owners' Association, for each net usable square foot within any building located on the Lot(s) on which the corresponding project is situated). There shall be no fractional votes. The Board shall conclusively determine the net usable square footage of each building located on a Lot. "Net usable square footage" for purposes of this Declaration shall be computed exclusive of common areas or common elements. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall a Lot be allocated more than the voting power determined in accordance with the formula set forth in the second sentence of this Section 3.3.

Class B. The Class B Member shall be Declarant and shall be entitled to a number of votes equal to the sum of (a) the number of votes then held by Class A Members plus (b) one. The Class B membership shall cease and be converted to Class A membership upon Declarant's election in writing to terminate the Class B membership.

3.4 Powers and Obligations. The Community Association shall have, exercise, and perform (a) the powers, duties, and obligations granted to the Community Association by this Declaration; (b) the powers and obligations of a non-profit corporation pursuant to the Oregon Nonprofit Corporation Act; and (c) any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Community Association pursuant to this Declaration or otherwise promoting the general benefit of the Members within the Property.

3.5 Liability. Neither the Community Association nor any officer or member of the Board or the Design Review Committee shall be liable to any Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act by the Community Association, any of its officers, or any member of the Board or the Design Review Committee, provided only that the officer or Board or Design Review Committee member has acted in good faith in accordance with the actual knowledge possessed by him.

3.6 Indemnification. The Community Association shall indemnify every officer, director, Design Review Committee member, or other member of a committee established under the Bylaws against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. Any right to indemnification provided for herein shall not be

exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Community Association shall, as an expense subject to General Assessments under Section 5.2, maintain adequate officers' and directors' liability insurance to fund this obligation.

3.7 Community Association Rules and Regulations. The Community Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots, Units and the Common Area as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Board promptly to each Member and shall be binding upon all Members and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws.

#### 4. MAINTENANCE AND INSURANCE

4.1 Maintenance. The Community Association shall be responsible for the maintenance, repair, restoration, replacement, and improvement of the Common Area (including any utilities thereon, to the extent not maintained by governmental authorities or public or private utility companies) in good order and condition. The Community Association's responsibilities shall include, but shall not be limited to, the cleaning, repaving, and replacing of any paved areas included in the Common Area (including streets and adjoining sidewalks forming part of any platted tract within the Common Area, but excluding any public streets and adjoining sidewalks, for which the Community Association shall have no responsibility), landscape maintenance, replacement, and repair of or to landscaped areas included in the Common Area, and the repair, repainting, restaining, and replacing of any benches, lights and lightposts, planters, fences, irrigation systems, works of art, and other Improvements located within the Common Area.

4.2 Insurance. The Community Association shall obtain, and maintain in effect, from reputable insurance companies authorized to do business in the State of Oregon, public liability and property damage insurance with respect to the Common Area in such amounts and in such forms as the Board deems advisable to provide adequate protection for bodily injury, including deaths of persons, and property damage, whether caused by the negligence of the Community Association or otherwise; provided, however, that such liability policy(ies) shall not be for an amount of less than \$1,000,000.00 per person, per occurrence, and that such liability policy(ies) shall provide that the coverage thereunder cannot be canceled or substantially modified without at least 10 days' written notice to the Community Association. The Community Association may obtain such other and further policies of insurance as it deems advisable. Additionally, the Community Association shall obtain, and maintain in effect, from such companies fire and extended coverage casualty insurance with respect to all insurable Improvements within the Common Area in an amount equal to 100% of the replacement cost thereof.

#### 5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by

acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Community Association all assessments or other charges as may be fixed, established, and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses, or attorneys' fees imposed pursuant to Section 9.4, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Such assessments, charges, and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 9 below. Upon the creation of a townhome, condominium, or comparable project on one or more Lots by the recordation of a subdivision or condominium plat therefor, each Unit within such project shall be subject to the lien described in this Section 5.1; provided that the owner of any Unit may obtain the discharge of the lien for any assessment or other charge payable by the applicable Owners' Association upon payment to the Community Association of an amount equal to (a) the total amount of such assessment or other charge multiplied by (b) the percentage of common area expense allocated by the applicable Owners' Association to that Unit.

## 5.2 General Assessments

5.2.1 Commencement. General Assessments against all Lots shall commence on a date selected by the Board, in its sole discretion.

5.2.2 Amount of Annual General Assessment. The total annual General Assessment against all Lots shall be based upon an annual budget prepared by the Board with respect to projected expenses for the common benefit of the Property and the Members, as determined by the Board in its sole discretion. Expenses that may be subject to General Assessments include, without limitation, costs and charges incurred in connection with:

- (a) Maintenance, repair, restoration, replacement, and improvement activities pursuant to Section 4.1 (including appropriate reserves);
- (b) Acquisition, installation, and maintenance of decorations and ornamentation for the Property;
- (c) Liaison and communication with the City of Portland, Multnomah County, and other governmental agencies with respect to issues of common concern to the Members;
- (d) Sponsorship and promotion of arts and cultural activities within or in the vicinity of the Property;
- (e) Meetings and other gatherings of residents of the Property for social, recreational, informational, or other purposes;
- (f) Professional management of the Community Association and the Property;



- (g) Legal and accounting services for the Community Association;
- (h) Public liability and property damage insurance pursuant to Section 4.2, officers' and directors' liability insurance coverage, errors and omissions coverage for members of the Board (and, if the Board deems appropriate, the Design Review Committee), and such other insurance coverage as the Board may deem necessary or appropriate;
- (i) Provision of security services for the Property, subject to Section 12.9, provided that the Community Association shall have no obligation whatsoever to provide such security services; and
- (j) Other activities, events, or services for the common benefit of the Property and the Members, as determined by the Board from time to time in its sole discretion.

5.2.3 Allocation of Assessments. All General Assessments shall be allocated among Members in proportion to the net usable square footage within any building located on the Lot owned by each Member (or, in the case of an Owners' Association, in proportion to the net usable square footage within any building located on the Lot on which the corresponding project is situated), as determined in accordance with Section 5.2.3.

5.2.4 Notice of General Assessments and Time for Payment. General Assessments shall be determined on an annual basis. Subject to amendment by the Board, the Community Association shall give written notice to each Member as to the amount of the General Assessment with respect to each Lot on or before December 15 for each year for the calendar year commencing January 1 of the next year. The General Assessment shall be due and payable monthly or on such other basis as the Board shall determine.

5.2.5 Limitation of Annual General Assessment; Contribution by Class B Member. The initial annual General Assessment shall not exceed \$0.17 for each net usable square foot within any building located on a Lot. Each subsequent annual General Assessment shall not be increased over the General Assessment for the preceding year by a percentage exceeding the percentage increase in the Consumer Price Index - All Items published by the U.S. Bureau of Labor Statistics for the region including the Portland, Oregon metropolitan area (or any generally accepted substitute for such index, if such index shall be discontinued) for the 12-month period immediately preceding the month in which the annual General Assessment is determined, plus one percent, without the written consent of holders of at least 60% of the Class A voting power of the Community Association and the Class B Member, if any. In the event the annual General Assessments are insufficient to pay the expenses for the common benefit of the Property as a result of the limitation set forth in this Section 5.2.5, the Class B Member, if any, agrees to contribute funds sufficient to satisfy the deficiency.

5.2.6 Special Assessments. In addition to the annual General Assessments, the Board shall have the authority, with the written consent of holders of at least 60% of the Class A voting power of the Community Association and the Class B Member, if any, to levy Special

Assessments to satisfy any actual or projected deficiency between the expenses of the Community Association and the amounts realized through General Assessments. Special Assessments shall be allocated in the manner described in Section 5.2.3. Special Assessments are payable as the Board may from time to time determine, within 30 days after mailing notice thereof to the Members.

5.3 Limited Assessments. The Community Association may levy against any Member a Limited Assessment (a) equal to the costs and expenses incurred by the Community Association, including legal fees, for corrective action performed pursuant to this Declaration which is required as a result of the willful or negligent actions or omissions of such Member or such Member's agents, tenants, contractors, or invitees, or if the Member is an Owner's Association, of a member of that Owner's Association or of the member's family members, tenants, guests, contractors, or invitees, or (b) that equitably reflects use of or benefit from one or more Common Areas by a Member or a Member's agents, tenants, contractors, or invitees, or if the Member is an Owners' Association, of a member of that Owners' Association or of the member's family members, tenants, guests, contractors, or invitees, that is disproportionate to the percentage of the total General Assessments allocable to the Member.

## 6. PROPERTY RIGHTS AND EASEMENTS

6.1 Members' Use and Occupancy. Except as otherwise expressly provided in this Declaration or in the plat in which a Lot was platted or partitioned, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot. Declarant and any representative of the Community Association authorized by the Community Association may at any reasonable time, upon reasonable notice to the applicable Member, enter upon any Lot for the purpose of performing the maintenance, repair, restoration, replacement, and improvement activities described in Section 4.1 with respect to any Common Area adjoining such Lot. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the applicable Member. Declarant or the Community Association may grant or assign easements over or with respect to any Lot to municipalities or other utilities performing utility services and to communication companies, provided such easements do not unreasonably interfere with the use and enjoyment of the Lot by the Owner (or the Owners of Units thereon).

6.2 Members' Easements of Enjoyment. Subject to the provisions of this Declaration, every Member and the Member's agents, tenants, contractors, and invitees, or, if the Member is an Owners' Association, every member of that Owners' Association and the member's family members, tenants, guests, contractors, and invitees, shall have a right and easement of enjoyment in and to the Common Area, which easement shall be appurtenant to and shall pass with the title to every Lot and Unit. Use of the Common Area shall not result in unreasonable disturbance of occupants of the Units and shall be subject to such rules and regulations as may be adopted by the Board from time to time.

6.3 Title to Common Area. Fee title to all Common Area shall be conveyed to the Community Association by Declarant free and clear of liens and encumbrances at any time, in the discretion of Declarant, prior to the date on which Class B membership in the Community Association ceases and is converted to Class A membership.

6.4 Extent of Members' Rights. The rights and easements of enjoyment in the Common Area created hereby shall be subject to the following and all other provisions of this Declaration:

6.4.1 Community Association's Easements. Declarant grants to the Community Association the following easements over, under, and upon the Common Area:

6.4.1.1 An easement for installation and maintenance of power, gas, electric, water, and other utility and communication lines and services installed by Declarant or with the approval of the Board and any such easement shown on any plat of the Property.

6.4.1.2 An easement for construction, maintenance, repair, restoration, replacement, improvement, and use of the Common Area and any Improvements thereon.

6.4.2 Declarant's Easements. So long as Declarant owns any Lot or Unit, and in addition to any other easements to which Declarant may be entitled, Declarant reserves an easement over, under, and across the Common Area in order to carry out development, construction, sales, and rental activities necessary or convenient for the development of the Property or the sale or rental of Lots, Units, or other units of the Property and for such other purposes as, in its sole discretion, may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights hereunder.

6.4.3 Utility and Other Municipal Easements. Declarant or the Community Association may (and, to the extent required by law, shall) grant or assign easements to municipalities or other utilities performing utility services and to communication companies, and the Community Association may grant free access thereon to police, fire, and other public officials and to employees of utility companies and communications companies serving the Property.

6.5 Encroachments. If an encroachment results from construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Property, an easement for the encroachment shall exist to the extent that any Lot or Common Area encroaches on any other Lot or Common Area. An easement shall continue for the purpose of maintaining the encroachment so long as the encroachment exists. Nothing in this Section 6.5 shall relieve a Member of liability in case of a Member's willful misconduct or shall relieve Declarant or any other person of liability for failure to adhere to any plat of any portion of the Property.

## 7. ADDITIONAL RESTRICTIONS AND DUTIES

7.1 Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, Unit, or Common Area, nor shall anything be done or placed on any Lot, Unit, or Common Area which unreasonably interferes with or jeopardizes the enjoyment of other Lots, Units, or the Common Area, or which is a source of unreasonable annoyance to residents. No unlawful use shall be made of any Lot, Unit, or Common Area or any part thereof,

and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction thereof shall be observed.

7.2 Maintenance of Structures and Grounds. Each Owner shall maintain such Owner's Lot, Unit, and Improvements thereon in a clean and attractive condition, in good repair, and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, and replacement of and care for roofs, gutters, downspouts, exterior building surfaces, landscaping, driveways, sidewalks adjoining public streets, parking areas, walks and other exterior Improvements.

7.3 Parking. Parking of boats, trailers, motorcycles, trucks, truck campers, recreational vehicles, or similar vehicles or equipment shall be permitted only upon a Lot and only within the confines of an enclosed garage or screened area located thereon, which shall fully screen from view any such vehicle or equipment.

7.4 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on the Common Area for a period in excess of 48 hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the residents of the Property. Should any Owner fail to remove such vehicle within two days following the date on which notice is mailed to such Owner by the Community Association, the Community Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner.

7.5 Signs. No signs shall be erected or maintained on any Lot except signs which comply with the River District Design Guidelines, as amended, or signs which have been approved in writing by the Design Review Committee.

7.6 Rubbish and Trash. No Lot, Unit, or part of the Common Area shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other debris and waste shall be kept in appropriate sanitary containers for proper disposal.

7.7 Temporary Structures. No structure of a temporary character, trailer, tent, shack, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, without the prior written approval of the Design Review Committee.

7.8 Utilities and Antennae. No sewer, drainage, or utility lines, wires, satellite dishes, or other devices for the communication or transmission of electric current, power, or signals (including telephone, television, microwave, or radio signals) shall be constructed, placed, or maintained anywhere in or upon the Property other than within buildings or other structures unless contained in conduits or placed or maintained underground or concealed in or under Buildings or other structures, without the prior written approval of the Board. No device for the transmission or reception of telephone, television, microwave, or radio signals will be allowed within the Property unless the antenna is located and screened so as not to be visible from neighboring Lots and streets. Nothing contained in this Section 7.8 shall be construed to prohibit the erection or use of temporary power or telephone facilities during construction or repair of

Improvements. The restrictions contained in this Section 7.8 shall be effective only to the extent permissible under applicable laws and regulations.

7.9 Activities of Declarant. This Article VII shall not apply to the activities of Declarant or its affiliates or their respective agents, employees, or contractors.

#### 8. DESIGN REVIEW COMMITTEE

8.1 Design Review. No Improvement shall be commenced, erected, placed, altered, added to, or maintained on, within, or beneath, or above the Property until design plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor have been submitted for review by the Design Review Committee and have been approved by the Board in writing. Notwithstanding the foregoing, any Owner may renovate, paint, or redecorate the interior of structures on the Owner's Lot without such approval. In addition, no approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. It is the intent and purpose of this Declaration to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements and location with respect to topography and finished grade elevations.

8.2 Procedure. In all cases which require Committee review and Board approval or consent pursuant to this Declaration, the provisions of this Article VIII shall apply. The procedure and specific requirements for Committee review and Board approval or consent may be set forth in Design Guidelines adopted from time to time by the Committee. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Property and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Committee. The Committee may charge a reasonable fee to cover the cost of processing an application for its approval. Compliance with the design review process set forth in this Declaration is not a substitute for compliance with governmental building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

8.3 Variance. The Board may, but is not required to, authorize variances from compliance with any of its Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no such variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (iii) estop the Board from denying a variance in other circumstances. For purposes of this Section 8.3, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

8.4 Expert Consultation. Each of the Committee and the Board may avail itself of technical and professional advice and consultants as it deems appropriate, at the requesting Member's expense.

8.5 Board Decision. The Board shall render its decision on an application for approval of an Improvement or any other proposal submitted to it for approval or consent within a reasonable period after the Committee has received a complete written application therefor. A complete application shall specify the approval or consent requested and be accompanied by all material reasonably required or desired by it to make an informed decision on such application. The Board in making its decision shall consider, but shall not be bound by, the recommendations of the Committee. If the Board approves an application, it may not thereafter revoke, rescind, or materially modify its approval without the consent of the affected Owner.

8.6 Board Discretion. The Board may, at its sole discretion, withhold consent to any proposed Improvement if the Board finds the proposed Improvement would be inappropriate for the particular Lot or incompatible with the design standards that the Board intends for the Property. Consideration of siting, shape, size, color, design, height, solar access, impairment of the view from other Lots or Units, effect on the enjoyment of other Lots, Units, or the Common Area, environmental impact, and any other factors which the Board reasonably believes to be relevant, may be taken into account by the Board in determining whether or not to approve or condition its approval of any proposed Improvement.

8.7 Membership, Appointment and Removal. The Committee shall consist of as many persons, but not less than three, as the Board may from time to time appoint. The Board may remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Community Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee.

8.8 Majority Action. The affirmative vote of a majority of the members of the Board shall govern its actions and constitute the act of the Board under this Article 8. A quorum of the Board shall consist of a majority of the Board's members. The Board may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

8.9 Limitation of Liability. The Board and the Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Board nor the Committee nor any individual Board or Committee member shall be liable to any person or entity for any official act of the Board or the Committee in connection with submitted plans and specifications, except to the extent the Board or Committee or any individual Board or Committee member acted with malice or wrongful intent. Approval by the Board does not necessarily assure approval by any governmental agency. Notwithstanding that the Board has approved plans and specifications, neither the Board nor the Committee nor any of their respective members shall be responsible or liable to any Owner, contractor, or other person or entity with respect to any loss, liability, claim, or expense which may arise by reason of such approval. Neither the Board, the Committee, or any agent thereof, nor Declarant or any of its members, managers, employees, agents, or consultants, shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. The Community Association shall indemnify, hold harmless, and defend the Board, the Committee, and their respective members in any suit or proceeding which may arise by reason of any of the Board's decisions under this Article 8. The Community

Association, however, shall not be obligated to indemnify any member of the Board or the Committee to the extent such member shall be adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the Board or the Committee, unless (and then only to the extent that) the tribunal in which such action or suit is brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense. The Community Association shall use all reasonable efforts to procure errors and omissions insurance coverage with respect to members of the Board and, if determined by the Board, the Committee.

8.10 Nonwaiver. Consent by the Board to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

8.11 Effective Period of Consent. The Board's consent to any proposed Improvement shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Board.

8.12 Estoppel Certificate. Within 30 working days after written request therefor is delivered to the Board by any Owner, and upon payment to the Board of a reasonable fee, if any, fixed by the Board to cover its costs, the Board shall provide such Owner with an estoppel certificate executed by a member of the Board and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (i) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (ii) such Improvements do not so comply. If the estoppel certificate states that the Improvements do not comply, such certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any Mortgagee, shall be entitled to rely conclusively on such certificate with respect to the matters set forth therein.

8.13 Activities of Declarant. This Article VIII shall not apply to the activities of Declarant, or its affiliates, nor to Improvements to the Common Area by or on behalf of the Community Association.

## 9. ENFORCEMENT

9.1 Use and Improvement Restrictions. In the event any Member shall violate any provision of this Declaration, any Supplemental Declaration, the Bylaws, or any rules or regulations adopted by the Community Association governing the use or improvement of Lots, Units, or the Common Area, then the Community Association, acting through the Board, may notify the Member in writing that the violations exist and that such Member is responsible for them, and may, after affording the Member reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Member's voting rights for the period that the violations remain unabated, or for any period not to exceed 60 days for any infraction of its rules and regulations, (b) impose reasonable fines upon the Member, in the manner and amount the Board deems appropriate in relation to the violation, (c) bring suit or action against such Member to enforce this Declaration, or (d) if the Community Association has notified the Member of

required remedial or abatement action and the Member is unable or unwilling to comply with the Community Association's specific directives for remedy or abatement, or the Member and the Community Association cannot agree on a mutually acceptable solution within the framework and intent of this Declaration, within 60 days after such notice, enter the offending Lot (which entry shall not subject the Community Association, the directors of the Community Association, or any agent or representative thereof to liability for trespass or any other claim for damages) and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto and assess such Member for the entire cost of the work done, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings. Nothing in this Section, however, shall give the Community Association the right to deprive any Member (or if the Member is an Owners' Association, any member of that Owners' Association) of access to and from such Member's Lot (or, if the Member is an Owners' Association, to and from the Unit of any member of that Owners' Association).

9.2 Default in Payment of Assessments; Enforcement of Lien. If an assessment or other charge levied under this Declaration is not paid within 30 days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth below and, in addition, the Community Association may exercise any or all of the remedies described in Section 9.1, as well as any other remedy available to it by law or in equity. The Community Association shall have a lien against each Lot for any assessment levied against such Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine, or charge is due (or, upon the creation of a townhome or condominium project on one or more Lots by the recordation of a subdivision or condominium plat therefor, against the owner of each Unit within such project, subject to the provisions of Section 5.1). The provisions regarding the attachment, notice, recordation, and duration of liens established on real property under ORS 87.352 to 87.382 shall apply to the Community Association's lien. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens under ORS Chapter 88. The Community Association, through its duly authorized agents, may bid on the Lot or Unit at such foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot or Unit. If any assessment is payable in installments, the full amount of the assessment is a lien from the date the first installment of the Assessment becomes due. The Community Association may bring an action to recover a money judgment for unpaid assessments, fines, and charges under this Declaration without foreclosing or waiving its lien. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

9.3 Subordination of Lien to Mortgages. The lien for assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot or Unit which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot or Unit shall not affect the assessment lien, provided that the sale or transfer of any Lot or Unit which is subject to a mortgage or deed of trust pursuant to a decree of foreclosure thereunder or pursuant to a proceeding, deed, or assignment in lieu of foreclosure shall extinguish the lien of an assessment, notice of which was recorded after the recording of the mortgage or trust deed. Any such sale or



transfer, however, shall not release the Lot or Unit from liability for any assessments or charges thereafter becoming due or from the lien of such subsequent assessments or charges.

9.4 Interest, Expenses, and Attorneys' Fees. Any amount not paid to the Community Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three percentage points per annum above the "prime rate" or "reference rate" offered by Bank of America as of the due date therefor, or at such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the Board not to exceed 30% of such assessment. In the event the Community Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board. In the event the Community Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Member-defendant shall pay to the Community Association all costs and expenses incurred by the Community Association in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

9.5 Nonexclusiveness and Accumulation of Remedies. An election by the Community Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of any other remedy permitted hereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Community Association. In addition, any aggrieved Member may bring an action against another Member or the Community Association to recover damages or to enjoin, abate, or remedy any violation of this Declaration by appropriate legal proceedings.

## 10. CASUALTY AND CONDEMNATION

10.1 Casualty. In the event of damage to or destruction of a part of the Common Area, the Community Association shall repair and restore the damaged or destroyed portions of the Common Area, unless holders of at least 75% of the Class A voting power of the Community Association and the Class B Member, if any, agree that the damaged or destroyed portions shall not be repaired or restored. All repair, reconstruction, rebuilding, or restoration shall begin within six months following the damage or destruction and shall be diligently pursued to completion within 12 months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Community Association. If the proceeds of the insurance policies held by the Community Association are insufficient to fund the full cost of repair and/or restoration of the Common Area, the difference between the amount of such proceeds and such cost shall be charged to the Members as a Special Assessment pursuant to Section 5.2.6.

10.2 Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or shall be sold under threat of condemnation), each Member shall be entitled to notice of such event. The Community Association shall represent the Members in negotiations with the condemning authority. The condemnation award shall be applied first to restoration of the Common Area not so taken (unless holders of at least 75% of the Class A voting power of the Community Association and the Class B member, if any, agree that the remaining Common Area shall not be restored) and then to such other purposes as the Board may determine in its discretion (including payment to the Members).

## 11. ANNEXATION

11.1 Annexation Without Approval of Membership. Declarant may from time to time and in its sole discretion unilaterally subject to the provisions of this Declaration any real property, including, but not limited to, all or any portion of the Additional Property by recording in the official records of Multnomah County, Oregon a Supplemental Declaration describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. The right reserved in the preceding sentence shall continue until the termination of the Class B membership. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. There are no limitations (except those imposed by applicable governmental authorizations) on the number of Lots that may be annexed hereunder, nor on the right of Declarant to annex additional Common Area. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

11.2 Annexation With Approval of Membership. In addition to the rights of Declarant pursuant to Section 11.1, the Community Association or Declarant may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of holders of at least 75% of the Class A voting power of the Community Association, and the consent of the Class B Member, if any. Such annexation shall be accomplished by filing a Supplemental Declaration in the official records of Multnomah County, Oregon describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and Secretary of the Community Association and by the owner of the annexed property. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

11.3 Voting Rights. Upon annexation, additional Lots so annexed shall be entitled to voting rights in accordance with Section 3.3.

11.4 Adjustment of General Assessments. If additional property is annexed to the Properties pursuant to this Article 11, the Community Association shall, within 60 days after the date of annexation, recompute the annual budget described in Section 5.2.2 based upon the additional Lots and Common Area and recompute the General Assessment for each Lot in accordance with Section 5.2.3, subject to the limits contained in Section 5.2.5. The Community Association shall send notice of applicable General Assessments to the new Member(s) not later

than 60 days after the date of annexation of the corresponding property. If additional property is annexed during the Community Association's fiscal year, the Community Association shall send notice of and shall collect adjustments to General Assessments for Lots which formed part of the Properties prior to the annexation. Notice of the adjustment in the General Assessments shall be sent to the applicable Members not later than 60 days after the date of annexation. Assessments under this Section 11.4 shall be due and payable on or before a date set forth in the notice, which shall be not less than 30 days after the date the notice is mailed. To the extent that any adjustment results in a credit with respect to General Assessments payable by a Member, such credit shall be applied toward the next occurring payment or payments of the applicable assessment.

11.5 Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration by Supplemental Declaration to additional covenants and easements, including, without limitation, covenants obligating the Community Association to maintain and insure such property and covenants authorizing the Community Association to enforce restrictions (including parking restrictions) and determine permitted uses (including permitted commercial uses) with respect to particular Lots. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than Declarant.

11.6 Assignment of Rights. Declarant may transfer or assign its right to annex property pursuant to this Article 11, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

## 12. MISCELLANEOUS

12.1 Term. The covenants, conditions and restrictions of this Declaration shall run until December 31, 2028, unless amended as herein provided. After December 31, 2028, such covenants, conditions and restrictions shall be automatically extended for successive periods of 10 years each, unless amended or extinguished by a written instrument executed by holders of at least 75% of the Class A voting power of the Community Association and by the Class B Member, if any, which is recorded in the deed records of Multnomah County, Oregon.

### 12.2 Amendment and Repeal.

12.2.1 This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the Class B Member, for so long as there is Class B membership in the Community Association, provided the amendment or repeal does not materially and adversely affect the Class A Members. Any amendment or repeal that materially and adversely affects the Class A Members shall also require the vote of holders of at least 50% of the Class A voting power of the Community Association. After there is no longer Class B membership in the Community Association, amendment or repeal of this Declaration shall require the vote of holders of at least 75% of the Class A voting power of the Community Association. Any exercise of Declarant's rights

pursuant to Sections 1.6, 11.1, or 11.5 shall be conclusively deemed not to materially and adversely affect the Class A Members.

12.2.2 Any such amendment or repeal shall become effective only upon recordation in the deed records of Multnomah County, Oregon of a certificate of Declarant, for so long as there is Class B membership in the Community Association, and thereafter of the president or secretary of the Community Association setting forth in full the amendment, amendments, or repeal so approved and certifying that said amendment, amendments, or repeal have been approved in the manner required by this Declaration.

12.3 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Community Association for the purpose of service of such notice, or to the residence of such person (or, in the case of an entity, the registered agent for such entity) if no address has been given to the Community Association. Such address may be changed from time to time by notice in writing to the Community Association.

12.4 Right of Enforcement. Except as otherwise provided herein, any Member covered by this Declaration shall have the right to enforce any or all of the provisions hereof against any property covered by this Declaration, the Owners thereof, and the Members.

12.5 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.6 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Community Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

12.7 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the rights to enforce any such provision or any other provision of said restrictions.

12.8 No Partition. There shall be no judicial partition of the Common Area. No person or entity shall seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of this Declaration.

12.9 Security. THE COMMUNITY ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR SAFETY AND SECURITY MATTERS WITHIN THE PROPERTY,

ALTHOUGH THE COMMUNITY ASSOCIATION MAY, IN ITS DISCRETION, ELECT TO PROVIDE SECURITY SERVICES FOR THE PROPERTY. NEITHER THE COMMUNITY ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY FOR THE PROPERTY NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SECURITY MEASURES CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE PROTECTION FOR WHICH THE MEASURES ARE INTENDED. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE COMMUNITY ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

12.10 Restrictions Severable. Each of the provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

7th IN WITNESS WHEREOF, the undersigned, as Declarant, has set its hand this day of DECEMBER, 1998.

HOYT STREET PROPERTIES, L.L.C. an Oregon  
limited liability company

By: Hoyt Street Investors, L.L.C.,  
Managing Member

By: [Signature]  
Title: Managing Member

STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me on this 7th day of DECEMBER, 1998 by HOMER G. WILLIAMS who is the MANAGING MEMBER of Hoyt Street Investors, L.L.C., Managing Member of Hoyt Street Properties, L.L.C., an Oregon limited liability company, on behalf of the limited liability company.

Susan M. Miller  
Notary Public for Oregon  
My Commission Expires: 6/15/01.



**EXHIBIT A**

Property  
Legal Description

Lots 39, 40, 41, and 42, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Tract D and Tract E, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

**EXHIBIT B**

Additional Property  
Legal Description



**EXHIBIT B**

**Additional Property  
Legal Description**

**LEGAL DESCRIPTION OF PROPERTY**

**PART A - NORTH OF LOVEJOY**

All of Blocks 186, 187, 199, 201, 216, 217, 218, 225, 226, 241 and 246, also a portion of Block 224, a portion of Block 242, a portion of Block 243, a portion of Block 244, a portion of Block 245, all within Couch's Addition to the City Portland, recorded November 16, 1872 in Town Plat Book 1, Pages 51 and 52; also including a portion of Block 1, a portion of Block 2, a portion of Block 3, a portion of Block 14 and a portion of Block 15 of Watson's Addition to the City of Portland, recorded March 7, 1871 in Town Plat Book 2, Page 60, Multnomah County, Oregon; also including portions of the vacated N.W. Marshall Street from N.W. 9th to N.W. 12th; and vacated N.W. Overton Street from N.W. 9th to N.W. 12th; and vacated N.W. Overton Street from N.W. 9th to N.W. 12th; and vacated N.W. Pettygrove from N.W. 9th Street to N.W. Front Avenue and N.W. Quimby from N.W. 9th to N.W. Front Avenue; and N.W. Raleigh from N.W. 13th to N.W. Front Avenue; and a portion of N.W. Savier, and a portion of N.W. Thurman; also vacated N.W. 10th from N.W. Lovejoy to Front Avenue; vacated N.W. 11th from Lovejoy to Front Avenue; vacated N.W. 12th from N.W. Quimby to Front Avenue; vacated N.W. 13th from N.W. Raleigh Street to N.W. Front Avenue.

Contains 26.543 acres.

And

PEARL LOFTS CONDOMINIUMS. Units 101A and 101B, 102 through 111, inclusive, and 201 through 216, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 2, Lots 4 through 13, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

HOYT COMMONS CONDOMINIUMS, Units 100 through 104, inclusive, 201 through 217, inclusive, 301 through 317, inclusive, and 401 through 414, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 3, Lots 25 through 38, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

PEARL BLOCK NO. 2, Units 14 through 23, inclusive, in the City of Portland, County of Multnomah and State of Oregon.

Tract C, PEARL BLOCK NO. 3, in the City of Portland, County of Multnomah and State of Oregon.

Lots 51, 52, 53, and 54, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lot 2, PARTITION PLAT 1996-73, in the City of Portland, County of Multnomah and State of Oregon.

Lots 47, 48, 49, and 50, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lots 43, 44, 45, and 46, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

Lot 3, PARTITION PLAT 1996-73, in the City of Portland, County of Multnomah and State of Oregon.

**EXHIBIT C**

**Common Area**

Tract D and Tract E, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

After Recording, Return to:

Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204  
Attention: Rebecca Biermann Tom

Recorded in the County of Multnomah, Oregon  
Total : C. Swick, Deputy Clerk  
39.00  
2000-160515 11/22/2000 01:28:09pm ATESL  
Dgs 5 REC SUR DOR OLIS  
25.00 3.00 10.00 1.00

**INSTRUMENT CORRECTING AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HOYT STREET YARDS COMMUNITY**

This Instrument Correcting Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community (this "Correction Instrument") is made on this 21<sup>st</sup> day of November, 2000 by Hoyt Street Properties, LLC, an Oregon limited liability company ("Declarant"), to be effective as of December 7, 1998.

Recital:

This Correction Instrument corrects Exhibits A and B to that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, dated as of December 7, 1998 and recorded in the deed records of Multnomah County, Oregon, as Document No. 98223156 on December 7, 1998 (the "Initial Declaration"). Certain tracts of real property were intended to be included on Exhibit A to the Initial Declaration as Property which is a part of the Hoyt Street Yards Community, rather than on Exhibit B to the Initial Declaration as Additional Property. This Correction Instrument is made for the sole purpose of correcting the legal description set forth on Exhibits A and B of the Initial Declaration and for no other purpose. Capitalized terms not defined herein shall have the meaning set forth in the Initial Declaration.

Correction:

NOW, THEREFORE, the Initial Declaration is hereby corrected as follows:

1. Correction to Exhibits A and B

In order to correct the legal descriptions set forth on Exhibits A and B to the Initial Declaration, Exhibits A and B to the Initial Declaration are corrected to read in their entirety as set forth on Exhibit A and Exhibit B, respectively, which are attached hereto and by this reference made a part hereof and which replace in their entirety Exhibits A and B to the Initial Declaration.

2. Effect of Correction

This Correction Instrument merely causes Exhibits A and B to the Initial Declaration to conform to and be consistent with the intent of the Declarant in executing and

OREGON TITLE 20006F 052M

RECORDED BY OREGON TITLE AS AN ACCOMMODATION ONLY NO LIABILITY IS ACCEPTED FOR THE CONDITION OF TITLE OR FOR THE VALIDITY, SUFFICIENCY, OR EFFECT OF THIS DOCUMENT.

5

recording the Initial Declaration. This Correction Instrument shall relate back to and be effective as of the date of recordation of the Initial Declaration.

IN WITNESS WHEREOF, Declarant has executed this Correction Instrument to be effective as of December 7, 1998.

Declarant:

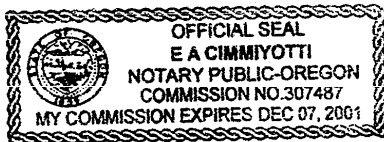
HOYT STREET PROPERTIES LLC, an Oregon limited liability company

Hoyt Street Investors, LLC,  
a limited liability company

By   
Its Managing Member

STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me on this 21 day of November, 2000, by Homer Williams, the Managing Member of Hoyt Street Investors, LLC, managing member of Hoyt Street Properties, LLC, a limited liability company, on behalf of the limited liability company.



E. A. Cimmiyotti  
Notary Public for Oregon  
My Commission Expires: 12-7-01

**EXHIBIT A**

Property

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**EXHIBIT B**

Additional Property

**LEGAL DESCRIPTION OF PROPERTY**

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**EXHIBIT B**  
(continued)

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Lot 3, PARTITION PLAT 1996-73, in the City of Portland, County of Multnomah and State of Oregon.



After recording return to:

Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, OR 97204  
Attn: Robert S. Ball

Send tax statements to:

No change

Recorded in the County of Multnomah, Oregon

C. Swick, Deputy Clerk  
Total : 399.00  
2002-025454 02/08/2002 03:00:28pm ATLJH  
C73 77 REC SUR DOR OLIS  
385.00 3.00 10.00 1.00

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions ("Declaration") is made February 8, 2002 between Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Declarant") and The Burlington Northern and Santa Fe Railway Company ("BNSF"), a Delaware corporation doing business in Oregon.

RECITALS

A. Declarant is the owner of certain real property (the "Property") located in Multnomah County, Oregon, which is more particularly described in Exhibit A, attached hereto and by this reference made a part hereof.

B. Environmental investigations at the Property have determined that hazardous substances, as defined in ORS Chapter 465, are present in soils and groundwater at the Property. To address these hazardous substances and to protect human health and the environment, the Oregon Department of Environmental Quality ("DEQ") selected the remedial action for the Property in a Record of Decision for the Property dated December 15, 2000, and as it may be amended from time to time ("ROD"). Declarant, BNSF and DEQ entered into a consent decree to implement the ROD in *State of Oregon v. The Burlington Northern and Santa Fe Railway Company and Hoyt Street Properties, L.L.C.*, Multnomah County Circuit Court Case No. 0202-01268. That consent decree, together with all exhibits thereto, is attached hereto as Exhibit B (collectively, "Consent Decree").

C. Declarant and BNSF were parties to a lawsuit entitled *Hoyt Street Properties, LLC v. Burlington Northern & Santa Fe Railway Company, et. al.*, U.S. District Court of Oregon, Civil No. 98-1198AS (the "Lawsuit"). At issue in the Lawsuit, by way of claims, counterclaims, and some third party claims for damages and other relief, was liability for the environmental condition of real property in Multnomah County, including the Property. In order to avoid the substantial expense involved in continuing the Lawsuit and to resolve other issues, HSP and BNSF entered into a settlement agreement ("Settlement") to compromise and resolve all known and unknown claims between them. This Declaration is required by the terms of the Settlement, implements certain terms of the Settlement, and does not supersede the Settlement.

NOW THEREFORE, in consideration for the foregoing, which is incorporated by reference, and the promises and obligations herein, Declarant declares and the parties agree as follows:

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Recorded By TICOR TITLE 767742 EO

2-8-02

## SECTION 1 GENERAL DECLARATION

Declarant hereby acknowledges, declares and gives notice of the terms, covenants, obligations and release of claims set forth in this Declaration which are also intended to and do run with the Property and bind Declarant's Successors, as defined in Section 2.5, in the same manner and to the same extent as Declarant regardless of whether reference is expressly made to Declarant's Successors in the provisions of this Declaration.

## SECTION 2 DEFINITIONS

For purposes of this Declaration, the following definitions apply:

2.1 **Hazardous Substance(s)**. The terms "Hazardous Substance" and "Hazardous Substances" shall mean and include: (a) the substances included within the definitions of the terms "Hazardous Substance" and/or "Hazardous Material" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 *et. seq.*, and regulations promulgated thereunder as amended; (b) the substances included within the definitions of the terms "Hazardous Substance" and/or "Hazardous Material" under the Oregon Hazardous Waste and Hazardous Materials Act, ORS 465.200 *et. seq.*, and regulations promulgated thereunder, as amended; and (c) any waste listed as or meeting the identified characteristics of a "Hazardous Waste" under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 *et. seq.*, and regulations promulgated thereunder, as amended.

2.2 **Capping Requirements** shall mean and include all current and future actions required by the DEQ with respect to the Property, excluding matters pertaining to groundwater to the extent specified in Section 5.6 below, and including without limitation remedial actions or measures contained in the ROD and as required of Declarant by the Consent Decree attached hereto as Exhibit B. The Capping Requirements shall also include, without limitation, management of any excavated soils from the Property in accordance with all applicable DEQ requirements. Capping Requirements also means and includes responsibility for institution of DEQ-required deed restrictions and/or other institutional controls that would require long-term maintenance of the cap and other engineering controls; provision and notification of site hazards; DEQ notification prior to any significant changes in site plans, ownership or land use; and restrictions of activities, operations, or uses that would cause long-term damage or interfere with the integrity of the cap, or disturb residual soil contamination without proper management.

2.3 **Clean Fill** shall mean fill that is not subject to any requirements for handling, treatment or disposal except those applicable to native uncontaminated soil, and meets Oregon OSHA occupational standards for maintenance workers without monitoring of exposure to contaminants.

2.4 **Claims** shall mean and include all claims, actions or causes of action, suits, or causes of suit, liens, losses, costs, injuries, damages and/or liabilities, whether known or unknown, including without limitation matters alleged or that could have been alleged in the Lawsuit.

2.5 **Declarant's Successors** shall mean and include any and all persons or entities which succeed to any possessory, ownership, or other interest to the Property, or any portion thereof, and which engage at any time in development or redevelopment activities of or on any portion of the Property which involve any excavation or other handling or any disturbance of, or effect on, the soil, the Capping Requirements (as defined in Section 2.2), or groundwater.

2.6 **HSP/Prendergast Agreement** shall mean that certain agreement between Declarant and Prendergast and Associates, Inc., Walker Road Partners, and Walker Road Limited Partnership regarding the Lawsuit.

2.7 **Indemnified Claims**

2.7.1 Indemnified Claims shall mean claims, demands, lawsuits, or state or federal notices of violation brought against Declarant by anyone, including any state or federal governmental authorities, other than any owners, developers, occupants, users or other persons having or claiming any right with regard to any part of the Property, based on allegations of contamination of groundwater or other waters of the State of Oregon (including subsurface waters of the Property, the Tanner Creek subsurface storm water drainage system, and the Willamette River) which arose from Hazardous Substances, which existed on the Property as of December 31, 1998, or alleged migration of Hazardous Substances, which existed on the Property as of December 31, 1998. Indemnified Claims shall also include any claims by any third party caused by conduct of BNSF with regard to any failure by BNSF to meet its obligations under Section 5.6.1 or LNAPL or hot spot removal undertaken by BNSF, subject to the exception in Section 2.7.2. Section 2.7 – 2.7.2 on Indemnified Claims is included in this Declaration for definitional purposes. The indemnity referenced in this Declaration does not apply to Declarant's Successors or assigns and does not run with the land.

2.7.2 Excluded from the definition of Indemnified Claims are any claims, demands, lawsuits, or state or federal notices of violation which were caused or materially contributed to by any excavation, developmental activity or use of the Property, or which arise from any contractual obligations assumed, by Declarant or Declarant's Successors, or their respective grantees, assigns and/or purchasers, including without limitation anything relating to basements, Future Rights-of-Way (defined below) development and/or Previously Constructed Rights-of-Way (defined below). Indemnified Claims shall not include any kind of taxes or governmental assessments. Indemnified Claims shall not include any claims which have been released in any agreements between BNSF and any third parties including without limitation BNSF's agreement with Patrick Prendergast and others concerning Lots 55, 56 and Tract "F" Pearl Block No. 4, City of Portland, Multnomah County, Oregon.

2.8 **Previously Constructed Rights-of-Way** shall mean and include all rights-of-way previously developed by Declarant using construction worker standard soil (as defined in the ROD) in the ten street blocks on 10<sup>th</sup> and 11<sup>th</sup> Streets from Lovejoy to Northrup, on Northrup from 9<sup>th</sup> Street to 12<sup>th</sup> Street, and Marshall from 9<sup>th</sup> to 12<sup>th</sup> Streets which include a soil volume credit to BNSF of 11,325 truck cubic yards ("TCY"). Attached hereto as Exhibit C is a legal description of the Previously Constructed Rights-of-Way.

2.9 **Future Rights-of-Way** shall mean and include all rights-of-way to be constructed on the Property by HSP other than Previously Constructed Rights-of-Way. Future Rights-of-Way shall be constructed using Clean Fill or Urban Resident Child Fill, as applicable pursuant to Section 5.2, to a depth of five feet below pavement surface extending laterally 22 ½ feet from the mid point of each street or to the extent of the actual right-of-way where any basements may not allow for a depth of five feet below the pavement surface.

2.10 **"Urban Resident Child Fill"** means fill not exceeding the risk-based concentrations for the Urban Resident Child, as contained in Table 4-1 of the ROD.

### **SECTION 3 RELEASE AND COVENANT NOT TO SUE BY DECLARANT AND DECLARANT'S SUCCESSORS**

3.1 **Scope.** Except for obligations of BNSF expressly provided in herein, including without limitation Sections 5.6, 5.7, and Indemnified Claims as defined in Section 2.7, and as provided in Exhibit B hereto, Declarant hereby covenants not to further sue and agrees to release and forever discharge BNSF and its officers, directors, shareholders, representatives, agents, independent contractors, employees, insurers, attorneys, predecessors, affiliates, successors, successors in interest (including Glacier Park Co. and Burlington Resources, Inc.) and assigns from any and all Claims known or unknown, of any kind or nature whatsoever including without limitation:

3.1.1 Claims arising out of statutory liability, contract, indemnity (including without limitation the HSP/Prendergast Agreement), negligence, and environmental contamination claims relating to the Property, including without limitation any and all claims in any way related to the release, use or presence of Hazardous Substances on, at, under or from the Property;

3.1.2 enforcement actions or Claims by the DEQ, the Environmental Protection Agency, or any other regulatory agency or entity existing now or that may arise in the future, including any Claims or demands compelling, directly or indirectly, any investigations, cleanup or other response, removal, remedial action or compliance actions of any kind in any way related to any Hazardous Substance or any other condition on, at, or under the Property, whether or not the presence of such Hazardous Substance or other condition is presently known;

3.1.3 any Claims by or arising from all Property tenants, condominium owners, grantees, Declarant's Successors or assigns of Declarant of any kind or nature related to the presence of Hazardous Substances or any other condition of the Property;

3.1.4 any Claims other than Indemnified Claims that may be made by any third parties relating in any way to the condition of the Property, including without limitation any environmental condition or Hazardous Substances;

3.1.5 any Claims by anyone arising from environmental contamination of or Hazardous Substances in ground water or from the Property where such Claims arise from or

2-8-02

relate to the developmental activities of Declarant or its Successors or assigns, including without limitation basements; and

3.1.6 any and all Claims that were or could have been asserted in the Lawsuit.

3.2 **Release to Run With The Property.** It is the express intention of Declarant and BNSF that the release and terms agreed to by Declarant in this Section 3 shall run with the Property and all portions thereof, be binding upon Declarant's Successors, and shall forever bar Declarant and any of Declarant's Successors from asserting any Claim subject to release herein against any of the parties released by Declarant in Section 3.1 – 3.1.6 above.

#### **SECTION 4 RELEASE AND COVENANT NOT TO SUE BY BNSF.**

Except for obligations of Declarant or Declarant's Successors expressly provided herein and as provided in Exhibits B hereto, including without limitation Sections 3 and 5 and all of their subsections, BNSF hereby covenants not to further sue and agrees to release and forever discharge Declarant and its officers, directors, shareholders, representatives, agents, independent contractors, employees, insurers, attorneys, successors, successors in interest and assigns from any and all of the following known or unknown Claims:

4.1 Claims arising from the condition of the Property up to the time of and as it existed on December 31, 1998, and Claims by BNSF that were or could have been brought in the Lawsuit and as to amounts paid by BNSF for investigation or remediation to date of any Hazardous Substances or any other environmental condition on, at, or under or from the Property other than the obligations of Declarant expressly specified in this Agreement;

4.2 Claims arising from or relating to any failure by BNSF to meet its obligations under this Agreement, including without limitation under Section 5.6.1;

4.3 Indemnified Claims as defined in Section 2.7.

#### **SECTION 5 ENVIRONMENTAL OBLIGATIONS.**

5.1 **Capping Obligation.** Declarant and BNSF shall each be a signatory to a DEQ Consent Decree in the form of Exhibit B hereto (including the Soil SOW and License and Declaration of Restrictions attached to the Consent Decree), under the ROD concerning the Property. Declarant agrees to undertake and have complete and sole responsibility for completing, maintaining and obtaining DEQ approval for all Capping Requirements.

5.2 **Future Rights-of-Way.**

5.2.1 Unless Declarant satisfies the requirements of Section 5.2.2 and elects to place Urban Resident Child Fill in the Future Rights of Way pursuant thereto, BNSF and Declarant hereby agree that Clean Fill shall be placed in the Future Rights-of-Way by Declarant which have been or will be dedicated to the City of Portland.

5.2.2 If the City of Portland delivers to BNSF an unconditional release meeting the requirements of this Section 5.2.2, Declarant shall have the right to place Urban Resident Child Fill, rather than Clean Fill, in the Future Rights of Way which have been or will be dedicated to the City of Portland. Any such release shall specify that the City releases BNSF from any liability to the City with respect to the condition of the soil in the Future Rights-of Way, including without limitation any liability for the management, handling and disposal of soils in such Future Rights of Way as necessary to conduct the City's maintenance and operation activities for public infrastructure in such Future Rights of Way.

5.2.3 Declarant hereby agrees to take complete and sole responsibility for placement and expense of Clean Fill or Urban Resident Child Fill, as applicable, in the Future Rights-of-Way. Declarant shall place Clean Fill or Urban Resident Child Fill in the Future Rights-of-Way as provided in Sections 5.2.1 and 5.2.2 and as required by Section 2.9. BNSF shall have no further responsibility for the Future Rights-of-Way.

5.3 **Previously Constructed Rights-of-Way.** Declarant has acknowledged that construction worker standard soil (as defined in the ROD) has already been voluntarily used by Declarant in the Previously Constructed Rights-of-Way. BNSF shall have no responsibility for the environmental condition of the Previously Constructed Rights-of-Way except for any groundwater issues not caused by developmental activities as addressed in Section 5.6 through 5.6.2.

5.4 **Trench Spoils.** Declarant shall dispose of contaminated soil removed by Declarant in connection with the installation of storm and sanitary sewers in accordance with the ROD and the Soil Scope of Work (Exhibit B) or as may otherwise be required by DEQ. Declarant shall be responsible for the costs of such disposal. BNSF shall have no further obligation with respect to such sewers.

5.5 **Post-Construction Monitoring and Implementation Cost.** Declarant shall be obligated to undertake, pay for, and ensure that Declarant's Successors undertake all post-construction monitoring and implementation required by the DEQ except as to groundwater as addressed by Section 5.6 below. BNSF shall have no further responsibility for any of Declarant's post-construction monitoring and implementation costs.

5.6 **Groundwater.**

5.6.1 Except for responsibilities undertaken by Declarant and Declarant's Successors as provided in this Declaration, including without limitation in Section 5.6.2, BNSF shall, with respect to Hazardous Substances which were released on the Property on or previous to December 31, 1998 or migration thereof, be responsible for all monitoring, testing and remediation of groundwater within or from the Property required by state or federal authorities under state or federal environmental laws, including without limitation the ROD.

5.6.2 As to each parcel of Property, Declarant and Declarant's Successors shall be responsible for any liability or damage caused by or materially contributed to by, or resulting from, development or other use of such parcel by such person, including without limitation any monitoring, testing and remediation of groundwater required under any laws, rules or regulations

2-8-72

or by any judicial or administrative authority. For example, and without limitation, Declarant and Declarant's Successors as to a parcel shall be responsible for groundwater issues arising from any contractual obligations undertaken by Declarant or Declarant's Successors, or for obligations that result from disturbance of the soil or excavation of any kind arising from their development or other use of their respective parcels, including without limitation basements or fluids in or pumped from basements. Declarant and Declarant's Successors shall also be responsible for the groundwater "institutional controls" in Section 7.2.2 of the ROD at Page 7-6 as also addressed in the Consent Decree.

5.7 **LNAPL and Hot Spots.** BNSF and Declarant have entered a separate agreement concerning voluntary LNAPL removal by BNSF in the Block 16 area of the Property. BNSF and Declarant recognize that their respective excavations and other subsurface activities may reveal a currently unknown "hot spot" or other area of Hazardous Substances which may be required to be removed under applicable federal or state environmental laws or the ROD. For example, and by way of illustration only, Declarant may encounter a hot spot during basement excavation or right-of-way development and BNSF may encounter a hot spot if BNSF decides to engage in removal of light non-aqueous phase liquid ("LNAPL") in the Block 16 area. Whichever party encounters any such Hazardous Substance during the course of its activities shall be fully and solely responsible for removing it and any associated Hazardous Substance to the extent required by and in accordance with applicable federal and state environmental laws, and shall be responsible for all associated costs.

5.8 **Other Environmental Costs and Matters.** Except for the obligations of BNSF specifically set forth herein and in the Settlement, BNSF shall have no further responsibility for any and all other environmental costs, obligations, and issues relating to the Property.

#### SECTION 6 GENERAL PROVISIONS

6.1 **Assumption of Risk of Unknown Facts/Claims.** Declarant and BNSF expressly assume the risk of facts known or unknown for any reason, and/or any mistake of fact and any facts that might be proven to be other than or different from the facts now known to any of the parties to this Declaration or believed by them to exist. It is understood that each of the parties are represented by counsel, environmental consultants and other advisors, and that the Claims subject to release herein include any known or unknown Claims including without limitation any Claims in any way relating to or arising from omission or nondisclosure of any information, disclosure, and/or legal violations of any kind, including without limitation in the negotiation or inducement of this Declaration, on any grounds other than the direct representations herein.

6.2 **Disclaimer of Liability.** Neither this Declaration nor the negotiation, execution or performance thereof, shall be deemed to constitute an admission directly or indirectly by any party of its liability or responsibility for and/or of the correctness of, any of the allegations or claims that were or may have been asserted in the Lawsuit or arising out of the release of any Hazardous Substance on, at, under or adjacent to the Property. No party hereto, its agents, employees, officers, directors, representatives, affiliates or attorneys, shall allege or state anything to the contrary in any kind of suit, action or proceeding, whether or not it is now pending, in which it or they may be a litigant, witness or other participant.

6.3 **Other Instruments and Writings.** Each party agrees to execute any further and additional documents, instruments and writings as may be necessary for the purpose of fully effectuating the terms and provisions of this Declaration, including without limitation such things as deed restrictions and the Consent Decree.

6.4 **Settlement as a Defense.** If any Claim subject to release, hold harmless or covenant not to sue herein is ever asserted by a party against any of the persons or entities given a release in this Declaration, then this Declaration is intended to act as a defense to any such Claim and may be asserted by any of the parties released as a defense to any such Claim.

6.5 **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted to enforce or interpret any provision of this Declaration or in connection with any dispute arising hereunder, the prevailing party shall be entitled to recover an amount determined reasonable as attorney fees by any Court in which such action, suit, or proceeding is tried, heard or decided, including trial, and any appeal or review, in addition to all other amounts provided by law.

6.6 **Governing Law.** This Declaration shall be governed by the laws of the State of Oregon.

6.7 **Binding Effect.** This Declaration, including without limitation the releases given herein, shall be binding upon the parties and their respective grantees, successors, and assigns, including but not limited to Declarant's Successors. Nothing herein is intended to create any rights for anyone or any entity that is not expressly mentioned in this Declaration.

6.8 **Severability.** In the event any one or more of the provisions of this Declaration or any application thereof shall be deemed invalid, illegal or unenforceable in any respect, or if this Declaration is deemed to be unenforceable with respect to part of the Property, the validity, legality and enforceability of the remaining provisions thereof, or any other applications thereof, shall not in any way be affected or impaired.



6.9 **Notices.** All notices and delivery of documents shall be made as follows:

**IF TO BNSF:**

Vice President/Law  
The Burlington Northern and Santa Fe Railway Company  
2500 Lou Menke Drive  
Fort Worth, Texas 76131  
(817) 352-2369  
(817) 352-2399 Fax

and

Bruce A. Sheppard, Manager  
Environmental Remediation  
The Burlington Northern and Santa Fe Railway Company  
2454 Occidental Avenue South, Suite 1A  
Seattle, Washington 98134-1451  
(206) 625-6035  
(206) 625-6007 Fax

**IF TO DECLARANT:**

Hoyt Street Properties LLC  
809 NW 11<sup>th</sup>  
Portland, Oregon 97209  
Attention: Executive Director  
(503) 227-6677  
(503) 227-0147 Fax

6.10 **Amendment.** This Declaration shall not be changed in any respect except by a writing executed by authorized representatives of the parties.

6.11 **Representations of Authority.** The undersigned have read this Declaration and have been advised by counsel. They represent that they have authority to sign this Declaration.

2-8-02

IN WITNESS WHEREOF Declarant and BNSF have executed this Declaration of Covenants and Restrictions as of the date and year first set forth above.

DECLARANT:

Hoyt Street Properties, L.L.C.

By: [Signature]  
Its: Executive Director

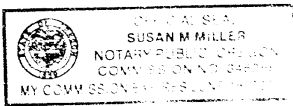
BNSF:

The Burlington Northern and Santa Fe Railway Company

By: [Signature]  
Its: Executive Vice President  
and Secretary

STATE OF OREGON )  
County of Multnomah ) ss.

The foregoing instrument is acknowledged before me this 20<sup>th</sup> day of January 2002, by Tiffany Ewertzer the Executive Director of Hoyt Street Properties, L.L.C., on its behalf.



[Signature: Susan M. Miller]  
NOTARY PUBLIC FOR OREGON

STATE OF TEXAS )  
County of \_\_\_\_\_ ) ss.

The foregoing instrument is acknowledged before me this 3<sup>rd</sup> day of February, 2002, by [Signature] the Vice President of The Burlington Northern and Santa Fe Railway Company, on its behalf.



[Signature: Kaaran Frank]  
NOTARY PUBLIC FOR OREGON TEXAS

2-8-02

**EXHIBIT A**  
**Legal Description**  
(1 of 3)

Parcel 1

Lots 43, 44, 45 and 46, PEARL BLOCK NO. 4, City of Portland, County of Multnomah,  
Oregon.

2-8-02

**EXHIBIT A**  
(2 of 3)

Parcel 2

A parcel of land located in the southwest quarter of Section 27, southeast quarter of Section 28, northeast quarter of Section 33, and northwest quarter of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon and being more particularly described as follows:

Beginning at the southeast corner of Block 188 of COUCH'S ADDITION TO THE CITY OF PORTLAND, recorded November 16, 1872 in Town Plat Book 1, Pages 51 and 52; said point also being the north line of N.W. Lovejoy Street; thence along the northerly line of said N.W. Lovejoy Street North 89°56'04" West 720.00 feet to the southwest corner of Block 186 of said COUCH'S ADDITION; said point also being on the east line of N.W. 12<sup>th</sup> Avenue; thence along the east line of said N.W. 12<sup>th</sup> Avenue North 00°03'56" East 1300.03 feet to the southwest corner of Block 245 of said COUCH'S ADDITION; and also being the north line of N.W. Quimby Street; thence along the north line of said N.W. Quimby Street North 89°56'04" West 260.00 feet to the southwest corner of Block 246; and also being the east line of said N.W. 13<sup>th</sup> Avenue; thence along the east line of said N.W. 13<sup>th</sup> Avenue North 00°03'56" East 260.00 feet to the southwest corner of Block 259, said point also being on the north line of N.W. Raleigh Street; thence along the north line of said N.W. Raleigh Street North 89°56'04" West 260.00 feet to the southwest corner of Lot 2, Block 258 of said COUCH'S ADDITION; thence along the west line of said Block 258 North 00°03'56" East 100.00 feet to the northwest corner of Lot 3 of Block 3, of WATSON'S ADDITION TO THE CITY OF PORTLAND, recorded March 7, 1871 in Town Plat Book 2, Page 60; thence along the north line of said Lot 3, South 89°56'04" East, 100.00 feet to the northeast corner of said Lot 3; thence along a line that is parallel to and 100.00 feet easterly of the west line of said Block 3 North 00°03'56" East 160.00 feet to the southeast corner of Lot 2, Block 14 of said WATSON'S ADDITION, also being on the north line of N.W. Savier Street; thence along the south line of said Lot 2, Block 14 North 89°56'04" West 100.00 feet to the southwest corner of said Lot 2, Block 14 also being on the east line of N.W. 14<sup>th</sup> Avenue; thence along the east line of said N.W. 14<sup>th</sup> Avenue North 00°03'56" East 200.00 feet to the northwest corner of said Block 14; thence South 89°56'04" East 20.00 feet; thence along a line that is perpendicular to the southerly line of N.W. Front Avenue North 41°03'053" East, a distance of 34.87 feet to a point that is 25.00 feet southwesterly from the centerline of Portland Terminal Railroad Company's southerly main track centerline when measured at a right angle; thence along a line that is parallel to and 25.00 feet southerly from the said centerline of said railroad when measured at a right angle South 48°57'52" East 1386.65 feet to a point; thence as follows: South 40°34'15" East 81.77 feet; thence South 38°22'11" East 103.95 feet; thence South 28°07'24" East 68.27 feet to a point on the westerly line of said N.W. 9<sup>th</sup> Avenue; thence along the west line of said N.W. 9<sup>th</sup> Avenue South 0°03'56" West 933.52 feet to the southeast corner of said Block 188 COUCH'S ADDITION and the point of beginning;

Excepting therefrom:

Lots 1, 2, 7 and 8, HOYT STREET YARDS, in the City of Portland, County of Multnomah, Oregon;

**EXHIBIT A**  
(3 of 3)

Also excepting therefrom:

All street rights-of-way dedicated to the public, whether presently dedicated or dedicated in the future, including but not limited to those street rights-of-way as shown and dedicated to the public on the plat of HOYT STREET YARDS, recorded on September 13, 2000, in Book 1248, at Pages 21 and 22, plat records for Multnomah County, Oregon.

2-8-02

**EXHIBIT B**

**DEQ Consent Decree with attachments thereto**

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FOR THE CLERK OF COURT

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel.  
STEPHANIE HALLOCK, DIRECTOR  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY

Plaintiff,

v.

THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY, a  
Delaware corporation, and  
HOYT STREET PROPERTIES, LLC, an  
Oregon limited liability company,

Defendants.

Case No. 0202-01263

Case No.

STIPULATION AND CONSENT DECREE

Contents

Page

1.	Purpose.....	2
2.	Stipulations .....	3
3.	Work to be Performed.....	8
	A. Remedial Design and Remedial Action.....	8
	B. Periodic Review .....	9
	C. Site Restrictions .....	9
4.	General Provisions.....	10
	A. Selection of Supervising Contractor .....	10
	B. Financial Assurance .....	11
	C. Access .....	12
	D. Project Coordinators .....	13

Page 1 - STIPULATION AND CONSENT DECREE  
CST/CST P204  
GENA2922

Department of Justice  
1515 SW Fifth Ave, Suite 410  
Portland, OR 97201  
(503) 229-5725

2-8-02

1	E.	Notice and Samples.....	14
2	F.	Quality Assurance.....	14
3	G.	Records .....	15
4	H.	Progress Reports .....	16
5	I.	Other Applicable Laws .....	16
6	J.	Reimbursement of DEQ Oversight Costs.....	17
7	K.	Force Majeure .....	18
8	L.	DEQ Approvals.....	19
9	M.	Dispute Resolution.....	20
10	N.	Stipulated Penalties.....	21
11	O.	Enforcement of Consent Decree .....	23
12	P.	Indemnification and Insurance.....	24
13	Q.	Parties Bound.....	26
14	R.	Modification.....	27
15	5.	Contribution Actions.....	27
16	6.	Covenants Not To Sue .....	27
17	7.	Certification(s) of Completion; Termination .....	29
18		Attachment A Facility Map	
19		Attachment B Groundwater Scope of Work	
20		Attachment C Soil Scope of Work	
21		Attachment D License and Declaration of Restrictions	

22 1. Purpose

23 This Stipulation and Consent Decree is filed simultaneously with and for the purpose of  
 24 resolving the underlying complaint by the State of Oregon. The parties desire to resolve this  
 25 action without litigation and have agreed to entry of the Consent Decree without admission or  
 26 adjudication of any issue of fact or law.

2-8-02



1 The mutual objective of the parties is to protect public health, safety, and welfare and  
2 the environment by the design and implementation of remedial measures in accordance with  
3 ORS 465.200 through 465.410, regulations promulgated thereto, and the administrative Record  
4 of Decision dated December 15, 2000.

5 2. Stipulations

6 A. Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF")  
7 and Defendant Hoyt Street Properties, LLC ("HSP") each stipulate:

- 8 (1) To entry of this Consent Decree;
- 9 (2) To perform and comply with all applicable provisions of this Consent  
10 Decree;
- 11 (3) In any proceeding brought by the Oregon Department of Environmental  
12 Quality ("DEQ") to enforce this Consent Decree, not to litigate this Court's jurisdiction over  
13 this matter or the validity of the Consent Decree; and
- 14 (4) To waive any right Defendant might have under ORS 465.260(7) or  
15 465.325(2) to seek reimbursement or financial assistance for the costs incurred under this  
16 Consent Decree.

17 B. DEQ, BNSF, and HSP each stipulate:

- 18 (1) BNSF is a Delaware corporation licensed to do business in the State of  
19 Oregon. HSP is an Oregon limited liability company licensed to do business in the State of  
20 Oregon.
- 21 (2) BNSF formerly owned and operated a railroad operations and  
22 maintenance facility on approximately 26 acres in northwest Portland, Oregon. The former  
23 railyard is bounded by the current Naito Parkway to the north, NW 9<sup>th</sup> Avenue to the east, NW  
24 Lovejoy Street to the south, and NW 12<sup>th</sup> Avenue to the west. The facility subject to this  
25 Consent Decree includes this area, as well as one block south of NW Kearney Street between  
26 NW 10<sup>th</sup> and NW 9<sup>th</sup> Avenues, one block north of NW Quimby Street between NW 12<sup>th</sup> and NW

2-8-02

1 13<sup>th</sup> Avenues, and approximately three blocks north of NW Raleigh Street between NW 12<sup>th</sup> and  
2 NW 14<sup>th</sup> Avenues in the northwestern corner of the former railyard. These areas are collectively  
3 referred to in this Consent Decree as the "Site". The general location of the Site is shown on  
4 Attachment A to this Consent Decree. HSP currently owns or controls most of the Site,  
5 formerly owned and controlled the entire Site, and is in the process of developing portions of the  
6 Site for residential, commercial, and other related uses.

7 (3) BNSF operated the Site from about 1911 through December 31, 1998.  
8 BNSF's activities at the Site involved switching and fueling railcars and locomotives. BNSF  
9 used a number of chemicals as part of its operations, such as petroleum. HSP acquired the Site  
10 in 1994 and leased the Site to BNSF through the end of 1998, when BNSF vacated the Site.  
11 Since 1998, HSP has been developing the Site for residential, commercial and other related  
12 uses. HSP's development activity at the Site involves management of soil and groundwater  
13 that may be contaminated with hazardous substances, such as petroleum. Since 1998, HSP has  
14 sold portions of the Site to third parties for redevelopment.

15 (4) On August 16, 1995, DEQ and BNSF signed Order on Consent  
16 No. WMCSR-NWR-95-08, in which BNSF agreed to complete a remedial investigation ("RI")  
17 and feasibility study ("FS") and to undertake interim remedial measures. The purpose of the  
18 RI was to investigate the nature and extent of hazardous substance contamination at the Site;  
19 the purpose of the FS was to develop alternatives for remedial action; and, the purpose of the  
20 interim remedial measures was to minimize the potential exposure of the public and  
21 environment to hazardous substances pending selection of a final remedial action for the Site.  
22 Further interim remedial measures have been performed or are underway since selection of a  
23 final remedial action, as described below, in order to implement remedy components  
24 concurrent with development of the Site.

25 (5) Analytical results of sampling performed at the Site indicate that  
26 petroleum, lead and polynuclear aromatic hydrocarbons ("PAH") are present in soil and that

1 petroleum and PAH are present in shallow groundwater.

2 (6) Since 1992, BNSF has been implementing an interim remedial measure  
3 to remove free petroleum product from the surface of shallow groundwater at the Site  
4 ("LNAPL IRM"). In 1996 and in 2000, BNSF implemented soil removal as further interim  
5 remedial measures under the Order on Consent.

6 (7) In the Summer of 1996, BNSF removed contaminated soil from the  
7 block bounded by NW Johnson St., NW Kearney St., NW 9<sup>th</sup> Ave., and NW 10<sup>th</sup> Ave. as an  
8 interim action approved by DEQ under the Order on Consent. This part of the Site was  
9 subsequently developed by the owner, Pearl Court Limited Partnership, and is the subject of  
10 Prospective Purchaser Agreement No.96-08 with DEQ. The agreement is premised on the  
11 construction of buildings, pavement, and sidewalks serving as a cap on most of the block to  
12 prevent water infiltration and direct contact with contaminated surface soils or air entrainment  
13 of surface soils. The agreement requires the limited partnership to maintain the cap and  
14 implement deed restrictions to restrict use of the shallow groundwater. However, DEQ has  
15 since determined that completion of the interim action by BNSF has resulted in a protective  
16 remedy consistent with the December 2000 Record of Decision, described below, such that cap  
17 maintenance and deed restrictions are no longer necessary for this block.

18 (8) In October 1996, BNSF submitted a Final RI to DEQ. In July 1999,  
19 BNSF submitted the Final FS to DEQ. Pursuant to ORS 465.320, on January 1, 2000, DEQ  
20 published notice of a proposed remedial action and provided opportunity for public comment.  
21 Comments received on the proposed remedial action were considered by DEQ, as shown in the  
22 administrative record.

23 (9) In 2000, Prendergast & Associates, the owner of the block bounded by  
24 NW Kearney St., NW Lovejoy St., NW 9<sup>th</sup> Ave., and NW 10<sup>th</sup> Ave., removed contaminated  
25 soil from this block as an interim action. This block is still in the process of being developed  
26 by the owner, and is not within the Site subject to this Consent Decree. Upon completion of

Page 5 - STIPULATION AND CONSENT DECREE  
CSTCST P204  
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Portland, OR 97201  
(503) 229-5725

2-8-02

1 this work and review of a completion report by DEQ, DEQ will determine whether cap  
2 maintenance and institutional controls are necessary at this block to achieve a protective  
3 remedy consistent with the December 2000 Record of Decision.

4 (10) In 2000, Onder Development Company, on behalf of owner Lovejoy  
5 Station Limited partnership, began development of the block bounded by NW Lovejoy St.,  
6 NW Marshall St., NW 9<sup>th</sup> Ave., and NW 10<sup>th</sup> Ave. In September 2000, DEQ and the  
7 partnership entered Prospective Purchaser Agreement No. 00-08. The agreement is premised  
8 on the construction of buildings, pavement, and sidewalks serving as a cap at the block. The  
9 agreement requires the partnership to maintain the cap and implement deed restrictions to  
10 prevent disturbance of the cap and underlying contaminated soils.

11 (11) The Deputy Director of DEQ selected the remedial action set forth in a  
12 Record of Decision dated December 15, 2000 ("ROD").

13 (12) The remedial action selected in the ROD requires the following  
14 categories of work for groundwater:

- 15 • Continuation of the LNAPL IRM operating at the Site (free  
16 petroleum recovery and recycling);
- 17 • Performance evaluation of the existing LNAPL IRM to determine  
18 if a system upgrade and/or expansion is feasible;
- 19 • Investigation and evaluation of the Tanner Creek sewer and  
20 backfill as a potential contaminant migration pathway to the  
21 Willamette River with contingencies for preventing or mitigating  
22 the migration;
- 23 • Groundwater monitoring;
- 24 • Institutional controls; and
- 25 • Periodic review, with contingency measures in the event  
26 groundwater monitoring shows that contaminant levels have

2-8-02

1 significantly increased or are migrating to the Willamette River,  
2 and pose imminent threats to human health or the environment, or  
3 that remedial action objectives are not otherwise being attained.

4 (13) The remedial action selected in the ROD requires the following  
5 categories of work for soil:

- 6 • Excavation and treatment and/or disposal of hot spot soils;
- 7 • Excavation, stabilization (as needed), and landfill disposal of  
8 TCLP-lead soil;
- 9 • Excavation of soil in utility corridors where concentrations  
10 exceed the construction worker cleanup criteria in the upper five  
11 feet of soil;
- 12 • Capping the entire Site with two to three feet of clean soil,  
13 buildings, pavement or other improvements;
- 14 • Institutional controls; and,
- 15 • Periodic review, with contingency measures in the event that any  
16 component of the soil remedy is compromised such that the  
17 remedy no longer meets the protection standards, or that the  
18 remedial action objectives are not otherwise being satisfied.

19 (14) In June 2001, BNSF proposed to excavate LNAPL and LNAPL-  
20 contaminated soils from the subsurface in the Block 16 area consistent with the ROD. This  
21 work was approved by DEQ on September 7, 2001 as an interim action under the Order on  
22 Consent, and the work was commenced. The LNAPL removal work will be in lieu of the  
23 following requirements in the ROD: (a) continuation of the LNAPL IRM operating at the Site  
24 (free petroleum recovery and recycling); and, (b) performance evaluation of the existing  
25 LNAPL IRM to determine if a system upgrade and/or expansion is feasible. Upon completion  
26 of this work, a completion report will be submitted for DEQ review and approval in

2-8-02

1 accordance with this Consent Decree.

2 (15) In July 2001, BNSF proposed, consistent with the ROD, to stabilize,  
3 excavate, and dispose at a landfill TCLP-lead soils. This proposal was approved by DEQ on  
4 August 13, 2001 as an interim action under the Order on Consent, and the work was completed  
5 in September 2001. A completion report will be submitted for DEQ review and approval in  
6 accordance with this Consent Decree.

7 (16) Because the ROD was not issued until December 2000, DEQ required  
8 that earthwork for the development of Blocks 8-13 and the adjacent rights-of-way of NW  
9 Marshall St., NW Northrup St., NW Tenth Ave., and NW Eleventh Ave. be carried out under  
10 the Phases 1 and 2 Interim Remedial Action Plan developed by HSP. The interim plan was  
11 approved by DEQ and the City of Portland. This work is underway.

12 (17) On December 1, 2001, DEQ published notice of a proposed consent  
13 decree and provided opportunity for public comment in accordance with ORS 465.325(4)(d).  
14 The comment period ended on January 7, 2002. No comments were received.

15

16 Based on the above Stipulations, the parties agree to entry of the following Consent  
17 Decree:

18 CONSENT DECREE

19 3. Work to be Performed

20 A. Remedial Design and Remedial Action

21 (1) BNSF shall perform the groundwater component of remedial design and  
22 remedial action for the Site in accordance with the terms and schedules set forth in the  
23 Groundwater Scope of Work ("Groundwater SOW"), attached to and incorporated by  
24 reference into this Consent Decree as Attachment B, and the terms and schedules set forth in  
25 an approved work plan.

26 (2) HSP shall perform the soil component of remedial design and remedial

2-8-02

1 action for the Site in accordance with the terms and schedules set forth in the Soil Scope of Work  
2 ("Soil SOW"), attached to and incorporated by reference into this Consent Decree as Attachment  
3 C, and the terms and schedules set forth in an approved work plan

4 B. Periodic Review

5 At least once every five years, DEQ will review the remedy to ensure that the  
6 Site remains protective of public health, safety, and welfare and the environment. Periodic  
7 reviews will include evaluation of monitoring data, progress reports, inspection and  
8 maintenance reports, land and water uses, compliance with institutional controls, and any other  
9 relevant information. Contingency measures for groundwater might be necessary if  
10 information shows that contaminant levels have significantly increased or are migrating to the  
11 Willamette River and pose threats to human health or the environment, or that remedial action  
12 objectives are not otherwise being attained. Contingency measures for soils might be  
13 necessary if any component of the soil remedy is compromised such that the remedy no longer  
14 meets protection standards, or if remedial action objectives are not otherwise being obtained.  
15 Neither Defendant is obligated under this Consent Decree to perform any groundwater or soil  
16 contingency measures identified through DEQ's periodic review and not otherwise required  
17 under the Groundwater SOW or the Soil SOW.

18 C. Site Restrictions

19 (1) Prior to conveying fee title to any portion of the Site owned by HSP at the  
20 time of execution of this Consent Decree, HSP shall record with the County Clerk, Multnomah  
21 County, a License and Declaration of Restrictions substantially in the form attached to this  
22 Consent Decree as Attachment D. HSP shall provide DEQ and BNSF a file-stamped copy of the  
23 License and Declaration of Restrictions within five working days of recording.

24 (2) Property subject to the License and Declaration of Restrictions may be  
25 freely alienated at any time after recording; provided, the deed or other instrument of  
26 conveyance from HSP shall refer to or incorporate the License and Declaration of Restrictions.

1 (3) Any deed, title, or other instrument of conveyance regarding real  
2 property owned by the HSP within the Site shall reserve such access--by easement, right-of-  
3 way, License and Declaration of Restrictions, or otherwise--as might be necessary to carry out  
4 its obligations and BNSF's obligations under this Consent Decree.

5 (4) The terms and conditions of this Subsection 3.C. shall not apply to the  
6 granting or conveyance of a security interest in the property.

7 4. General Provisions

8 A. Selection of Supervising Contractor

9 (1) All aspects of the work to be performed by Defendants in designing and  
10 constructing the remedy pursuant to this Consent Decree shall be performed under the  
11 direction and supervision of the Defendants' respective qualified contractor or contractors  
12 having experience in hazardous substance remediation and knowledge of applicable state and  
13 federal laws, regulations, and guidance.

14 (2) Before initiation of remedial design work for the site, each Defendant  
15 shall notify DEQ in writing of the name, title, and qualifications of any proposed supervising  
16 contractor(s). DEQ may for good cause disapprove the proposed contractor(s). In the event of  
17 such disapproval, DEQ shall notify the relevant Defendant in writing of the reasons for its  
18 disapproval, within 14 days of receipt of the initial notice from that Defendant. Within 14  
19 days of receiving DEQ's notice of disapproval, the relevant Defendant shall notify DEQ of the  
20 name, title, and qualifications of alternative supervising contractor(s), subject to DEQ's right  
21 to disapprove under the terms and schedule specified above. Any work schedule shall be  
22 extended in the event that a delay is caused due to DEQ disapproval of a contractor or  
23 contractors, in an amount of time corresponding to the delay but not exceeding 60 days from  
24 the date of DEQ's last disapproval. DEQ hereby approves ThermoRetec as a qualified  
25 contractor for BNSF for purposes of this Consent Decree. DEQ hereby approves IT  
26 Corporation as a qualified contractor for HSP for purposes of this Consent Decree.



1 (3) If, during the course of work required under this Consent Decree, either  
2 Defendant proposes to change its supervising contractor(s), it shall notify DEQ in accordance  
3 with the provisions of the preceding paragraph. DEQ shall have the right to disapprove such  
4 contractor(s), under the terms and schedule specified in the preceding paragraph.

5 B. Financial Assurance

6 (1) Each Defendant shall demonstrate its ability to perform the work  
7 required of that Defendant under this Consent Decree by obtaining and submitting to DEQ for  
8 approval one or a combination of the following: (1) a performance bond; (2) a letter(s) of  
9 credit equaling the total estimated cost of the work; (3) evidence of an escrow account  
10 dedicated to payment of or reimbursement for remedial action costs and containing a balance at  
11 least equal to the total estimated cost of the work not assured through a performance bond,  
12 letter(s) of credit, or financial test or corporate guarantee; (4) internal financial information  
13 (financial test or corporate guarantee) sufficient to satisfy DEQ that its net worth is sufficient to  
14 make additional financial assurances unnecessary. If internal financial information is relied  
15 upon, the standards used to determine the adequacy of Defendant's resources shall be  
16 equivalent to those set forth in 40 CFR Part 265, Subpart H. Financial assurance shall be  
17 submitted within 30 days of DEQ approval of the final remedial design work plan in the  
18 amount of the estimated total capital cost of the remedial action.

19 (2) DEQ will have 45 days from the receipt of the financial assurance or  
20 other information to determine its adequacy and to communicate that determination to each  
21 Defendant. If DEQ determines that such assurance or information is inadequate, the relevant  
22 Defendant shall submit one of the other forms of assurance to DEQ for its approval. If  
23 internal corporate information is relied upon, the relevant Defendant shall submit updated  
24 financial information annually on the anniversary date of issuance of this Consent Decree.

25 (3) During implementation of the remedial action, DEQ may require either  
26 Defendant to revise the cost estimates used to demonstrate that Defendant's financial

Page 11 - STIPULATION AND CONSENT DECREE

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2-8-02

1 assurance, and either Defendant at its own election may revise the cost estimate for the work  
2 required of that Defendant from time to time. If the revised cost estimate is significantly  
3 higher or lower than the original cost estimate, DEQ may require the relevant Defendant to  
4 submit, or that Defendant may elect to submit, revised financial assurance under the terms and  
5 schedule set forth in the preceding paragraphs adequate to assure financial capability of the  
6 level of the revised cost estimate.

7 (4) In no event shall work required under this Consent Decree be delayed  
8 pending submission and/or approval of financial assurance under this subsection.

9 C. Access

10 (1) HSP shall allow DEQ to enter all portions of the Site owned or under the  
11 control of HSP at all reasonable times for the purpose of overseeing HSP's and BNSF's  
12 performance under this Consent Decree, including but not limited to inspecting records relating  
13 to work under this Consent Decree, observing Defendants' progress in implementing this  
14 Consent Decree, conducting such tests and taking such samples as DEQ deems necessary,  
15 verifying data submitted to DEQ by either Defendant, conducting periodic review, and using  
16 camera, sound recording, or other recording equipment. DEQ shall make available to each  
17 Defendant a split or duplicate of any sample taken in connection with this Consent Decree and  
18 provide each Defendant with copies of all analytical data for such samples. DEQ shall also  
19 make available to each Defendant, upon that Defendant's request, any photographs or recorded  
20 or videotaped material taken. DEQ shall be responsible for the health and safety of its  
21 commissioners, agents, officers, employees, and contractors entering or moving about the  
22 Property and shall indemnify and hold Defendants harmless, to the extent required by  
23 Paragraph 4.P.(3) of this Consent Decree, from and against any and all claims arising out of  
24 the acts or omissions of such commissioners, agents, officers, employees, and contractors  
25 entering or moving about the property.

26 (2) Each Defendant shall permit DEQ to inspect and copy all records, files,

2-8-02

1 photographs, documents, and data that the Defendant prepares in order to complete work  
2 required under this Consent Decree, except that neither Defendant shall be required to permit  
3 DEQ inspection or copying of items subject to attorney-client or attorney work product  
4 privilege.

5 (3) Each Defendant shall identify to DEQ (by addressor-addressee, date,  
6 general subject matter, and distribution) any document, record, or item withheld by the  
7 Defendant from DEQ on the basis of attorney-client or attorney work product privilege, except  
8 to the extent that such identifying information is itself subject to a privilege. DEQ reserves its  
9 rights under law to obtain documents DEQ asserts are improperly withheld by either  
10 Defendant. Attorney-client and work product privileges may not be asserted with respect to  
11 any records required under Paragraph 4.G.(1) of this Consent Decree.

12 D. Project Coordinators

13 (1) To the extent possible, all reports, notices, and other communications  
14 required under or relating to this Consent Decree shall be directed to:

15  
16 DEQ  
Project Coordinator:  
17 Jill Kiernan  
18 Department of Environmental Quality  
19 2020 SW Fourth Avenue, Suite 400  
20 Portland, OR 97201-4987  
21 Tel: 503-229-6900  
22 Fax: 503-229-6945

21 HSP  
Project Coordinator:  
22 Jim Mitchell  
23 Hoyt St. Properties  
24 809 NW 11<sup>th</sup> Ave.  
25 Portland, OR 97209  
26 Tel: 503-227-6677  
Fax: 503-227-0147

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BNSF  
Project Coordinator:  
Bruce A. Sheppard  
2454 Occidental Ave. S., Suite 1A  
Seattle, WA 98134  
Tel: 206-625-6035  
Fax: 206-625-6007

(2) The Project Coordinators shall be available and have the authority to make day-to-day decisions necessary to complete the relevant SOW under this Consent Decree.

E. Notice and Samples

(1) Each Defendant shall make every reasonable effort to notify DEQ of any new excavation, drilling, or sampling to be conducted by that Defendant under this Consent Decree at least five working days before such activity but in no event less than 24 hours before such activity. Upon DEQ's verbal request, the sampling Defendant shall make available to DEQ a split or duplicate of any sample taken pursuant to this Consent Decree. DEQ shall provide both Defendants with copies of all analytical data from such samples as soon as practicable.

(2) In the event DEQ conducts any sampling or analysis in connection with this Consent Decree, DEQ shall make every reasonable effort to notify each Defendant of any excavation, drilling, or sampling at least five working days before such activity but in no event less than 24 hours before such activity. Upon either Defendants' verbal request, DEQ shall make available to the requesting Defendant a split or duplicate of any sample taken in connection with this Consent Decree and provide both Defendants with copies of all analytical data for such samples. Each Defendant shall provide DEQ with copies of all analytical data from such samples as soon as practicable.

F. Quality Assurance

(1) Defendants shall conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control ("QA/QC") provisions

2-8-02

1 approved by DEQ as part of the work plan. All plans prepared and work conducted under this  
2 Consent Decree shall be consistent with DEQ's "Environmental Cleanup Division Quality  
3 Assurance Policy No. 760.000." Defendants shall make every reasonable effort to ensure that  
4 the laboratory used by Defendants for analysis performs such analyses in accordance with such  
5 provisions. In the event that DEQ submits QA/QC sample(s) to either Defendant's laboratory,  
6 that Defendant shall also make every reasonable effort to ensure that such laboratory analyzes  
7 all samples submitted by DEQ for QA/QC monitoring in accordance with such provisions.  
8 (2) In the event DEQ conducts sampling or analysis in connection with this  
9 Consent Decree, DEQ shall conduct sampling, sample transport, and sample analysis in  
10 accordance with the QA/QC provisions of the approved work plan. Upon written request,  
11 DEQ shall provide Defendants with DEQ records regarding such sampling, transport, and  
12 analysis.

13 G. Records

14 (1) In addition to those reports and documents specifically required under  
15 this Consent Decree, each Defendant shall provide to DEQ, within 10 days of DEQ's written  
16 request, copies of QA/QC memoranda and audits, raw data, task memoranda, field notes (not  
17 made by or at the direction of either Defendant's attorney), and laboratory analytical reports  
18 relating to the work to be performed under this Consent Decree.

19 (2) Each Defendant shall preserve all records and documents in possession  
20 or control of that Defendant or its employees, agents, or contractors that relate in any way to  
21 activities under this Consent Decree for at least five years after termination under Section 7 of  
22 this Consent Decree. Upon DEQ's request, each Defendant shall provide, or make available  
23 for copying by DEQ, copies of such nonprivileged records to DEQ. After five years and up to  
24 10 years after termination, each Defendant shall provide DEQ 60 days notice before  
25 destruction or other disposal of such records or documents. Ten years after termination,  
26 neither Defendant shall have further obligation to preserve documents or records.

Page 15 - STIPULATION AND CONSENT DECREE

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2-8-02

1 (3) Each Defendant may assert a claim of confidentiality regarding any  
2 documents or records submitted to or copied by DEQ pursuant to this Consent Decree. DEQ  
3 shall treat documents and records for which a claim of confidentiality has been made in  
4 accordance with ORS 192.410 through 192.505. If a Defendant does not make a claim of  
5 confidentiality at the time the documents or records are submitted to or copied by DEQ, the  
6 documents or records may be made available to the public without notice to either Defendant.

7 H. Progress Reports

8 During each calendar quarter following entry of this Consent Decree, each  
9 Defendant shall deliver to DEQ on or before the tenth working day of each quarter a progress  
10 report containing:

11 (1) Actions taken by the reporting Defendant under this Consent Decree  
12 during the previous three months;

13 (2) Actions scheduled to be taken by the reporting Defendant in the next  
14 three months;

15 (3) A summary of sampling, test results, and any other data generated by the  
16 Defendant during the previous three months; and

17 (4) A description of any problems experienced by the reporting Defendant  
18 during the previous three months.

19 DEQ may approve less frequent reporting by either or both Defendants, if  
20 warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy  
21 written form, two copies shall be provided to DEQ.

22 I. Other Applicable Laws

23 All activities under this Consent Decree shall be performed in accordance with  
24 all applicable federal, state, and local laws and regulations, except that, in accordance with  
25 ORS 465.315(3), the remedial actions performed by either Defendant in accordance with this  
26 Consent Decree are exempt from any on-site procedural or permitting requirements that might

1 otherwise be applicable under ORS 466.005 to 466.385 and any regulations promulgated  
2 thereunder. This exemption does not preclude either Defendant from electing to obtain any  
3 necessary permits to satisfy requirements under ORS 466.005 to 466.385.

4 J. Reimbursement of DEQ Oversight Costs

5 (1) DEQ shall submit to BNSF a monthly invoice of costs actually and  
6 reasonably incurred by DEQ or the State of Oregon after approval of this Consent Decree by  
7 the Court in connection with any activities related to the Groundwater SOW, oversight of  
8 BNSF's implementation of this Consent Decree, and periodic review. Each invoice will include  
9 a summary of costs billed to date.

10 (2) DEQ shall submit to HSP a monthly invoice of costs actually and  
11 reasonably incurred by DEQ or the State of Oregon after approval of this Consent Decree by  
12 the Court in connection with any activities related to the Soil SOW, oversight of HSP's  
13 implementation of this Consent Decree, and periodic review. Each invoice will include a  
14 summary of costs billed to date.

15 (3) DEQ or State of Oregon oversight costs payable by each Defendant shall  
16 include direct costs, indirect costs, and costs authorized under ORS 465.333. Direct costs  
17 shall include site-specific expenses, DEQ contractor, and DEQ legal costs. DEQ's direct cost  
18 summary will include an Environmental Cleanup Division ("ECD") direct labor summary  
19 showing the persons charging time, the number of hours, and the nature of work performed.  
20 Indirect costs shall include those general management and support costs of DEQ and of the  
21 ECD allocable to DEQ oversight of this Consent Decree which are not charged as direct, site-  
22 specific costs. Indirect charges shall be based on actual costs and applied as a percentage of  
23 direct personal services costs. DEQ shall maintain work logs, payroll records, receipts, and  
24 other documents to document work performed and expenses incurred under this Consent  
25 Decree and, upon request, shall provide copies of such records to each Defendant during the  
26 term of this Consent Decree and for at least five years thereafter. After five years and up to

1 10 years after termination, DEQ shall provide each Defendant 60 days notice before  
2 destruction or other disposal of such records or documents. Upon either Defendant's request,  
3 DEQ shall provide that Defendant with copies of such records or documents. Ten years after  
4 termination, DEQ shall have no further obligation to preserve such records or documents.

5 (4) Within 45 days of receipt of DEQ's invoice, each Defendant shall pay  
6 the amount of costs billed to that Defendant by check payable to the "State of Oregon,  
7 Hazardous Substance Remedial Action Fund" or invoke dispute resolution under Subsection  
8 4.M. of this Consent Decree. After 45 days, any unpaid amounts that are not the subject of  
9 pending dispute resolution or that have been determined owing after dispute resolution shall  
10 become a liquidated debt collectible under ORS 293.250 or other applicable law.

11 (5) Each Defendant shall pay nine percent simple interest per annum on the  
12 unpaid balance of DEQ oversight costs billed to that Defendant, which interest shall begin to  
13 accrue 60 days from the date of the invoice. Interest on any amount disputed under Subsection  
14 4.M. shall begin to accrue 60 days from final resolution of any such dispute.

15 K. Force Majeure

16 (1) If any event occurs that is beyond a Defendant's reasonable control and  
17 that causes or might cause a delay or deviation in performance of the requirements of this  
18 Consent Decree by that Defendant despite the due diligence of that Defendant ("force  
19 majeure"), that Defendant shall promptly, upon learning of the event, notify DEQ's Project  
20 Coordinator verbally of the cause of the delay or deviation, its anticipated duration, the  
21 measures that have been or will be taken to prevent or minimize the delay or deviation, and the  
22 timetable by which that Defendant proposes to carry out such measures. The Defendant shall  
23 confirm in writing this information within five working days of the verbal notification.

24 (2) If a Defendant demonstrates to DEQ's satisfaction that the delay or  
25 deviation has been or will be caused by force majeure, DEQ shall extend times for  
26 performance of related activities by that Defendant under this Consent Decree as appropriate.



1 Circumstances or events beyond a Defendant's control might include but not be limited to acts  
2 of God, unforeseen strikes or work stoppages, delays in government action or approvals, fire,  
3 explosion, riot, sabotage, or war. Increased cost of performance or changed business or  
4 economic circumstances shall be presumed not to be circumstances beyond a Defendant's  
5 control.

6 L. DEQ Approvals

7 (1) Where DEQ review and approval is required for any plan or activity  
8 under this Consent Decree, the Defendant responsible for the plan or activity shall not proceed  
9 to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting  
10 or denying approval shall correspondingly extend the time for completion by the Defendant.  
11 Prior approval shall not be required in emergencies; provided, the relevant Defendant shall  
12 notify DEQ immediately after the emergency and evaluate its impact on that Defendant's work.  
13 A "delay" for the purposes of this subsection shall constitute any time beyond the time  
14 allocated in the Soil SOW or Groundwater SOW for DEQ approval or denial of the activity, as  
15 calculated from the date of receipt by DEQ of any necessary report or notification from the  
16 relevant Defendant to receipt by that Defendant's Project Coordinator of DEQ's approval or  
17 denial.

18 (2) After review of any plan, report, or other item required to be submitted  
19 for DEQ approval under this Consent Decree, DEQ shall:

- 20 (a) approve the submission in whole or in part; or  
21 (b) disapprove the submission in whole or in part and notify the  
22 relevant Defendant of its deficiencies and/or request modifications to cure the deficiencies.

23 (3) In the event of two deficient submittals of the same deliverable that are  
24 deficient for the same reasons due to the relevant Defendant's failure in good faith to cure the  
25 original deficiency, DEQ may modify the submission to cure the deficiency.

26 (4) DEQ approvals, rejections, or identification of deficiencies shall be

2-8-02

1 given within the time specified in the Soil SOW or the Groundwater SOW or as soon as  
2 practicable in writing, and state DEQ's reasons with reasonable specificity.

3 (5) In the event of approval or modification of the submission by DEQ, the  
4 relevant Defendant shall implement the actions(s) required by the plan, report, or other item,  
5 as so approved or modified.

6 (6) In the event of DEQ disapproval or request for modification of a  
7 submission, the relevant Defendant shall, within 30 days of receipt of the DEQ notice or such  
8 longer time as may be specified in the notice, either correct the deficiencies and resubmit the  
9 revised report or other item for approval, or institute dispute resolution under Subsection 4.M.  
10 of this Consent Decree.

11 M. Dispute Resolution

12 (1) In the event a Defendant disagrees with DEQ regarding oversight costs,  
13 review and approval of any plan or activity, interpretation of data, or DEQ modifications of a  
14 deliverable, that Defendant shall promptly notify DEQ in writing of its objection. DEQ and the  
15 Defendant which initiated the dispute then shall make a good-faith effort to resolve the  
16 disagreement within 14 days of the Defendant's written objection. At the end of the 14-day  
17 period, DEQ shall provide the Defendant that initiated the dispute with a written statement of its  
18 position from the DEQ Northwest Region's Cleanup Manager. If the Defendant still disagrees  
19 with DEQ's position, then the Defendant which initiated the dispute, within 14 days of receipt of  
20 DEQ's position from the Cleanup Manager, shall provide that Defendant's position and rationale  
21 in writing to the DEQ Northwest Region Administrator. The Region Administrator may discuss  
22 the disputed matter with the Defendant which initiated the dispute and, in any event, shall  
23 provide that Defendant with DEQ's final position in writing as soon as practicable after receipt of  
24 Defendant's written position.

25 (2) If the Defendant initiating dispute resolution refuses or fails to follow  
26 DEQ's final decision pursuant to this Paragraph 4.M.(1), and DEQ seeks to (a) enforce its final

1 decision, (b) collect stipulated penalties, (c) assess civil penalties, (d) collect reimbursement of  
2 DEQ oversight costs, or (e) collect costs related to any removal or remedial action performed by  
3 DEQ, the parties, subject to Section 2 of this Consent Decree, shall be entitled to such rights,  
4 remedies, and defenses as are provided by applicable law.

5 (3) During the pendency of any dispute resolution as provided in this  
6 subsection, the time for completion of work or obligations affected by such dispute shall be  
7 extended for a period of time not to exceed the actual time taken to resolve the dispute.  
8 Elements of work or obligations not affected by the dispute shall be completed in accordance  
9 with the applicable schedule approved pursuant to this Consent Decree.

10 N. Stipulated Penalties

11 (1) Subject to Subsections 4.K., 4.L., and 4.M. of this Consent Decree,  
12 upon any violation by a Defendant of any provision of this Consent Decree applicable to that  
13 Defendant, and upon that Defendant's receipt from DEQ of written notice of violation, that  
14 Defendant shall pay the stipulated penalties set forth in the following schedule:

15 (a) Up to \$ 5,000 for the first week of violation or delay and up to \$  
16 2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Site or  
17 provide records under Subsections 4.C. or 4.G.

18 (b) Up to \$ 2,500 for the first week of violation or delay (but not  
19 exceeding \$ 500 for any one day during the first week) and up to \$ 1,000 per day of violation  
20 or delay thereafter, for:

21 (i) failure to submit a final work plan, addressing in good  
22 faith DEQ's comments on the draft work plan, in accordance with the relevant Scope of Work  
23 schedule and terms;

24 (ii) failure to complete the work in accordance with the  
25 approved work plan schedule and terms;

26 (iii) failure to submit a final report, addressing in good faith

2-8-02

1 DEQ's comments on the draft report, in accordance with the approved work plan schedule and  
2 terms; or

3 (iv) violation by the Defendant or any authorized user of the  
4 Defendant's property of any covenant, restriction, or obligation contained in the License and  
5 Declaration of Restrictions (Attachment D to this Consent Decree).

6 (c) Up to \$ 500 for the first week of violation or delay and up to  
7 \$500 per day of violation or delay thereafter, for:

8 (i) failure to submit a good faith draft work plan in  
9 accordance with the relevant Scope of Work schedule and terms;

10 (ii) failure to submit good faith reports in accordance with the  
11 relevant Scope of Work schedule and terms; or

12 (iii) any other violation of the Consent Decree, relevant Scope  
13 of Work, or approved work plan.

14 (2) Violations arising out of the same facts or circumstances or based on the  
15 same deadline will be treated as one violation per day.

16 (3) Stipulated penalties shall not begin to accrue under this subsection until  
17 the Defendant receives a notice of violation from DEQ describing the violation and what is  
18 necessary to correct it. If the violation was not intentional, the violation is capable of cure,  
19 and the Defendant receiving notice corrects the violation within 30 days of receipt of such  
20 notice of violation or such other period as may be specified in the notice, DEQ shall waive the  
21 stipulated penalties. This opportunity to cure does not apply to violations subject to  
22 Subparagraph 4.N.(1)(a).

23 (4) Subject to Paragraph 4.N.(3), the Defendant receiving notice of a  
24 violation shall, within 30 days of receipt of the notice, pay the amount of such stipulated  
25 penalty by check made payable to the "State of Oregon, Hazardous Substance Remedial Action  
26 Fund" or request a contested case hearing in accordance with Paragraph 4.N.(5) below. The

1 Defendant shall pay interest of nine percent per annum on the unpaid balance of any stipulated  
2 penalties, which interest shall begin to accrue at the end of the 30-day period.

3 (5) In assessing a penalty under this subsection, the Director may consider  
4 the factors set forth in OAR 340-012-0045, provided that such factors may not be used to  
5 increase a penalty beyond the amounts stipulated in this subsection. A Defendant may request  
6 a contested case hearing regarding the penalty assessment against that Defendant in accordance  
7 with OAR Chapter 340, Division 11. The scope of any such hearing shall be consistent with  
8 the stipulations set forth in Section 2 of this Consent Decree; shall be limited to the occurrence  
9 or non-occurrence of the alleged violation, or conditions precedent to the requirement allegedly  
10 violated; and shall not review the amount of the penalty assessed. Further penalties shall not  
11 accrue pending any contested case regarding the alleged violation.

12 (6) If DEQ assesses stipulated penalties pursuant to this section for any  
13 failure of a Defendant to comply with this Consent Decree, DEQ may not seek civil penalties  
14 from that Defendant for the same violation under ORS 465.900 or other applicable law.

15 O. Enforcement of Consent Decree

16 (1) In addition to assessment of stipulated penalties under Subsection 4.N. of  
17 this Consent Decree or civil penalties under ORS 465.900, DEQ may seek enforcement of this  
18 Consent Decree by this Court. If DEQ seeks enforcement of this Consent Decree by this  
19 Court, DEQ may seek monetary sanctions, such as civil penalties, only if DEQ has not  
20 assessed and collected any stipulated penalties under this Consent Decree regarding the same  
21 violation.

22 (2) Neither Defendant admits any liability, violation of law, or factual or  
23 legal findings, conclusions, or determinations made by DEQ under this Consent Decree.

24 (3) Nothing in this Consent Decree is intended to create any cause of action  
25 in favor of any person not a party to this Consent Decree.

26 (4) Neither this Consent Decree nor any judgment enforcing this Consent

1 Decree shall be admissible in any judicial or administrative proceeding, except for proceedings  
2 by DEQ to enforce this Consent Decree, resolution of disputes under this Consent Decree,  
3 imposition or mitigation of sanctions for violation of this Consent Decree, in response to a  
4 citizen suit, or when offered by a Defendant for admission in any proceeding.

5 (5) Subject to Paragraph 2.A.(4) of this Consent Decree, nothing in this  
6 Consent Decree shall prevent either Defendant from exercising any rights of contribution or  
7 indemnification a Defendant might have against any person regarding activities under this  
8 Consent Decree.

9 P. Indemnification and Insurance

10 (1) BNSF shall indemnify and hold harmless the State of Oregon and its  
11 commissions, agencies, officers, employees, contractors, and agents from and against any and  
12 all claims arising from acts or omissions related to this Consent Decree of BNSF or its  
13 officers, employees, contractors, agents, receivers, trustees, or assigns after the date this  
14 Consent Decree is approved by the Court. The State of Oregon shall notify BNSF of any such  
15 claims or actions as soon as practicable after receiving notice that such a claim or action is  
16 threatened or has been filed. BNSF shall have the right to participate fully at its own expense  
17 in the defense or settlement of such claims, including the right to promptly receive related  
18 correspondence with the claimant and the opportunity to participate in related meetings and  
19 telephone conferences with the claimant. The State will confer with BNSF regarding litigation  
20 and settlement strategy and, to the extent practicable, will afford BNSF the opportunity to  
21 review and comment on all pleadings and settlement documents before they are filed with the  
22 court or sent to the claimant. BNSF shall have no obligations under this paragraph with  
23 respect to any claim settled or otherwise compromised without BNSF's having been provided  
24 the opportunity to participate in accordance with this paragraph. DEQ shall not be considered  
25 a party to any contracts made by BNSF or its agents in carrying out activities under this  
26 Consent Decree.

2-8-02

1           (2) HSP shall indemnify and hold harmless the State of Oregon and its  
2 commissions, agencies, officers, employees, contractors, and agents from and against any and  
3 all claims arising from acts or omissions related to this Consent Decree of HSP or its officers,  
4 employees, contractors, agents, receivers, trustees, or assigns after the date this Consent  
5 Decree is approved by the Court. The State of Oregon shall notify HSP of any such claims or  
6 actions as soon as practicable after receiving notice that such a claim or action is threatened or  
7 has been filed. HSP shall have the right to participate fully at its own expense in the defense  
8 or settlement of such claims, including the right to promptly receive related correspondence  
9 with the claimant and the opportunity to participate in related meetings and telephone  
10 conferences with the claimant. The State will confer with HSP regarding litigation and  
11 settlement strategy and, to the extent practicable, will afford HSP the opportunity to review  
12 and comment on all pleadings and settlement documents before they are filed with the court or  
13 sent to the claimant. HSP shall have no obligations under this paragraph with respect to any  
14 claim settled or otherwise compromised without HSP's having been provided the opportunity  
15 to participate in accordance with this paragraph. DEQ shall not be considered a party to any  
16 contracts made by HSP or its agents in carrying out activities under this Consent Decree.

17           (3) To the extent permitted by Article XI, Section 7, of the Oregon  
18 Constitution and by the Oregon Tort Claims Act, the State of Oregon shall indemnify and hold  
19 harmless the Defendants and their respective officers, employees, contractors, and agents from  
20 and against any and all claims arising from acts or omissions related to this Consent Decree of  
21 the State of Oregon or its commissions, agencies, officers, employees, contractors, agents, or  
22 assigns (excepting acts or omissions constituting DEQ approval of a Defendant's activities  
23 under this Consent Decree). The relevant Defendant shall notify the State of Oregon of any  
24 such claims or actions as soon as practicable after receiving notice that such a claim or action  
25 is threatened or has been filed. The State of Oregon shall have the right to participate fully at  
26 its own expense in the defense or settlement of such claims, including the right to promptly

Page 25 - STIPULATION AND CONSENT DECREE

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1 receive related correspondence with the claimant and the opportunity to participate in related  
2 meetings and telephone conferences with the claimant. The relevant Defendant will confer  
3 with the State of Oregon regarding litigation and settleme... strategy and, to the extent  
4 practicable, will afford the State of Oregon the opportunity to review and comment on all  
5 pleadings and settlement documents before they are filed with the court or sent to the claimant.  
6 The State of Oregon shall have no obligations under this paragraph with respect to any claim  
7 settled or otherwise compromised without it having been provided the opportunity to  
8 participate in accordance with this paragraph. Neither Defendant shall be considered a party to  
9 any contract made by DEQ or its agents in carrying out activities under this Consent Decree.

10 (4) Before commencing any onsite work under this Consent Decree, each  
11 Defendant shall obtain and maintain for the duration of this Consent Decree comprehensive  
12 general liability and automobile insurance with limits of \$1 million, combined single limit per  
13 occurrence, naming as an additional insured the State of Oregon. If a Defendant demonstrates  
14 by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent  
15 coverage, or coverage for the same risks but in a lesser amount or for a lesser term, then that  
16 Defendant may provide only that portion of the insurance that is not maintained by its  
17 contractor(s) or subcontractor(s). Neither Defendant is required to maintain insurance to the  
18 extent it demonstrates that its contractor(s) or subcontractor(s) maintains equivalent insurance.

19 Q. Parties Bound

20 This Consent Decree shall be binding on the parties and their respective  
21 successors, agents, and assigns after the date this Consent Decree is approved by the Court.  
22 The undersigned representative of each party certifies that he or she is fully authorized to  
23 execute and bind such party to this Consent Decree. No change in ownership or corporate or  
24 partnership status relating to the Site shall in any way alter either Defendants' obligations  
25 under this Consent Decree, unless otherwise approved in writing by DEQ.

26 ///

Page 26 - STIPULATION AND CONSENT DECREE  
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1 R. Modification

2 DEQ and the Defendants may modify this Consent Decree by unanimous written  
3 agreement, subject to approval by this Court. DEQ and HSP may modify the Soil SOW or  
4 work plan without having to obtain court approval, provided the modification is consistent with  
5 the ROD and BNSF has been given reasonable notice prior to the modification. DEQ and  
6 BNSF may modify the Groundwater SOW or work plan without having to obtain court  
7 approval, provided the modification is consistent with the ROD and HSP has been given  
8 reasonable notice prior to the modification.

9 5. Contribution Actions

10 A. Pursuant to ORS 465.325(6)(b), neither Defendant shall be liable for claims for  
11 contribution regarding matters addressed in this Consent Decree.

12 B. Subject to Paragraph 2.A.(4) of this Consent Decree, nothing in this Consent  
13 Decree shall prevent either Defendant from exercising any rights of contribution or  
14 indemnification either Defendant might have against any person (other than another Defendant)  
15 regarding activities under this Consent Decree.

16 6. Covenants Not To Sue

17 A. Upon certification(s) of completion under Section 7 of this Consent Decree, the  
18 State of Oregon covenants not to sue or take administrative action against either Defendant  
19 concerning any liability to the State of Oregon under ORS 465.200 to 465.455 and 465.900  
20 with regard to the release or threatened release of hazardous substances addressed by the  
21 certification(s) of completion; provided, this covenant shall not release either Defendant from  
22 future liability to DEQ resulting from:

- 23 (1) Failure of remedial action; or,  
24 (2) Information unknown to DEQ at the time of certification(s) of  
25 completion showing that the remedial action is not protective of public health, safety, and  
26 welfare or the environment.

2-8-02

- 1           B.    DEQ reserves all rights against each Defendant with respect to any other  
2 matters, including but not limited to:
- 3                   (1)    Claims based on failure by the Defendant to meet any applicable  
4 requirement of this Consent Decree;
- 5                   (2)    Liability arising from disposal of hazardous substances removed from the  
6 facility by the Defendant;
- 7                   (3)    Liability under federal or state law for natural resource damages;
- 8                   (4)    Claims based on criminal liability;
- 9                   (5)    Any matters as to which the State of Oregon is owed indemnification by  
10 the Defendant under Subsection 4.P. of this Consent Decree;
- 11                   (6)    Liability for violations of federal or state law by the Defendant occurring  
12 during implementation of the work required under this Consent Decree;
- 13                   (7)    Liability for oversight costs incurred by DEQ in connection with this  
14 Consent Decree;
- 15                   (8)    Performance of contingency measures identified pursuant to Subsection  
16 3.A. or 3.B. of this Consent Decree; and
- 17                   (9)    Liability arising from any release of hazardous substances to the  
18 Willamette River or sediments at the river, except to the extent the release is satisfactorily  
19 remediated by Defendants pursuant to this Consent Decree.

20           C.    The Director of DEQ has determined that the above covenant not to sue will  
21 expedite the remedial action and is in the public interest, based on consideration of the factors  
22 set forth in ORS 465.325(7)(a) and (d).

23           D.    So long as both Defendants are in compliance with their obligations under this  
24 Consent Decree, DEQ agrees not to undertake any enforcement or other adverse proceeding  
25 against BNSF with respect to the release of hazardous substances addressed by this Consent  
26 Decree. In the event HSP fails to perform its obligations under this Consent Decree related to

1 the Soil SOW, DEQ reserves all rights against each Defendant with respect to soils remedial  
2 action.

3 E. So long as both Defendants are in compliance with their obligations under this  
4 Consent Decree, DEQ agrees not to undertake any enforcement or other adverse proceeding  
5 against HSP with respect to the release of hazardous substances addressed by this Consent  
6 Decree. In the event BNSF fails to perform its obligations under this Decree related to the  
7 Groundwater SOW, DEQ reserves all rights against each Defendant with respect to  
8 groundwater remedial action.

9 7. Certification(s) of Completion: Termination

10 A. Upon BNSF's submission, in accordance with the Groundwater SOW, of a final  
11 project closeout report and a request for certification of completion, DEQ shall preliminarily  
12 determine whether the groundwater remedial action has been fully and satisfactorily performed  
13 in accordance with this Consent Decree. For purposes of this certification, the groundwater  
14 remedial action is defined to include commencement of groundwater monitoring and  
15 completion of the Tanner Creek evaluation and any Tanner Creek mitigative measure, but to  
16 exclude long-term operation, maintenance, and reporting relating to the groundwater  
17 monitoring and any Tanner Creek mitigative measure. Upon a preliminary determination that  
18 the groundwater remedial action, as so defined, has been fully and satisfactorily performed,  
19 DEQ shall provide public notice and opportunity to comment on a proposed certification  
20 decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public  
21 comment, and within 90 days after receiving BNSF's project closeout report, the Director of  
22 DEQ shall issue a final certification decision. The certification decision shall subsequently be  
23 submitted by DEQ to this Court.

24 B. Upon HSP's completion of work in accordance with the Soil SOW for a portion  
25 of the Site, HSP shall submit a final closeout report to DEQ signed both by an Oregon-  
26 registered professional engineer and HSP's Project Coordinator certifying that the remedial

1 action for that portion of the Site has been completed in accordance with this Consent Decree.  
2 The report shall summarize the work performed and include all necessary supporting  
3 documentation. The report shall include a legal description of the portion of the Site for which  
4 the work required under this Consent Decree has been completed and for which HSP requests  
5 certification of completion. Except with prior approval from DEQ, HSP shall not request  
6 certification of completion for an area of less than one city block (approximately 40,000 square  
7 feet). DEQ shall preliminarily determine whether the soils remedial action has been fully and  
8 satisfactorily performed for the identified portion of the Site in accordance with this Consent  
9 Decree. Upon a preliminary determination that the soils remedial action for a portion of the  
10 Site has been fully and satisfactorily performed, DEQ shall provide public notice and  
11 opportunity to comment on a proposed certification decision in accordance with ORS 465.320  
12 and 465.325(10)(b). After consideration of public comment, and within 90 days after  
13 receiving HSP's closeout report, the Director of DEQ shall issue a final certification decision.  
14 The certification decision shall subsequently be submitted by DEQ to this Court.

15 C. Subject to the jurisdiction of this Court under ORS 465.325(10)(c), upon any  
16 filing of a DEQ certification of completion for the groundwater remedial action before  
17 termination of this Consent Decree under Subsection 7.D., BNSF shall be relieved of its  
18 obligations under the following sections of this Consent Decree, except as necessary for long-  
19 term operation, monitoring, and reporting related to groundwater monitoring and any Tanner  
20 Creek mitigative measure: 3.A. (RD/RA); 4.A. (supervising contractors); 4.B. (financial  
21 assurance); 4.E. (notice and sampling); 4.F. (quality assurance); 4.H (progress reports); 4.N.  
22 (stipulated penalties); and, 4.P.(4) (insurance).

23 D. Subject to the jurisdiction of this Court under ORS 465.325(10)(c), this Consent  
24 Decree shall be deemed satisfied and terminated upon filing of DEQ's certification(s) of  
25 completion both for the groundwater remedial action and the soil remedial action (for all  
26 portions of the Site) and payment by the Defendants of any and all outstanding costs and

Page 30 - STIPULATION AND CONSENT DECREE

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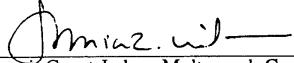
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1 penalties. The following Consent Decree obligations of Defendants or DEQ, as applicable,  
2 shall survive termination: Subsections 3.A. (long-term operation, maintenance, and reporting  
3 related to groundwater monitoring and any Tanner Creek mitigative measure); 3.C. (site  
4 restrictions); 4.C. (access); 4.G. (records preservation and confidentiality), 4.J. (periodic  
5 review costs; documentation of oversight costs); and 4.P. (indemnification).

6 E. Notwithstanding termination of this Consent Decree, this Court retains  
7 jurisdiction over both the subject matter of this Consent Decree and the parties regarding the  
8 surviving obligations referenced in Subsection 7.D.

9  
10 IT IS SO ORDERED this day of <sup>8th</sup> February, 2002.

11  
12   
13 Circuit Court Judge, Multnomah County  
14 WILSON

15 STATE OF OREGON  
16 DEPARTMENT OF ENVIRONMENTAL QUALITY

17 By: Neil Mullane Date: 1-31-02

18 Neil Mullane  
19 Administrator, Northwest Region

20 By: Kurt Burkholder Date: 1-31-02

21 Kurt Burkholder, OSB No. 80465  
22 Assistant Attorney General  
23 Oregon Department of Justice  
24 1515 SW Fifth Avenue, Suite 410  
25 Portland, OR 97201  
26 Attorney for DEQ

Page 31 - STIPULATION AND CONSENT DECREE

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1 THE BURLINGTON NORTHERN  
2 AND SANTA FE RAILWAY COMPANY

3  
4 By: *Jeffrey R. Moreland*

Jeffrey R. Moreland  
Sr. Vice President and Chief of Staff

Date: *1/24/02*

5  
6

7 By: *Craig Trueblood*

Craig Trueblood, OSB No. 860076  
Preston Gates & Ellis, LLP  
701 Fifth Ave., Suite 5000  
Seattle, WA 98104-7078  
Attorney for The Burlington Northern and Santa Fe Railway Company

Date: *1/16/02*

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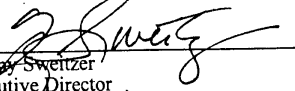
Page 32 - STIPULATION AND CONSENT DECREE

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1 HOYT STREET PROPERTIES, LLC

2  
3 By:   
4 Tiffany Swentzer  
Executive Director

Date: 1/14/02

5 By:   
6 Richard Allan  
7 Ball Janik LLP  
101 SW Main St., Suite 1100  
8 Portland, OR 97204  
Attorney for Hoyt Street Properties, LLC

Date: January 14, 2002

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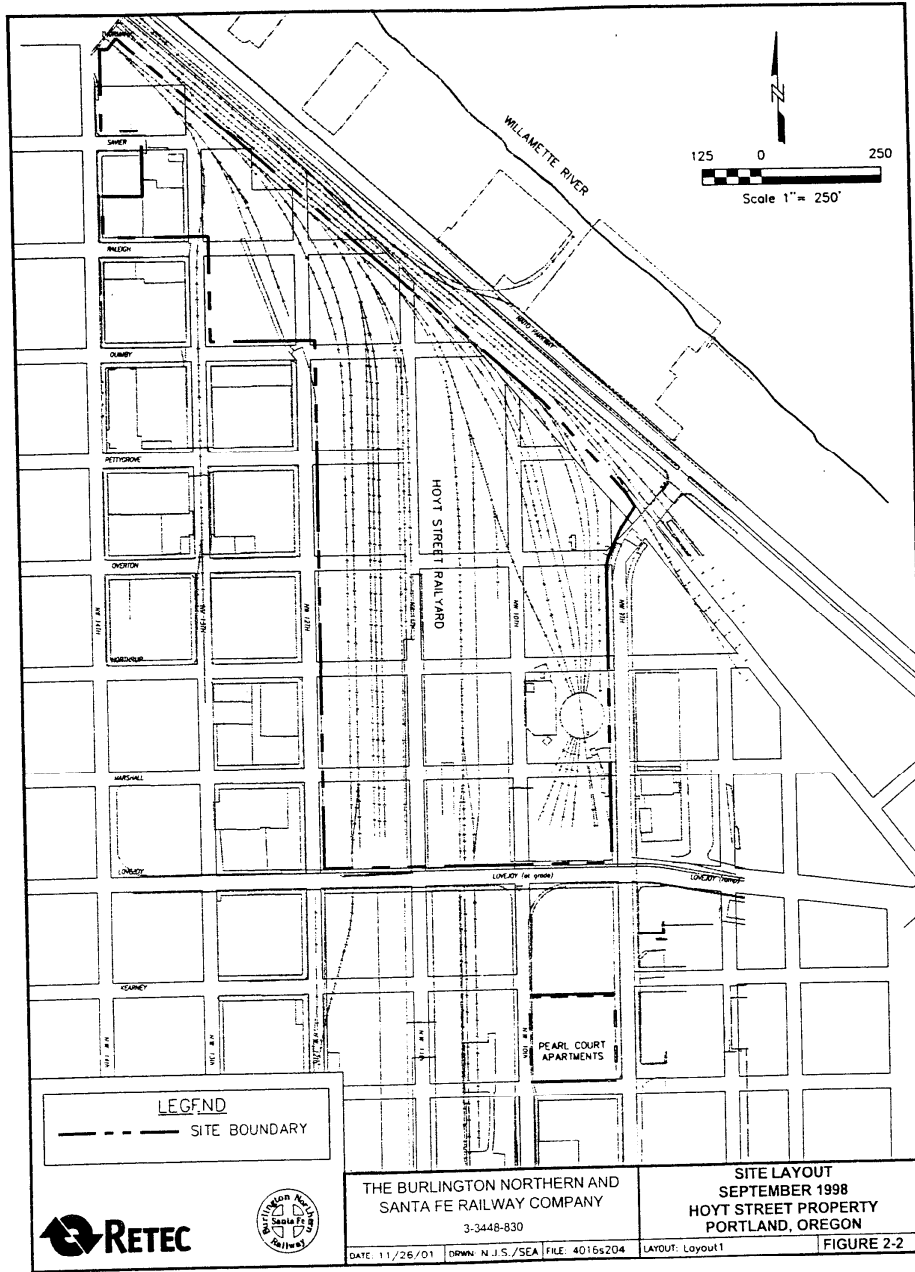
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ATTACHMENT A

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ATTACHMENT A



LEGEND  
 - - - - - SITE BOUNDARY



THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY 3-3448-830		SITE LAYOUT SEPTEMBER 1998 HOYT STREET PROPERTY PORTLAND, OREGON	
DATE: 11/26/01	DRWN: N.J.S./SEA	FILE: 4016s204	LAYOUT: Layout1
			FIGURE 2-2

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**ATTACHMENT B**  
**FORMER HOYT STREET RAILYARD**  
**GROUNDWATER REMEDIAL DESIGN/REMEDIAL ACTION**  
**SCOPE OF WORK**

**I. SCHEDULE AND OBJECTIVES**

Within 45 days of issuance of the Consent Decree, the Burlington Northern and Santa Fe Railway Company (BNSF) shall submit for DEQ review and comment a draft work plan for Remedial Design (RD) and Remedial Action (RA) at the facility. Within 30 days of receipt of DEQ's written comments on the draft RD/RA work plan, BNSF shall submit to DEQ for approval a final RD/RA work plan addressing DEQ's comments.

The objectives of the Remedial Design and Remedial Action are to attain the degree of cleanup of hazardous substances and control of further release of hazardous substances as established in the Record of Decision (ROD). The objectives shall be consistent with the requirements set forth in the Environmental Cleanup Rules, Oregon Administrative Rules (OAR) 340-122-010 to 115, and the Environmental Cleanup Laws, Oregon Revised Statutes (ORS), Chapter 465.

The institutional controls for groundwater specified in Section 7.2.2 of the ROD will be implemented through the Soil Scope of Work (Attachment C to the Consent Decree). This Groundwater Scope of Work also does not address remedial action that may be required as a result of groundwater conditions that arise in the future from the development activities permitted under the ROD and the Soil Scope of Work.

**II. REMEDIAL DESIGN/REMEDIAL ACTION DELIVERABLES**

**A. GROUNDWATER REMEDIAL DESIGN/REMEDIAL ACTION WORK PLAN**

The RD/RA Work Plan shall be developed in conformance with DEQ's Record of Decision (ROD); this Scope of Work; and as appropriate, EPA's "Superfund Remedial Design Remedial Action Guidance", OSWER Directive 9355.0-4A, 1986; "Guidance on Expediting Remedial Design and Remedial Action", OSWER Directive 9355.5-02; and any additional guidance documents as directed by DEQ.

The RD/RA Work Plan shall be prepared for all activities conducted during remedial design and remedial action and include, at a minimum, the following items:

1. Description of all proposed remedial design and remedial action activities to be performed.
2. Proposed schedule for submittal of RD/RA deliverables and implementation of all required RD and RA activities.
3. Summary of selected remedy and cleanup levels.
4. Identification and description of design objectives.
5. Identification and description of design criteria and performance standards that shall be applied to the remedial activities conducted by BNSF.
6. Identification and listing of federal, state, or local laws, regulations, or guidance applicable to or associated with the remedial action and an explanation of how they will be incorporated into the design and implementation of the remedial action.
7. An assessment of permitting requirements and a plan for satisfying any applicable requirements.
8. Identification and description of site access agreements required to implement RA activities, if any.
9. A description of the proposed approach to investigating and evaluating the Tanner Creek sewer and backfill as migration pathways of site contaminants to the Willamette River, and, if occurring, whether the migration of site contaminants results in a significant adverse effect on beneficial uses of the Willamette River, as defined in OAR 340-122-0115(50), or poses an unacceptable risk to human or ecological receptors exposed to surface water or sediments. Details of this investigation and evaluation shall be submitted as a separate deliverable (Item II.B.).

**B. TANNER CREEK SEWER INVESTIGATION AND EVALUATION WORK PLAN**

A draft work plan shall be prepared and submitted for DEQ review and comment to address the investigation and evaluation of the Tanner Creek sewer and backfill as migration pathways of site contaminants to the Willamette River, and, if occurring, whether the migration of site contaminants results in a significant adverse effect on beneficial uses of the Willamette River, as defined in OAR 340-122-0115(50), or poses an unacceptable risk to human or ecological receptors exposed to surface water or sediments. A final work plan shall be submitted for DEQ approval addressing DEQ's comments on the draft work plan.

Attachment B  
Groundwater RD/RA Scope of Work

2-8-02

The Tanner Creek Sewer Investigation and Evaluation Work Plan shall include, at a minimum:

1. Objectives of the investigation and evaluation.
2. Scope and approach for proposed work.
3. Detailed description of work to be conducted.
4. Summary of previous investigations, including associated relevant data, that assessed impacts to the Tanner Creek sewer and backfill from site contamination.
5. Identification of data requirements, data gaps, and data quality objectives.
6. Detailed description of the approach to evaluating significant adverse effects on beneficial uses of the Willamette River and risks to human and ecological receptors from exposure to site contaminants in surface water and sediments as a result of the migration of site contaminants in the Tanner Creek sewer or backfill.
7. Schedule for work to be performed, including deliverables.
8. Sampling and Analysis Plan as detailed in Item II.C.
9. Approach to evaluating feasibility of mitigation measures based on criteria in OAR 340-122-085 and 090.

C. GROUNDWATER SAMPLING AND ANALYSIS PLAN (SAP)

The SAP shall be prepared for all proposed sampling and monitoring activities conducted during the investigation and evaluation of the Tanner Creek sewer and backfill as migration pathways of site contaminants to the Willamette River, and, if occurring, whether the migration of site contaminants results in a significant adverse effect on beneficial uses of the Willamette River, as defined in OAR 340-122-0115(50), or poses an unacceptable risk to human or ecological receptors exposed to surface water or sediments.

A draft SAP shall be submitted with the draft Tanner Creek Sewer Investigation and Evaluation Work Plan for DEQ review and comment. A final SAP shall be submitted with the draft Tanner Creek Sewer Investigation and Evaluation Work Plan for DEQ approval addressing DEQ's comments on the draft SAP. This SAP need not address long-term groundwater monitoring, which is addressed in Item II.H., Groundwater Monitoring and Contingency Plan.

In preparation of the SAP, the following guidance documents shall be utilized: DEQ Environmental Cleanup Division's Quality Assurance Policy 760; and as appropriate, "Data Quality Objectives Process for Superfund", EPA 540-R-93-071, September, 1993; "Data Quality Objectives for Remedial Response Activities", EPA/540/G-87/004 (OSWER Directive 9355.0-7B), March 1987; "Test Methods for Evaluating Solid Waste", SW-846; and "A Compendium of Superfund Field Operations Methods", EPA/540/P-87/001 (OSWER Directive 9355.0-14), December 1987.

The SAP shall include, at a minimum:

1. Proposed sampling locations, frequency, parameters, and rationale.
2. A description of sample collection techniques, sampling equipment, and sample handling procedures.
3. A description of proposed analytical or test methods.
4. A description of quality assurance and quality control (QA/QC) procedures for both field and laboratory activities, including a data quality objectives plan.
5. Documentation and data reporting.
6. A description of data analysis and interpretation methods.
7. Description of procedures for management of investigation-derived wastes.

#### D. GROUNDWATER RD/RA HEALTH AND SAFETY PLAN

A Site Health and Safety Plan shall be prepared to address all field activities conducted during the remedial design and remedial action phases for the groundwater remedy and include construction hazards, chemical exposure hazards, on-site worker safety, and measurement of potential off-site impacts.

The Site Health and Safety Plan shall be developed in accordance with "Standard Operating Safety Guides", EPA, Office of Emergency and Remedial Response, 1988; and applicable standards promulgated by the U.S. Occupational Safety and Health Administration including Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120; General Industry Standards, 29 CFR 1910; and the Construction Industry Standards, 29 CFR 1926.

The Site Health and safety Plan shall include at a minimum:

1. Scope and applicability of plan.

Attachment B  
Groundwater RD/RA Scope of Work

2. Identification and responsibilities of key health and safety personnel.
3. Task/operation safety and health risk analysis for each site task and operation, including description of known hazards and risks and procedures for assessing risks.
4. Personnel training requirements.
5. Personal protective equipment to be used.
6. Medical surveillance requirements.
7. Air monitoring requirements, including types and frequency. Describe air monitoring methods to be used.
8. Site control measures, including communication, site security, and work zone delineation.
9. Decontamination plan for personnel, equipment, and facilities.
10. Emergency response/contingency plan.
11. Confined space entry procedures.
12. Spill containment program.
13. Identification of potential construction hazards and precautionary measures to minimize hazards.

The Groundwater Health and Safety Plan shall be submitted with the draft Tanner Creek Sewer Investigation and Evaluation Work Plan and include those elements above, as applicable, to address all field activities to be conducted during the Tanner Creek sewer investigation. If mitigative measures are required to address the migration of site contaminants in the Tanner Creek sewer or backfill that results in a significant adverse effect on beneficial uses of the Willamette River, as defined in OAR 340-122-0115(50), or an unacceptable risk to human or ecological receptors exposed to surface water or sediments, then a revised Site Health and Safety Plan shall be submitted with the subsequent draft design documents (Item II.F.) and include those elements above, as applicable, to address all mitigative measures.

E. TANNER CREEK SEWER INVESTIGATION REPORT

A draft Tanner Creek Sewer Investigation Report shall be prepared and submitted for DEQ review and comment presenting the results of the investigation and evaluation of the Tanner Creek sewer and backfill as migration pathways of site contaminants to the Willamette River, and, if occurring, whether the migration of site contaminants results in a significant adverse effect on beneficial uses of the Willamette River, as defined in OAR 340-122-0115(50), or poses an unacceptable risk to human or ecological receptors exposed to surface water or sediments. A final Tanner Creek Sewer Investigation Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report.

The Tanner Creek Sewer Investigation Report shall include, at a minimum:

1. Discussion of investigative procedures.
2. Presentation and discussion of analytical results.
3. Summary and conclusions of investigation.
4. Presentation and discussion of evaluation of significant adverse effects on beneficial uses of the Willamette River and risks to human and ecological receptors from exposure to site contaminants in surface water and sediments as a result of the migration of site contaminants in the Tanner Creek sewer or backfill.
5. Results of evaluation of mitigative measures, if applicable.
6. Recommendations for mitigative measures to address contaminant migration that results in a significant adverse effect on beneficial uses of the Willamette River or an unacceptable risk to human and ecological receptors from exposure to site contaminants in surface water and sediments, if applicable.

F. DESIGN AND IMPLEMENTATION PLANS

If, based on the results of the Tanner Creek sewer investigation, DEQ has determined that mitigative measures are necessary to address significant adverse effects on beneficial uses of the Willamette River from site contaminant migration or unacceptable risks to human and ecological receptors from exposure to site contaminants in surface water and sediments, then design and implementation plans shall be submitted to DEQ for review and approval. Design and implementation plans shall be submitted in the following phases:

1. PRELIMINARY DESIGN

Upon completion of approximately 50% of the remedial design effort, and prior to submittal of the Prefinal Design Plan (Item F.2.), BNSF shall make an oral presentation to DEQ. The objective of this presentation is to identify and allow correction of any problem areas before extensive design has been completed.

The presentation shall include the following:

- a. Design objectives, criteria, and standards.
- b. Description of design elements.
- c. Preliminary drawings and schematics.
- d. Description of problems encountered that could result in a delay of the project schedule.
- e. Preliminary construction schedule.

2. PREFINAL DESIGN PLAN(90% complete)

The Prefinal Design Plan shall contain a compilation of major design items reflecting an approximate 90% completion of the design effort. This report shall serve as the draft design report. The report shall contain, at a minimum:

- a. Design criteria/standards.
- b. Final design/analyses calculations.
- c. Drawing index and final drawings.
- d. Final specifications.
- e. Final construction schedule.
- f. Summaries of treatability studies, bench or pilot scale studies, or other engineering studies conducted during the design phase, including results and conclusions.
- g. Description of permitting requirements to include:

2-8-02



- i) construction/operating permits required.
- ii) permitting authorities and specific permit requirements.
- iii) permit application processing procedures, schedule, and fees.
- iv) monitoring and compliance testing requirements.
- h. Equipment startup and operator training requirements to include:
  - i) contractor/vendor procedures for providing appropriate service visits by experienced personnel to supervise installation, adjustment, startup, and operation of treatment systems.
  - ii) identification of appropriate operational procedures training for personnel.
- i. Description of proposed control measures to minimize releases of hazardous substances to all environmental media during construction or installation activities.
- j. Description of proposed surface water runoff control measures during construction.
- k. Identification and description of dust control and noise abatement measures to minimize and monitor environmental impacts of construction or installation activities.
- l. Identification and description of any site security measures necessary to minimize exposure to hazardous situations during remedial action.
- m. Operation and Maintenance Plan, as applicable, and as detailed in Item II.G.

3. FINAL DESIGN (100% complete)

The Final Design Report shall be submitted for DEQ approval, incorporating revisions resulting from DEQ's review and comments on the Prefinal Design Report. The Final Design Report shall provide the basis for the remedial action activities to be undertaken at the facility. The Final Design Report shall include the elements described above, 100% complete.

2-8-02

4. IMPLEMENTATION

Upon DEQ approval of the Final Design Report, the remedial measures shall be performed in accordance with the design plans and schedule.

G. OPERATION AND MAINTENANCE PLAN

If mitigative measures will result in the requirement for operational and maintenance activities, then an Operation and Maintenance (O&M) Plan shall be prepared detailing the specific operation and maintenance requirements for each constructed or installed component of the completed project.

A draft O&M Plan shall be submitted with Prefinal Design Report (90%) for DEQ review and comment, and include, at a minimum, those items listed below. A final O&M Plan shall be submitted with the Final Design Report (100%) for DEQ approval addressing DEQ's comments on the draft O&M Plan.

1. Description of equipment and monitoring components and equipment replacement schedule.
2. Description of normal O&M tasks, prescribed treatment or operation conditions, and frequency schedule of O&M tasks.
3. Description and analysis of potential operating problems, sources of information for trouble-shooting, and common remedies.
4. Description of routine monitoring, inspection, and laboratory testing requirements, associated QA/QC requirements, and monitoring locations, parameters, and frequency.
5. Description of alternate O&M to prevent undue hazard in the event of system failure.
6. Description of safety procedures and equipment required for operators during normal operations and in the event of systems failure.
7. Records management plan to include daily operating logs, laboratory results, operating costs, and maintenance activities.
8. Reporting procedures to address emergencies.
9. Proposed schedule for O&M report submittals to DEQ.

2-8-02

#### H. GROUNDWATER MONITORING AND CONTINGENCY PLAN

The objectives of the Groundwater Monitoring and Contingency Plan are to monitor contaminant concentrations and migration, evaluate the effectiveness of source removals, LNAPL removal, and other remedial actions that have occurred at the site, and verify results of the fate and transport modeling conducted as part of the groundwater beneficial use assessment and hot spot determination for groundwater. The plan shall also propose response actions to occur in the event that the evaluation of groundwater monitoring data show contaminant levels have significantly increased or are migrating, and pose an unacceptable risk to human health or the environment, or cause a significant adverse effect on beneficial uses of the groundwater or surface water, as defined in OAR 340-122-0115(50).

A draft Groundwater Monitoring and Contingency Plan shall be submitted for DEQ review and comment. A final plan shall be submitted for DEQ approval addressing DEQ's comments on the draft plan. The Groundwater Monitoring and Contingency Plan shall include, at a minimum:

1. Proposed length of groundwater monitoring period.
2. Proposed groundwater monitoring locations, frequency, and parameters.
3. A description of sample collection techniques, sampling equipment, and sample handling procedures.
4. A description of proposed analytical or test methods.
5. A description of quality assurance and quality control (QA/QC) procedures for both field and laboratory activities, including a data quality objectives plan.
6. Documentation and data reporting, including a proposed schedule for data report submittals.
7. Description of methods for data analysis, including modeling and statistical methodology, for evaluating changes in groundwater quality, contaminant migration, and attainment of remedial action objectives and requirements as specified in the ROD.
8. Proposed trigger mechanisms and assessment criteria that would warrant evaluation of contingency measures.
9. Description of assessment criteria for modifications to long-term groundwater monitoring program.
10. Description of how investigation-derived waste will be managed.

11. Description of periodic reviews of beneficial water uses to be conducted to include procedures and schedule.
12. Contingency plan to include an identification of potential response actions and description of the procedures and process for evaluating and implementing potential response actions.

I. GROUNDWATER MONITORING REPORTS

Groundwater monitoring reports and periodic water use review reports shall be submitted in accordance with the terms and schedules set forth in the DEQ-approved Groundwater Monitoring and Contingency Plan (Item II.H.).

J. PROJECT CLOSEOUT REPORT

At the completion of the groundwater remedial action construction activities as identified in Item II.F., BNSF shall conduct a final inspection and submit a draft Project Closeout Report for DEQ review and comment. A final Project Closeout Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Closeout Report shall include, at a minimum:

1. Results of the final inspection, including a brief description of any problems discovered during the final inspection and the resolution of those problems.
2. A detailed description of all work conducted in accordance with the approved final design plans and specifications, and certification by an Oregon-Registered Professional Engineer and Respondent's Project Coordinator that the work was performed in accordance with all approved plans and specifications.
3. Explanation of any modifications to the approved plans and specifications and why these modifications were necessary.
4. Final, as-built drawings, if different from final design drawings previously submitted under Item F.2 or F.3.
5. Copy of final permits as applicable.
6. Results of verification sampling, including data validation, and certification that the required remedial action criteria have been attained, and/or sampling results verifying

2-8-02

that the remediation performs according to design specifications, as appropriate for the remedial design and remedial action phases.

7. Explanation of additional O&M (including monitoring) to be undertaken at the site.

If no mitigation measures are required, then the draft Project Closeout Report may be submitted after DEQ approval of the Tanner Creek Investigation Report (Item II.E.) and the Groundwater Monitoring and Contingency Plan (Item II.H.). A final Project Closeout Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Closeout report shall include the following:

1. A brief description of work conducted in accordance with this SOW and certified by BNSF Project Coordinator that the work was performed in accordance with approved plans.
2. Brief description of remaining work to be performed for the groundwater remedy as required by the ROD, Consent Decree, and this SOW.

2-8-02

**ATTACHMENT C**  
**FORMER HOYT STREET RAILYARD**  
**SOIL REMEDIAL DESIGN/REMEDIAL ACTION**  
**SCOPE OF WORK**

**I. SCHEDULE AND OBJECTIVES**

Within 45 days of issuance of the Consent Decree, Hoyt Street Properties LLC (HSP) shall submit for DEQ review and comment a draft work plan for Remedial Design (RD) and Remedial Action (RA) at the facility. Within 30 days of receipt of DEQ's written comments on the draft work plan, HSP shall submit to DEQ for approval a final RD/RA work plan addressing DEQ's comments.

The objectives of the Remedial Design and Remedial Action are to attain the degree of cleanup of hazardous substances and control of further release of hazardous substances as established in the Record of Decision (ROD). The objectives shall be consistent with the requirements set forth in the Environmental Cleanup Rules, Oregon Administrative Rules (OAR) 340-122-010 to 115, and the Environmental Cleanup Laws, Oregon Revised Statutes (ORS), Chapter 465.

This Soil Scope of Work includes all items specified for the selected soil remedial alternative under Sections 7.2.1 and 7.2.3 of the ROD:

- Excavation and treatment and or landfill disposal of hot spot soils. (This requirement was completed by BNSF as an interim removal action).
- Excavation, stabilization (as needed), and landfill disposal of TCLP-lead soil. (This requirement was completed by BNSF as an interim removal action).
- Excavation of soil in utility corridors where concentrations exceed the construction worker RBCs in the upper five feet of soil.
- Capping the entire site with 2 to 3 feet of clean soil, buildings, pavement, or other site improvements.
- Institutional controls.
- Periodic reviews.

The cap will be installed during, and coordinated with site redevelopment. If no redevelopment occurs for portions of the site within 15 years from December 15, 2000, those areas will be capped.

Attachment C  
Soil RD/RA Scope of Work

2-8-02

The soil SOW will also include a description of the groundwater institutional controls covered in Section 7.2.2 of the ROD. The soil SOW will include implementation of the groundwater institutional controls.

## **II. REMEDIAL ACTION PHASING**

The remedial work will be phased as the Hoyt Street Yards residential, commercial development progresses. Phases 1 and 2 earthwork activities, with the associated soil remediation, have been completed. That work was documented in the Hoyt Street Yards Phases 1 and 2, Environmental Construction Report prepared by IT Corporation and submitted to DEQ on February 22, 2001. The Excavation and Grading plans for Phases 3 and 4 have been submitted to the City of Portland for permit review. The schedule for Phases 3 and 4 earthwork is not certain, but is anticipated to begin in late 2001 or in 2002. DEQ will be kept informed on the status of the schedule as that information becomes available.

Because the site development schedule is uncertain, the soil SOW cannot include a detailed schedule for accomplishing the soil scope of work at the site. For those years where there are earthwork or other construction activities related to capping, HSP will provide DEQ with an annual status report of the capping achievements. For those years where there have been no earthwork or other type of capping activities, HSP will provide an annual capping status report to DEQ with an estimated future schedule of development. If HSP has not completed the soil scope of work by November 15, 2014, HSP will provide a report to DEQ by the 14<sup>th</sup> anniversary date of the ROD describing how HSP will meet the requirements of the soil SOW by the 15<sup>th</sup> anniversary of the ROD.

## **III. RD/RA DELIVERABLES**

### **A. SOIL REMEDIAL DESIGN/REMEDIAL ACTION WORK PLAN**

The Soil RD/RA work plan and associated documents shall be developed in conformance with DEQ's ROD, and this Scope of Work. The RD/RA work plan will include the following sections and associated plans.

1. Description of remedy objectives and requirements as specified in the ROD.
2. Estimated schedule for submittal of RD/RA deliverables.
3. Project organization, personnel and communication plan.
4. Assessment of permitting requirements and plan for satisfying same.

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Attachment C  
Soil RD/RA Scope of Work

2-8-02

5. Contaminated Media Management Plan. (Item III.B.)
6. Health and Safety Plan. (Item III.C.)
7. Sampling and Analysis Plan. (Item III.D.)
8. Engineering and Institutional Control Plan. (Item III.E)
9. The RD/RA work plan will contain sections that describe the criteria and process for the following activities.
  - a. Earthwork and Cap Design.
  - b. Construction Inspection and Certification.
  - c. Post-Construction Cap Inspection and Maintenance. The elements of this plan relating to rights-of-way and parks will be developed in cooperation with the City of Portland Department of Transportation and Parks Department, and may be submitted after the RD/RA Work Plan.

#### B. CONTAMINATED MEDIA MANAGEMENT PLAN

A draft Contaminated Media Management Plan shall be prepared and submitted for DEQ review and comment. A final Contaminated Media Management Plan shall be submitted for DEQ approval addressing DEQ's comments on the draft plan.

The plan shall adhere to the ROD requirements and include protocols for handling contaminated media during site development earthwork activities. The plan shall address handling, treatment, storage, reuse, and disposal of contaminated soil, storm water, groundwater, and construction debris. Contaminated media shall be managed in a manner which minimizes worker exposure and environmental releases and meets applicable laws and rules regarding disposal. Wherever possible, the protocols will be the same as those presented in the Phases 1 and 2 Interim Remedial Action Plan, as approved by DEQ and the City of Portland.

#### C. SOIL HEALTH AND SAFETY PLAN

A soil Health and Safety Plan (HASP) shall be prepared to address all field activities conducted during implementation of the soil remedial action and include construction hazards, chemical exposure hazards, on-site worker safety, and measurement of potential off-site impacts. The soil HASP will be adapted from the HASP that was used for the Phases 1 and 2 earthwork activities. That HASP was developed in cooperation with Oregon OSHA. Because the site will be developed in phases, the HASP could be modified prior to each phase, to account for new

Gen2937

Attachment C  
Soil RD/RA Scope of Work

2-8-02



industrial hygiene or chemical exposure standards. Any modifications to the HASP will be submitted to DEQ prior to implementation of that phase of work.

#### D. SOIL SAMPLING AND ANALYSIS PLAN

A draft Soil Sampling and Analysis Plan (SAP) shall be submitted for DEQ review and comment. A final Soil SAP shall be submitted for DEQ approval addressing DEQ's comments on the draft plan.

The Soil SAP shall address field protocols and procedures to be used for sampling of environmental media during implementation of the soil remedial action and site development earthwork activities. The plan will identify quality assurance and quality control objectives for field and laboratory testing activities. The criteria for classifying onsite reuse and disposal options for contaminated media will be described and will conform to the requirements of the ROD. The rationale to be used for designing sampling plans for each development phase will be described. The actual sampling locations for each phase will be provided to DEQ in memorandum format prior to each phase of development.

#### E. ENGINEERING AND INSTITUTIONAL CONTROL PLAN

The engineering and institutional control plan will describe the method of implementation of the following engineering and institutional controls. The plan will meet the requirements of the ROD, Section 7.2.1.

1. Predevelopment fencing and site security.
2. Stormwater and erosion control measures to protect soil cap areas.
3. Property deed restrictions.
4. Cap inspection and maintenance.
5. Groundwater institutional controls.

#### F. EARTHWORK AND CAP DESIGN

The RD/RA work plan shall include a range of design alternatives for cap materials, including streets, building foundations, sidewalks, and soil caps. The RD/RA work plan will include a cross section of the proposed street pavement, including subgrade. The work plan will also include alternative cross sections for sidewalks, one to be constructed on blocks with underground parking, and one for sidewalks where there is no underground parking. Alternative sections for building foundations will also be provided. These will be proposed as the range of

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Attachment C  
Soil RD/RA Scope of Work

2-8-02

design alternatives suitable for capping, per the objectives of the ROD. Proposed designs for soil caps in park and landscape areas will also be provided.

The RD/RA work plan will not include block specific maps of proposed streets, sidewalks, buildings, or other details of areas proposed to be capped, because those details have not yet been determined beyond Phases 1 and 2.

Prior to construction of any phase of development the following documents will be submitted to DEQ.

1. Excavation and Grading Plans developed for submittal to City Portland.
2. Street Improvement Plans developed for submittal to City Portland.
3. Sidewalk Improvement Plans developed for submittal to City Portland.
4. Map of each construction phase showing the planned locations of buildings, streets, sidewalks, and parks.

#### G. CONSTRUCTION INSPECTION AND CERTIFICATION PLAN

The construction inspection and certification plan will identify responsibilities and describe the process for conducting inspections and certifications of constructed components of the cap. The plan will describe how the City of Portland inspection and certification program will be incorporated into the inspection and certification plan for the site.

For construction inspections, the following responsibilities have been identified:

1. City of Portland field inspectors will be responsible for inspection of streets, sidewalks, building foundations, and utilities.
2. HSP, LLC, using IT Corporation, will be responsible for field inspections during site development earthwork activities and construction of the soil caps.

For construction certifications, the following responsibilities have been identified:

1. The City of Portland Office of Transportation issues written acceptance of the construction of streets and sidewalks (i.e.; beginning of one-year maintenance period). HSP will provide DEQ with documentation upon acceptance by the City. For those blocks with underground parking, the sidewalks are not part of the cap. In those cases a determination that the soil remedy is complete would not require documentation of City acceptance of the sidewalk.

Gena2937

Attachment C  
Soil RD/RA Scope of Work

2-8-02

2. The City of Portland Bureau of Buildings issues written acceptance of building foundations. HSP will provide DEQ with documentation upon acceptance by the City.

#### H. POST-CONSTRUCTION CAP INSPECTION AND MAINTENANCE PLAN

An Inspection and Maintenance Plan shall be prepared to describe the specific post-construction inspection and maintenance requirements for the various cap designs and engineering controls. A draft Inspection and Maintenance Plan shall be submitted for DEQ review and comment. The elements of this plan related to rights-of-way and parks will be developed in cooperation with the City of Portland Department of Transportation and Parks Department, and may be submitted after the RD/RA Work Plan. A final Inspection and Maintenance Plan shall be submitted for DEQ approval addressing DEQ's comments on the draft plan.

The Post-Construction Inspection and Maintenance Plan shall include, at a minimum:

1. Description of inspection requirements and schedule.
2. Description of maintenance requirements and schedule.
3. Description of documentation, reporting, and records management.
4. Description of the City of Portland's inspection and maintenance program for dedicated streets, sidewalks, and parks.

#### I. PROJECT CLOSEOUT REPORT

Upon completion of the soil remedial action to include construction of the cap and filing of deed restrictions, a draft Project Closeout Report shall be submitted for DEQ review and comment. A final Project Closeout Report shall be submitted for DEQ approval addressing DEQ's comments on the draft report. The Project Closeout Report shall be prepared for each portion of the site that HSP is requesting certification of completion by DEQ, and include, at a minimum:

1. Results of the final inspection for the cap, including a brief description of any problems discovered during the final inspection and the resolution of those problems.
2. A detailed description of all work conducted in accordance with the approved Contaminated Media Management Plan and the final design plans and specifications for the cap, and certification by an Oregon-Registered Professional Engineer and HSP's Project Coordinator that the work was performed in accordance with all approved plans and specifications.

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Attachment C  
Soil RD/RA Scope of Work

3. Explanation of any modifications to the approved plans and specifications, if the changes have reduced or could reduce the effectiveness of the cap, and why these modifications were necessary.
4. Final, as-built drawings of the cap, if different from final design drawings previously submitted. As-built drawings will be provided only where the as-built condition has reduced or could reduce the effectiveness of the cap per ROD requirements.
5. Map showing areas of site where cap is underlain by an identifier layer.
6. Certification that the quality of the cap meets requirements of the ROD.
7. Explanation of additional inspections and maintenance to be undertaken at the site.

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Attachment C  
Soil RD/RA Scope of Work

C-7

2-8-02

ATTACHMENT D

2-8-02

After recording return to:

Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, OR 97204  
Attn: Rebecca Biermann Tom

Send tax statements to:

No change

#### LICENSE AND DECLARATION OF RESTRICTIONS

This License and Declaration of Restrictions is made \_\_\_\_\_, 200\_ between Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Grantor"), the Oregon Department of Environmental Quality ("DEQ") and The Burlington Northern and Santa Fe Railway Company ("BNSF"), a Delaware corporation doing business in Oregon.

#### RECITALS

- A. Grantor is the owner of certain real property (the "Property") located in Multnomah County, Oregon, which is more particularly described in Exhibit A, attached hereto and by this reference made a part hereof.
- B. Grantor intends to develop the Property as a [insert description of project planned for the block] (the "Project"), which will include [insert description of the elements of the Project, e.g., residential, commercial, storage and parking units]. [For Projects with below grade parking, state: "The Project will have one level of parking below grade."]
- C. In conjunction with the development of the Property, Grantor prepared and DEQ approved the "\_\_\_\_\_ Plan." Grantor is required to conduct its development activities on the Property in accordance with that \_\_\_\_\_ Plan.
- D. Environmental investigations at the Property have determined that hazardous substances, as defined in ORS Chapter 465, are present in soils and groundwater at the Property, including [insert hazardous substances known to be present on the block in question]. To address these hazardous substances and to protect human health and the environment, the Director of the DEQ selected the remedial action for the Property in a Record of Decision for the Property dated December 15, 2000 ("ROD"). Grantor, BNSF and DEQ entered into a Consent Decree to implement the ROD in *State of Oregon v. The Burlington Northern and Santa Fe Railway Company and Hoyt Street Properties, L.L.C.*, Multnomah County Circuit Court Case No. \_\_\_\_\_ ("Consent Decree"). The Consent Decree requires that Grantor and its successors implement certain institutional controls and ensure ongoing access for DEQ and BNSF to any portions of the Property at or below ground level, except as otherwise provided herein. The Consent Decree also requires that Grantor record this License and Declaration of Restrictions in the real property records of Multnomah County prior to Grantor's sale or transfer of any right to or any interest in any part of the Property.

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2-8-02

E. The provisions of this License and Declaration of Restrictions are intended to protect human health and the environment.

NOW THEREFORE, in consideration for the foregoing, which is incorporated by reference, and the promises and obligations herein, the parties agree as follows:

#### SECTION 1 GENERAL DECLARATION

Grantor declares that the Property is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this License and Declaration of Restrictions. Each condition and restriction set forth in this License and Declaration of Restrictions and the licenses granted in Section 4 shall run with the land for all purposes, shall be binding upon all Owners as set forth in this License and Declaration of Restrictions, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this License and Declaration of Restrictions.

#### SECTION 2 DEFINITIONS

2.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives acting on its behalf. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

2.2 "Owner" means any person or entity, including Grantor, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Property, including any successor or holder of fee simple title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation. [For Projects that are condominiums insert the following: Notwithstanding the foregoing, upon the recording of a declaration creating a condominium (the "Condominium") on the Property and for so long as the Condominium is in existence, "Owner" shall mean the owners' association for such Condominium.]

2.3 "BNSF" means The Burlington Northern and Santa Fe Railway Company, and its employees, agents and authorized representatives acting on its behalf. BNSF also means any successor or assign of BNSF.

#### SECTION 3 RESTRICTIONS ON USE

3.1 No groundwater use. No use shall be made of groundwater at the Property, by extraction through wells or by other means, which use involves consumption or other beneficial use of the groundwater. This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

3.2 Maintenance of cap. Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will penetrate any

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surface cover required under the ROD or jeopardize the cover's functional integrity, including without limitation any excavation, drilling, scraping, or erosion. The Owner of the Property shall maintain the surface cover and any other permanent feature of the remedy described in the ROD in accordance with the Monitoring and Maintenance Plan approved in writing by DEQ for the Property pursuant to the Consent Decree.

3.3 Prohibited uses. The following operations and uses are prohibited on the Property:

3.3.1 Detached single-family residential development; and

3.3.2 Agricultural use of any type at or below the ground level of the Property, except that landscaping consistent with Section 3.2 and the use of self-contained planters and pots shall be allowed.

#### SECTION 4 LICENSE (RIGHT OF ENTRY).

4.1 During reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, DEQ shall have a non-exclusive license to enter upon and inspect any portion of the Property at or below ground level to determine whether the requirements of this License and Declaration of Restrictions have been or are being complied with. Notwithstanding the foregoing, for so long as the Property is developed as the Project, the access and inspection rights granted hereunder shall apply only to areas where no building development has occurred, [insert if Project includes below grade parking: the level of parking below grade] and sidewalk areas of the Property at ground level. [If Project is a condominium with below grade parking, insert the following: "In no instance shall DEQ have any right to access or inspect any units of the Condominium except the parking units or storage units on the level below grade."] [If Project is a condominium without below grade parking, insert the following: "In no instance shall DEQ have any right to access or inspect any units of the Condominium."]

4.2 DEQ shall provide the Owner with written notice of any violation of the requirements of this License and Declaration of Restrictions. Such notice shall describe what is necessary to correct the violation and shall specify the date by which the Owner must cure the violation; provided that if the violation is not capable of cure within the time period provided therefor by DEQ, the Owner shall not be deemed in default hereunder if the Owner commences to cure within the requisite time period provided by DEQ and Owner thereafter diligently pursues the cure to completion.

4.3 If after DEQ has provided written notice pursuant to Section 4.2 the Owner fails to timely cure the violation, DEQ shall have the right, privilege, and license to enter upon the portion of the Property (subject to all of the restrictions set forth in Section 4.1) where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry or for any action taken to abate, mitigate, or cure a violation; provided, that DEQ shall indemnify and hold Owner harmless for, from and against damages, costs (including, without limitation, attorneys' fees and costs), expenses, claims and



liabilities arising out of the gross negligence or willful misconduct of DEQ or its employees, agents, officials and contractors, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act.

4.4 During reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, BNSF shall have a non-exclusive license to enter upon the Property to the extent required by DEQ so that BNSF may implement the ROD and BNSF's obligations under the Consent Decree. Notwithstanding the foregoing, the access rights granted to BNSF hereunder shall apply only to areas where no building development has occurred, [insert if Project includes below grade parking: the level of parking below grade] and sidewalk areas of the Property at ground level. [If Project is a condominium with below grade parking, insert the following: "In no instance shall BNSF have any right to access any units of the Condominium except the parking units or storage units on the level below grade."] [If Project is a condominium without below grade parking, insert the following: "In no instance shall BNSF have any right to access any units of the Condominium."]

4.5 Grantor reserves for itself, upon sale or other transfer of any interest in the Property, a non-exclusive license to enter upon the Property during reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, to the extent required by DEQ so that Grantor may implement the ROD and Grantor's obligations under the Consent Decree. Notwithstanding the foregoing, the access rights reserved to Grantor hereunder shall apply only to areas where no building development has occurred, [insert if Project includes below grade parking: the level of parking below grade] and sidewalk areas of the Property at ground level. [If Project is a condominium with below grade parking, insert the following: "In no instance shall Grantor have any right to access any units of the Condominium except the parking units or storage units on the level below grade."] [If Project is a condominium without below grade parking, insert the following: "In no instance shall Grantor have any right to access any units of the Condominium."]

#### SECTION 5 GENERAL PROVISIONS.

5.1 Grantor shall record this License and Declaration of Restrictions in the records of deeds of real property in Multnomah County, such recordation being expressly authorized by statute including, without limitation, ORS 93.710.

5.2 By executing this License and Declaration of Restrictions, DEQ approves this instrument in accordance with ORS 93.808.

5.3 All conditions and restrictions contained in this License and Declaration of Restrictions shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.4 Any person or entity who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this License and Declaration

of Restrictions, whether or not any reference to this License and Declaration of Restrictions is contained in the instrument by which such person or entity acquired an interest in the Property.

5.5 The Owner of the Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Portland zoning code or any successor code.

5.6 Upon any violation of any condition or restriction contained in this License and Declaration of Restrictions, DEQ may enforce this License and Declaration of Restrictions through the remedies described in Section 4.4 as well as through any other remedy available at law or in equity.

IN WITNESS WHEREOF Grantor, DEQ and BNSF have executed this License and Declaration of Restrictions as of the date and year first set forth above.

GRANTOR: Hoyt Street Properties, L.L.C.

By: \_\_\_\_\_  
Its: Managing Member

GRANTEE: State of Oregon Department of  
Environmental Quality

By: \_\_\_\_\_  
Its: \_\_\_\_\_

GRANTEE: The Burlington Northern and Santa Fe  
Railway Company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON )  
) ss.  
County of Multnomah )

The foregoing instrument is acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_, the managing member of Hoyt Street Properties, L.L.C., on its behalf.

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2-8-02

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NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument is acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
200\_, by \_\_\_\_\_ of the Department of Environmental Quality of the State of  
Oregon, on its behalf.

---

NOTARY PUBLIC FOR OREGON

STATE OF TEXAS )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_, by \_\_\_\_\_, the \_\_\_\_\_  
of The Burlington Northern and Santa Fe Railway Company, on its behalf.

---

NOTARY PUBLIC FOR OREGON

2-8-02

**EXHIBIT A**

Legal Description of the Property

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## EXHIBIT C

### Previously Constructed Rights-of-Way

Strips of land located in Hoyt Street Yards in the northeast one-quarter of Section 33 and northwest one-quarter of Section 34, T1N, R1E, W.M., in the City of Portland, Multnomah County, Oregon. Said strips of land being more particularly described as follows:

- All of NW Northrup Street lying between the west line of NW 9<sup>th</sup> Avenue and the east line of NW 12<sup>th</sup> Avenue
- All of NW 10<sup>th</sup> and NW 11<sup>th</sup> Avenues lying between the north line of NW Northrup Street and the north line of NW Lovejoy Street
- All of NW Johnson Street lying between the west line of NW 10<sup>th</sup> Avenue and the east line of NW 12<sup>th</sup> Avenue
- All of NW 11<sup>th</sup> Avenue lying between the south line of NW Johnson Street and the south line of NW Lovejoy Street

And legally described as

- Those street rights-of-way as shown and dedicated to the public on the plat of *Pearl Block 2*, recorded on June 29, 1994, in Book 1227 at Pages 38 through 42, the plat of *Pearl Block 3*, recorded on May 26, 1995, in Book 1229 at Pages 58 through 60, and the plat of *Pearl Block 4*, recorded on August 16, 1996, in Book 1232 at Page 35 through 37, plat records for Multnomah County, Oregon
- Those street rights-of-way as shown and dedicated to the public on the plat of *Hoyt Street Yards*, recorded on September 13, 2000, in Book 1248, at Pages 21 and 22, plat records for Multnomah County, Oregon.

2-8-02

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
C73 6 ATKLM  
Total : 46.00  
2003-222927 09/18/2003 04:02:07pm

AFTER RECORDING RETURN TO:  
Rebecca Biermann Tom  
Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, OR 97204

**SUPPLEMENTAL DECLARATION  
TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HOYT STREET YARDS COMMUNITY**

This SUPPLEMENTAL DECLARATION TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HOYT STREET YARDS COMMUNITY (this "Declaration") is made this 18<sup>th</sup> day of SEPTEMBER, 2003, by Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Declarant").

Recitals:

A. Declarant owns the real property located in Multnomah County, Oregon, legally described on the attached Exhibit A (the "Subject Property").

B. The Subject Property is set forth on that certain Plat of HOYT STREET YARDS NO. 2, recorded on Sept. 18, 2003 in Plat Book 1259, Pages 84 through 86, Plat Records of Multnomah County, Oregon (the "Plat").

C. Declarant recorded that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, dated as of December 7, 1998, in the deed records of Multnomah County, Oregon, as document number 98223156 on December 7, 1998 (such Declaration, as amended from time to time, being referred to as the "Original Declaration"). Declarant also previously recorded that certain Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community on September 13, 2000 in the deed records of Multnomah County, Oregon as document no. 2000-127589, annexing certain property to the real property subject to the Original Declaration; and that certain Instrument Correcting Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, correcting Exhibits A and B of the Original Declaration, on November 22, 2000 in the deed records of Multnomah County, Oregon as document no. 2000-160515. Declarant also previously recorded that certain Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community on JANUARY 7, 2003 in the deed records of Multnomah County, Oregon as document no. 2003-003342, annexing certain property to the real property subject to the Original Declaration

D. Pursuant to Section 11.1 of the Original Declaration, Declarant desires to annex the Subject Property to the real property that is subject to the Original Declaration, upon the

9-18-03

terms and conditions contained in this Declaration. The Subject Property forms a part of the Additional Property.

NOW, THEREFORE, Declarant hereby declares that, subject to the terms and conditions of this Declaration, the Subject Property shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Subject Property, or any part thereof, and shall inure to the benefit of each owner thereof.

#### ARTICLE 1 DEFINITIONS

Except to the extent otherwise defined herein, the capitalized terms used in this Declaration shall have the meaning ascribed to such terms in the Original Declaration.

1.1 Annexed Common Area shall mean Tracts B and E, shown on the Plat.

1.2 Annexed Lots shall mean Lots 15 through 33, inclusive, shown on the Plat, in the City of Portland, County of Multnomah and State of Oregon.

1.3 Annexed Tracts shall mean Tracts C and D, shown on the Plat.

#### ARTICLE 2 ANNEXATION OF PROPERTY

2.1 Annexation. The Subject Property is hereby annexed to and made a part of the Property, and is owned and shall be owned, held, conveyed, hypothecated, encumbered, used, occupied and improved in perpetuity, subject to the easements, covenants, restrictions and charges contained in the Original Declaration, as modified, amended, or supplemented, if at all, by the terms and conditions of this Declaration.

2.2 Annexed Lots. The Annexed Lots, including, without limitation, any Improvements on such Lots, shall be subject to all of the easements, covenants, restrictions and charges regarding the Lots set forth in the Original Declaration.

2.3 Annexed Common Areas. The Annexed Common Areas shall be included among the Common Areas and shall be subject to all of the easements, covenants, restrictions, and charges regarding the Common Areas set forth in the Original Declaration (as modified or supplemented by the terms of this Declaration) and as stated on the Plat.

#### ARTICLE 3 MAINTENANCE

3.1 Pedestrian Easements. The Annexed Common Areas are subject to public pedestrian and utility easements, as set forth on the Plat. The Community Association shall maintain the Annexed Common Areas in good condition and repair, including without limitation, maintenance of the landscaping and Improvements located therein.

9-18-03

3.2 Maintenance of Annexed Tracts.

3.2.1 The Annexed Tracts shall be treated as a Common Area for maintenance, assessment, and other purposes under the Original Declaration, except that the Annexed Tracts shall not be conveyed to the Community Association and shall be retained by Declarant. The Annexed Tracts shall be subject to all of the easements, covenants, restrictions, and charges regarding the Common Areas set forth in the Original Declaration for so long as Declarant owns fee title to the Annexed Tracts.

3.2.2 Subject to Section 3.2.4, the Community Association shall perform all maintenance upon the Annexed Tracts. The Annexed Tracts shall be maintained in a safe condition to at least applicable City of Portland, Parks and Recreation District ("City") standards, and in a good and workmanlike manner. The Community Association shall hold harmless, defend, and indemnify the City and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from failure to maintain properly the Annexed Tracts during that period of time that the Community Association is responsible for maintaining the Annexed Tracts.

3.2.3 In the event the Community Association does not carry out its duties under Section 3.2.2 or is dissolved, the Owners (as that term is defined in the Original Declaration) shall confer from time to time regarding performance of required maintenance of the Annexed Tracts under this Declaration. Voting on required maintenance that the Community Association has failed to perform with respect to the Annexed Tracts shall be allocated in accordance with the Original Declaration. In the event of a disagreement concerning maintenance obligations and payment with respect to the Annexed Tracts, the Owners shall agree upon an arbitrator who shall resolve such disagreement. If the Owners cannot agree on an arbitrator, the presiding judge of the Circuit Court of the State of Oregon for the County of Multnomah shall appoint an arbitrator. The decision of the arbitrator shall be binding on the Owners and the fee of the arbitrator shall be borne equally by the Owners. Any notice, demand, or report required under this Agreement shall be sent to each Owner in care of the street address of his Lot or unit, or in the event the Owner does not reside on the said property, in care of the current property tax notification address of the property; provided, however, that an Owner can change their notification address by written notice to the Community Association. Any required notice or demand shall be made by hand delivery, first class mail, or certified mail, and shall be deemed received on actual receipt or 48 hours after being mailed, whichever first occurs. This Section 3.2.3 shall have application only in the event the Community Association fails to perform the maintenance on the Annexed Tracts as set forth in Section 3.3.2.

3.3 Withdrawal of Annexed Tracts. The Annexed Tracts are scheduled to be conveyed to and owned by the City for City park purposes. At such time as Declarant conveys either of the Annexed Tracts to the City, such Annexed Tract shall automatically and immediately be withdrawn from the Property and shall not be subject to this Declaration or the Original Declaration without any action by Declarant, Members, or the City. The withdrawal of an Annexed Tract described in the previous sentence is self-executing and shall be effective after: (a) the Portland City Council by ordinance accepts such Annexed Tract for maintenance; and (b) the recordation of a deed conveying such Annexed Tract from Declarant to the City.

9-18-03



From and after conveyance of an Annexed Tract to the City, the City, at its expense, shall maintain such Annexed Tract in good condition and repair, and the maintenance responsibilities of the Community Association and of the Owners under this Section 3.2 shall terminate and be of no further force or effect.

ARTICLE 4 MEMBERSHIP IN COMMUNITY ASSOCIATION

The Owners of Annexed Lots and any Improvements thereon (including, but not limited to, buildings such as apartments, condominiums, or garages) shall become Members of the Community Association as defined in Section 1.15 of the Original Declaration and shall be entitled to voting rights as set forth in Section 3.3 of the Original Declaration. Members who are other than Declarant shall be Class A Members, and Declarant shall be the Class B Member, until such time as it becomes a Class A Member under the Original Declaration.

ARTICLE 5 ASSESSMENTS

The Annexed Lots shall be subject to assessment in the manner and on the terms set forth in the Original Declaration. General Assessments shall be adjusted as described in Section 11.4 of the Original Declaration.

ARTICLE 6 AMENDMENTS

6.1 Amendment by Owners. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Subject Property, may be amended or repealed by the Class B Member, for so long as there is Class B membership in the Community Association, provided the amendment or repeal does not materially and adversely affect the Class A Members. Any amendment or repeal that materially and adversely affects the Class A Members shall also require the vote of holders of at least 50% of the Class A voting power of the Community Association. After there is no longer Class B membership in the Community Association, amendment or repeal of this Declaration shall require the vote of holders of at least 75% of the Class A voting power of the Community Association.

6.2 Recordation of Amendments. Any such amendment or repeal shall become effective only upon recordation in the deed records of Multnomah County, Oregon of a certificate of Declarant, for so long as there is Class B membership in the Community Association, and thereafter of the president or secretary of the Community Association setting forth in full the amendment, amendments, or repeal so approved and certifying that said amendment, amendments, or repeal have been approved in the manner required by this Declaration.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Non-Waiver. Failure by the Community Association or by any Owner of an Annexed Lot to enforce a covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Construction; Severability. This Declaration and the Original Declaration shall be liberally construed as one document to effect the annexation of the Subject Property to the

9-18-03

Property. Nevertheless, each provision of this Declaration and the Original Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

7.3 Run with Land. Subject to Sections 5.1 and 7.4 of this Declaration, this Declaration and the easements, covenants, restrictions and charges described herein shall run with the land, including any subdivision or partition thereof, and shall be binding on the parties and any person acquiring any right, title, or interest in the Subject Property.

7.4 Termination. This Declaration shall terminate upon the termination of the Original Declaration in accordance with the terms thereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 18<sup>th</sup> day of September, 2003.

HOYT STREET PROPERTIES, L.L.C., an Oregon limited liability company

By: [Signature]  
Its: Executive Director

STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of September, 2003 by TIFFANY SWETTS, who is a EXECUTIVE DIRECTOR of Hoyt Street Properties, L.L.C., an Oregon limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_



9-18-03

EXHIBIT A

The Subject Property

Lots 15 through 33 and Tracts B, C, D and E of Hoyt Street Yards No. 2, a plat recorded in Plat Book <sup>1259</sup> Page  
of the plat records of Multnomah County, Oregon.

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9-18-03

STEWART TITLE records this document as an accommodation only. No liability is assumed or accepted for the condition of title or for the validity or effect of this document.

**AFTER RECORDING RETURN TO:**

Ball Janik LLP  
One Main Place  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204-3219  
Attn: Rebecca Biermann Tom

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
C37 5  
Total : 41.00  
2005-252671 12/29/2005 10:02:06am  
ATKLM

**COVENANT TRANSFERRING FLOOR AREA RATIO**

**THIS COVENANT TRANSFERRING FLOOR AREA RATIO** (this "Covenant"), is granted this 20<sup>th</sup> day of December, 2005, by Block 4 L.L.C., an Oregon limited liability company (referred to herein as "Grantor") to Hoyt Street Properties, LLC, an Oregon limited liability company (referred to herein as "Grantee").

**RECITALS**

A. Grantor is the fee title owner of the real property located in the City of Portland, Oregon ("City") and more particularly described on the attached **Exhibit A** more commonly known as Kearney Plaza Apartments used as residential apartments with ground floor retail space (the "Grantor Property"). Grantee is the fee title owner of the real property located in the City and more particularly described on the attached **Exhibit B** ("Block 15"). Block 15 is hereinafter referred to as the "Grantee Property." The Grantor Property and the Grantee Property are located in the Central City Plan District.

B. Grantee seeks to obtain from Grantor and Grantor is willing to transfer its rights to 161,000 square feet of floor area ratio ("FAR") potential allowed under the Portland Zoning Code (the "Code") from the Grantor Property to Grantee and the Grantee Property.

C. Pursuant to Code Section 33.510.200.F, the FAR constitutes FAR from a site occupied by residential development. Pursuant to Code Section 33.510.200.F, the owners of residential development sites may transfer the rights to their unused FAR potential. The FAR may be used anywhere in the Central City Plan District.

D. The increase in FAR transferred to the Grantee Property is limited to a maximum of 3:1 pursuant to Code Section 33.510.200.C.

E. Capitalized terms used but not defined herein shall have the meanings set forth in the Code.

**AGREEMENT**

1. **ASSIGNMENT/TRANSFER.** Grantor hereby conveys, assigns, and transfers 161,000 square feet of FAR from the Grantor Property to Grantee for use on the Grantee Property (collectively, the "Transferred FAR").

2. **RUNS WITH THE LAND.** This Covenant shall run with the Grantor Property and shall be binding on all future owners of the Grantor Property and all other persons and parties claiming

STEWART TITLE 2005-269

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through Grantor and shall be recorded as a limitation on, and a benefit for, all future owners of the Grantor Property and the Grantee Property.

3. **INTENDED BENEFICIARIES.** This Covenant is intended to benefit Grantee and the Grantee Property, by receiving the Transferred FAR from the Grantor Property in accordance with Section 1 above. This Covenant is also intended to benefit the City by assuring that the overall density of development on the Grantor Property and the Grantee Property does not exceed the maximum density the Code allows.

4. **ENFORCEMENT; ATTORNEY FEES.** Grantor and Grantee acknowledge that if either of them fails to perform under this Covenant, the other party and the City shall have the right to bring legal proceedings against the persons violating or threatening to violate this restriction, including terminating occupancy of the violator's property and seeking all necessary injunctive relief, including seeking to prevent future occupancy of the violator's property while a violation of this Covenant exists. In the case of legal proceeding instituted by the City, the City shall also have the right to recover any costs incurred by the City to enforce the terms of this Covenant, including attorney fees and court costs.

5. **CONDITIONS OF APPROVAL.** Grantor, at Grantee's expense, will comply with all applicable Code requirements and conditions relating to approval of this Covenant.

6. **GRANTOR PROPERTY.** In accordance with applicable Code requirements, Grantor and its successors and assigns will continue and maintain the residential housing use of the Grantor Property.

7. **ASSURANCES OF GRANTOR.** Grantor warrants that it is the legal owner of and has good right to convey the Transferred FAR. Grantor shall execute and deliver from time to time, promptly upon request by Grantee, at the sole cost and expense of Grantee, such reasonable instruments as Grantee shall deem necessary (a) to confirm that the property interest hereby transferred is the Transferred FAR only and does not include fee ownership of land or the ownership interests that would create liability for real estate taxes; water, sewer or other public utility charges; downtown development agency charges; or any other similar governmental or public agency charges, and (b) to make all applications and filings as may be reasonably requested by Grantee to enable Grantee to fully utilize the Transferred FAR.

8. **AMENDMENT.** This Covenant may not be amended without the written consent of the City.

9. **FUTURE RIGHTS; TERMINATION.** If, subsequent to the date of recording this Covenant, the Code is amended to increase the Maximum FAR allowed on either or both of the Grantor Property and/or the Grantee Property, then this Covenant shall not apply to the increase and the Grantee Property and/or the Grantor Property, as applicable, shall receive the full benefit of such increased Maximum FAR. This Covenant may be terminated by Grantee upon recordation of an instrument signed by the City acknowledging that the Grantee Property is no longer subject to the base FAR and bonus FAR requirements contained in the Code in effect on the date hereof or to the resulting calculations and responsibilities as recorded in this Covenant.

10. **FURTHER TRANSFER.** If Grantee does not develop the Grantee Property, Grantee may transfer the applicable Transferred FAR to another property in the Central City Plan District with the City's prior written approval.

11. **RECORDATION.** Grantor, at Grantee's expense, shall submit this Covenant to the Multnomah County Recorder with instructions to file said Covenant in the deed records of the Grantor Property and the Grantee Property.

IN WITNESS WHEREOF, Grantor has executed this Covenant on the date stated above.

GRANTOR: **BLOCK 4 L.L.C., an Oregon limited partnership**

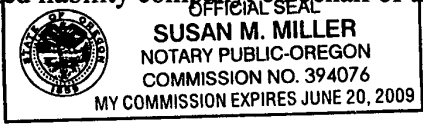
By: *S. Sweet*  
Its: *Member*

GRANTEE: **HOYT STREET PROPERTIES, LLC, an Oregon limited liability company**

By: *S. Sweet*  
Its: *President*

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of December, 2005, by *LIFANY SWEITZER*, as *MEMBER* of BLOCK 4 L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



*Susan M. Miller*  
Notary Public for Oregon  
My Commission Expires: *6-20-09*

STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

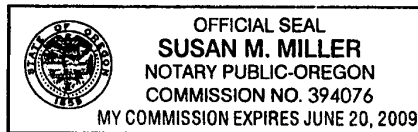
The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of ~~October~~ DECEMBER, 2005, by *LIFANY SWEITZER*, as *MEMBER* of HOYT STREET PROPERTIES, LLC, an Oregon limited liability company, on behalf of the limited liability company.

*Susan M. Miller*  
Notary Public for Oregon  
My Commission Expires: *6-20-09*

Approved by the City of Portland

APPROVED AS TO FORM

By: *Paula Cheng*  
Title: *City Attorney*  
Approved: *Paula Cheng*  
CITY ATTORNEY



City Attorney for the City of Portland

**Exhibit A**

**Legal Description of the Grantor Property**

Parcel 3, PARTITION PLAT NO. 1996-73, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH AN EASEMENT for maintenance and use of subsurface parking structure over the following described property: The North 25.00 feet of Tract D, PEARL BLOCK NO. 4, in the City of Portland, County of Multnomah and State of Oregon.

**Exhibit B**

**Legal Description of Block 15**

Lots 17, 18, 19 and 20 of HOYT STREET YARDS No. 2, in the City of Portland, County of Multnomah and State of Oregon.



**AFTER RECORDING, RETURN TO:**

Barg Tom PC  
121 SW Morrison Street, Suite 600  
Portland, Oregon 97204  
Attn: Rebecca Biermann Tom

Multnomah County Official Records  
C Swick, Deputy Clerk

2009-038626



\$31.00

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03/24/2009 04:22:10 PM

1R-AMMODCCR  
\$15.00 \$11.00 \$5.00

Cnt=1 Stn=10 RECCASH1

**FIRST AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HOYT STREET YARDS COMMUNITY**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HOYT STREET YARDS COMMUNITY (this "Amendment") is made and entered into effective this 23<sup>rd</sup> day of MARCH, 2009 by the Hoyt Street Properties, L.L.C., an Oregon limited liability company (the "Declarant").

**Recitals:**

A. Declarant recorded that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, dated as of December 7, 1998, in the Deed Records of Multnomah County, Oregon, as Document No. 98223156 on December 7, 1998 (such Declaration, as amended from time to time, being referred to as the "Original Declaration"). Declarant also previously recorded that certain Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community on September 13, 2000 in the Deed Records of Multnomah County, Oregon as Document No. 2000-127589 (the "First Supplemental Declaration"); that certain Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community on January 7, 2003 in the Deed Records of Multnomah County, Oregon, as Document No. 2003-003342 (the "Second Supplemental Declaration"); that certain Supplemental Declaration to Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community on September 18, 2003 in the Deed Records of Multnomah County, Oregon as Document No. 2003-222927 (the "Third Supplemental Declaration"); and that certain Instrument Correcting Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hoyt Street Yards Community, correcting Exhibits A and B of the Original Declaration, on November 22, 2000 in the deed records of Multnomah County, Oregon as Document No. 2000-160515 (the "Correction Instrument").

B. Declarant continues to be the Class B Member under the Original Declaration. Declarant desires to amend the Third Supplemental Declaration as provided herein pursuant to and in accordance with Section 6.1 of the Third Supplemental Declaration.

NOW, THEREFORE, the Original Declaration is hereby amended as follows:

1. Tract E. Declarant has divided Tract E of Hoyt Street Yards No. 2 of the Annexed Common Area into two tracts of real property, identified as Tracts F and G on the plat of Hoyt Street Yards No. 3 recorded as Book ~~X~~ Page \_\_\_\_ Multnomah County Plat Records concurrently herewith. Tract F shall be owned and maintained by the Community Association as Annexed Common Area, as set forth in the Third Supplemental Declaration. Section 1.3 of the Third Supplemental Declaration is hereby amended to include Tract G as one of the Annexed Tracts. As one of the Annexed Tracts, Tract G shall be owned and maintained as contemplated in Section 3.2 of the Third Supplemental Declaration and may be withdrawn from the Property as provided in Section 3.3 of the Third Supplemental Declaration. Tracts F and G, in their entirety, continue to be subject to public pedestrian and utility easements, as set forth on the plat of Hoyt Street Yards No. 3.

\* Bk . 1298 Pg . 98-99

2. Approval. Declarant, as the Class B Member, has approved this Amendment, as required by the Original Declaration and the Third Supplemental Declaration.

3. Indemnification. The Community Association shall hold harmless, defend and indemnify the City of Portland and its officers, agents and employees against all claims, demands, actions and suits, including attorneys' fees and costs, brought against any of them to the extent arising out of the failure of the Association to properly maintain Tracts F and G and the public pedestrian easements thereon or for damage to any property to the extent resulting from the failure of the Community Association to maintain such areas in a safe condition, except to the extent the City of Portland is responsible for maintenance of any of such areas.

4. Amendment. This Amendment may be amended as set forth in Article 6 of the Third Supplemental Declaration, provided that no amendment or repeal of Sections 1 or 3 of this Amendment shall be effective without the prior written consent of the City of Portland Bureau of Development Services.


5. Defined Terms. Any capitalized term utilized herein and not otherwise defined shall have the meaning ascribed to such term in the Third Supplemental Declaration.

6. Effect of Amendment. Except as expressly amended hereby, the Third Supplemental Declaration remains unamended and in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the date first set forth above.

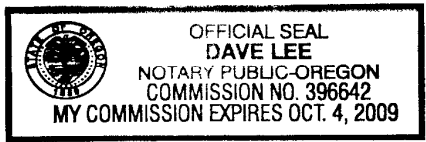
HOYT STREET PROPERTIES, L.L.C. an Oregon  
limited liability company

By: Hoyt Street Investors, L.L.C., Managing  
Member

By:   
Title: President

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The foregoing instrument was acknowledged before me on this 23<sup>rd</sup> day of March, 2009 by TIFFANY SWETZER, who is the PRESIDENT of Hoyt Street Investors, L.L.C., Managing Member of Hoyt Street Properties, L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



[Signature]  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

After recording return to:

Send tax statements to: *No change*

*P/U*  
Marten Law PLLC  
1001 SW Fifth Avenue, Suite 1500  
Portland, OR 97204  
Attn: Richard H. Allan

Multnomah County Official Records  
R Weldon, Deputy Clerk

2013-160232



\$71.00

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12/13/2013 12:14:57 PM

1R-RESTRICT

Pgs=7 Stn=11 ATMWB

\$35.00 \$11.00 \$15.00 \$10.00

### LICENSE AND DECLARATION OF RESTRICTIONS

This License and Declaration of Restrictions is made *Dec 17*, 2013 between Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Grantor"), the Oregon Department of Environmental Quality ("DEQ") and BNSF Railway Company ("BNSF"), a Delaware corporation doing business in Oregon.

#### RECITALS

- A. Grantor is the owner of certain real property (the "Property") located in Multnomah County, Oregon, which is more particularly described in Exhibit A, attached hereto and by this reference made a part hereof.
- B. Grantor intends to convey fee title to the Property to an affiliated limited liability company for development as a condominium tower (the "Project") that will include residential units, ground floor retail and above-grade parking within the structure.
- C. In conjunction with the development of the Property, Grantor prepared and DEQ approved the "Soil Remedial Action Work Plan, Hoyt Street Yards, Portland, Oregon" dated June 2002. Grantor is required to conduct its development activities on the Property in accordance with that Soil Remedial Design and Remedial Action Work Plan.
- D. Environmental investigations at the Property have determined that hazardous substances, as defined in ORS Chapter 465, are present in soils and groundwater at the Property, including petroleum hydrocarbons, polynuclear aromatic hydrocarbons, and lead. To address these hazardous substances and to protect human health and the environment, the Director of the DEQ selected the remedial action for the Property in a Record of Decision for the Property dated December 15, 2000 ("ROD"). Grantor, BNSF and DEQ entered into a Consent Decree to implement the ROD in *State of Oregon v. The Burlington Northern and Santa Fe Railway Company and Hoyt Street Properties, L.L.C.*, Multnomah County Circuit Court Case No. 0202-01268 ("Consent Decree"). The Consent Decree requires that Grantor and its successors implement certain institutional controls and ensure ongoing access for DEQ and BNSF to any portions of the Property at or below ground level, except as otherwise provided herein. The Consent Decree also requires that Grantor record this License and Declaration of Restrictions in the real property records of Multnomah County prior to Grantor's sale or transfer of any right to or any interest in any part of the Property.

*7*

E. The provisions of this License and Declaration of Restrictions are intended to protect human health and the environment.

NOW THEREFORE, in consideration for the foregoing, which is incorporated by reference, and the promises and obligations herein, the parties agree as follows:

### SECTION 1 GENERAL DECLARATION

Grantor declares that the Property is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this License and Declaration of Restrictions. Each condition and restriction set forth in this License and Declaration of Restrictions and the licenses granted in Section 4 shall run with the land for all purposes, shall be binding upon all Owners as set forth in this License and Declaration of Restrictions, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this License and Declaration of Restrictions.

### SECTION 2 DEFINITIONS

2.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives acting on its behalf. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

2.2 "Owner" means any person or entity, including Grantor, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Property, including any successor or holder of fee simple title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation. Notwithstanding the foregoing, upon the recording of a declaration creating a condominium (the "Condominium") on the Property and for so long as the Condominium is in existence, "Owner" shall mean the owners' association for such Condominium.

2.3 "BNSF" means BNSF Railway Company, formerly known as The Burlington Northern and Santa Fe Railway Company, and its employees, agents and authorized representatives acting on its behalf. BNSF also means any successor or assign of BNSF.

### SECTION 3 RESTRICTIONS ON USE

3.1 No groundwater use. No use shall be made of groundwater at the Property, by extraction through wells or by other means, which use involves consumption or other beneficial use of the groundwater. This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

3.2 Maintenance of cap. Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will penetrate any

surface cover required under the ROD or jeopardize the cover's functional integrity, including without limitation any excavation, drilling, scraping, or erosion. The Owner of the Property shall maintain the surface cover and any other permanent feature of the remedy described in the ROD in accordance with the Monitoring and Maintenance Plan approved in writing by DEQ for the Property pursuant to the Consent Decree.

3.3 Prohibited uses. The following operations and uses are prohibited on the Property:

3.3.1 Detached single-family residential development; and

3.3.2 Agricultural use of any type at or below the ground level of the Property, except that landscaping consistent with Section 3.2 and the use of self-contained planters and pots shall be allowed.

#### SECTION 4 LICENSE (RIGHT OF ENTRY).

4.1 During reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, DEQ shall have a non-exclusive license to enter upon and inspect any portion of the Property at or below ground level to determine whether the requirements of this License and Declaration of Restrictions have been or are being complied with. Notwithstanding the foregoing, for so long as the Property is developed as the Project, the access and inspection rights granted hereunder shall apply only to areas where no building development has occurred and sidewalk areas of the Property at ground level. In no instance shall DEQ have any right to access or inspect any units of the Condominium.

4.2 DEQ shall provide the Owner with written notice of any violation of the requirements of this License and Declaration of Restrictions. Such notice shall describe what is necessary to correct the violation and shall specify the date by which the Owner must cure the violation; provided that if the violation is not capable of cure within the time period provided therefor by DEQ, the Owner shall not be deemed in default hereunder if the Owner commences to cure within the requisite time period provided by DEQ and Owner thereafter diligently pursues the cure to completion.

4.3 If after DEQ has provided written notice pursuant to Section 4.2 the Owner fails to timely cure the violation, DEQ shall have the right, privilege, and license to enter upon the portion of the Property (subject to all of the restrictions set forth in Section 4.1) where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry or for any action taken to abate, mitigate, or cure a violation; provided, that DEQ shall indemnify and hold Owner harmless for, from and against damages, costs (including, without limitation, attorneys' fees and costs), expenses, claims and liabilities arising out of the gross negligence or willful misconduct of DEQ or its employees, agents, officials and contractors, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act.

4.4 During reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, BNSF shall have a non-exclusive license to enter

upon the Property to the extent required by DEQ so that BNSF may implement the ROD and BNSF's obligations under the Consent Decree. Notwithstanding the foregoing, the access rights granted to BNSF hereunder shall apply only to areas where no building development has occurred and sidewalk areas of the Property at ground level. In no instance shall BNSF have any right to access any units of the Condominium.

4.5 Grantor reserves for itself, upon sale or other transfer of any interest in the Property, a non-exclusive license to enter upon the Property during reasonable hours and subject to reasonable security requirements and reasonable advance written notice to Owner, to the extent required by DEQ so that Grantor may implement the ROD and Grantor's obligations under the Consent Decree. Notwithstanding the foregoing, the access rights reserved to Grantor hereunder shall apply only to areas where no building development has occurred and sidewalk areas of the Property at ground level. In no instance shall Grantor have any right to access any units of the Condominium.

#### SECTION 5 GENERAL PROVISIONS.

5.1 Grantor shall record this License and Declaration of Restrictions in the records of deeds of real property in Multnomah County, such recordation being expressly authorized by statute including, without limitation, ORS 93.710.

5.2 By executing this License and Declaration of Restrictions, DEQ approves this instrument in accordance with ORS 93.808.

5.3 All conditions and restrictions contained in this License and Declaration of Restrictions shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.4 Any person or entity who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this License and Declaration of Restrictions, whether or not any reference to this License and Declaration of Restrictions is contained in the instrument by which such person or entity acquired an interest in the Property.

5.5 The Owner of the Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Portland zoning code or any successor code.

5.6 Upon any violation of any condition or restriction contained in this License and Declaration of Restrictions, DEQ may enforce this License and Declaration of Restrictions through the remedies described in Section 4.4 as well as through any other remedy available at law or in equity.

IN WITNESS WHEREOF Grantor, DEQ and BNSF have executed this License and Declaration of Restrictions as of the date and year first set forth above.

GRANTOR:

Hoyt Street Properties, L.L.C.

By: [Signature]  
Its: President

GRANTEE:

State of Oregon Department of Environmental Quality

By: [Signature]  
Its: Manager, WWR Cleanup Section

GRANTEE:

BNSF Railway Company

By: [Signature]  
Its: General Director Real Estate

STATE OF OREGON )  
  ) ss.  
County of Multnomah )

The foregoing instrument is acknowledged before me this 11 day of November 2013, by Tiffany Snelzer the President of Hoyt Street Properties, L.L.C., on its behalf.

[Signature]  
NOTARY PUBLIC FOR OREGON

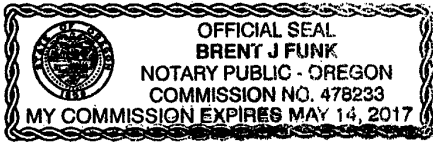




STATE OF OREGON )

County of Multnomah ) ss.

The foregoing instrument is acknowledged before me this 12<sup>th</sup> day of Dec., 2013, by Kevin Barnett of the Department of Environmental Quality of the State of Oregon, on its behalf.

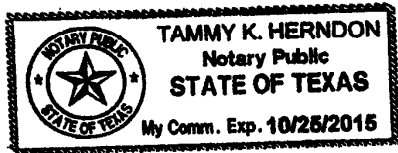


Brent J Funk  
NOTARY PUBLIC FOR OREGON

STATE OF TEXAS )

County of Tarrant ) ss.

The foregoing instrument is acknowledged before me this 5<sup>th</sup> day of Dec, 2013, by Hurt Geninger, the Gen. Dir. Real Estate of BNSF Railway Company, on its behalf.



Tammy K. Herndon  
NOTARY PUBLIC ~~FOR OREGON~~

**EXHIBIT A**

Legal Description of the Property

Lots 17, 18, 19 and 20, HOYT STREET YARDS NO. 2, in the City of Portland, County of Multnomah, State of Oregon

AFTER RECORDING, RETURN TO:  
Radler White Parks & Alexander LLP  
Attn: Dina E. Alexander  
111 SW Columbia Street, Suite 1100  
Portland, OR 97201

UNTIL A CHANGE IS REQUESTED,  
SEND ALL TAX STATEMENTS TO:  
No change.

**AMENDED AND RESTATED  
RESTRICTIVE COVENANT AGREEMENT**

**THIS AMENDED AND RESTATED RESTRICTIVE COVENANT AGREEMENT** (this "Agreement") is made and entered into as of September 12, 2014 (the "Effective Date") by and between **HOYT STREET PROPERTIES, L.L.C.**, an Oregon limited liability company ("Hoyt Street"), and **ABIGAIL HOUSING ASSOCIATES LP, a California limited partnership** ("Abigail Housing").

**RECITALS**

A. On July 14, 2014, Hoyt Street sold to Abigail Housing the real property in Portland, Oregon more particularly described on the attached Exhibit A (the "Burdened Property"). Hoyt Street owns the real property in Portland, Oregon more particularly described on the attached Exhibit B (the "Benefited Property").

B. As part of the consideration for Hoyt Street's sale of the Burdened Property to Abigail Housing, Abigail Housing agreed to the imposition of certain use restrictions on the Burdened Property to ensure that a minimum number of affordable rental housing units will be situated on the Burdened Property and will be made available to tenants who fall within certain income levels, as evidenced by that certain Restrictive Covenant Agreement between Hoyt Street and Abigail Housing dated July 14, 2014, and recorded in the Multnomah County Official Records under recording number 2014-067834 ("***Restrictive Covenant***").

C. The City of Portland, by and through the Portland Housing Bureau, has required that Abigail Housing make available, in the multi-family housing development to be constructed on the Burdened Property, a minimum of eight (8) units of housing to residents with incomes at or below thirty percent (30%) of the Area Median Income.

D. Due to the change in unit affordability requirements, Hoyt Street and Abigail Housing now desire to enter into this Agreement to amend and restate the Restrictive Covenant, in its entirety, as set forth herein.

WFG Title Acco 1477

## AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hoyt Street and Abigail Housing agree as follows:

1. Use Restriction. During the Term (as defined in Section 2 below), the Burdened Property shall be developed and operated as a rental housing project and ancillary uses (the "Project"), which shall include the following units limited to tenants who fall within the following ranges of median family income for the Portland Metropolitan Area in effect when the units in the Project are leased ("MFI"):

<u>Percentage of MFI</u>	<u>Minimum Number of Units</u>
0-50%	Thirty-five (35)
0-80%	Ninety-two (92)

Notwithstanding the foregoing, the owner of the Burdened Property may, in its sole discretion, elect to develop more than the minimum number of units required in the MFI categories specified above and nothing herein shall be construed to limit the number of unrestricted units that may be included in the Project so long as the Project includes at least the minimum number of restricted units as set forth above.

2. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the earlier to occur of: (a) September 8, 2047; (b) the date on which the Development Agreement (as defined below) is terminated in accordance with its terms; or (c) such earlier date as may be mutually agreed upon in writing among the owners of the Burdened Property and the Benefited Property. As used herein, "Development Agreement" means that certain Amended and Restated Agreement for Development dated March 12, 1999 and executed by and among the City of Portland, Hoyt Street and Hoyt Street Investors, L.L.C.

3. Covenants Running With the Land. The parties intend that the benefits and burdens of this Agreement, and the covenants set forth in this Agreement, shall run with the land and all portions thereof and be binding throughout the Term. Nonuse of the Benefited Property, or any portion thereof, or Hoyt Street's failure to exercise its rights under this Agreement for any period, shall not be deemed abandonment of such rights.

4. Reasonableness of Restrictions. Abigail Housing acknowledges and agrees that the covenants in this Agreement are reasonable in all respects and are of benefit to Hoyt Street and to all or any portion of the Benefited Property, as it may be used, partitioned, subdivided or conveyed.

5. Remedies. Abigail Housing acknowledges and agrees that (a) any breach by Abigail Housing of these covenants, directly or indirectly, will cause Hoyt Street irreparable injury for which there is no adequate remedy at law and (b) Abigail Housing's agreement to these covenants is material consideration for Hoyt Street's agreement to convey the Burdened Property

to Abigail Housing. Accordingly, Abigail Housing expressly agrees that, in the event of any such breach or threatened breach of these covenants, Hoyt Street shall be entitled, in addition to any and all other remedies available to Hoyt Street, to seek and obtain injunctive relief and/or other equitable relief to require specific performance of or prevent a breach of these covenants, without being required to post a bond or show inadequacy of damages as a remedy. Time and strict performance are of the essence of this Agreement.

6. Attorneys' Fees. If any suit or action is initiated arising out of or relating to this Agreement, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its costs and fees (including, without limitation, reasonable attorneys' fees and costs including cost and fees incurred in any bankruptcy or similar proceeding) incurred by such party, including those on appeal or review.

7. Entire Agreement; Severability. Hoyt Street and Abigail Housing acknowledge and agree this Agreement amends and restates the Restrictive Covenant in its entirety as set forth herein. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter of this Agreement. Invalidation of any provision of this Agreement, in whole or in part, or of any application of a provision of this Agreement, by judgment or court order shall in no way affect other provisions or applications.

8. Successors and Assigns. This Agreement shall bind and inure to the benefit of Hoyt Street and Abigail Housing, and their respective successors and assigns, and any party hereafter claiming any interest in all or any portion of the Burdened Property.

9. Amendment. This Agreement may not be amended except by a written agreement executed by all owners of the Burdened Property and the Benefited Property and recorded in the real property records of Multnomah County, Oregon.

10. Counterparts. This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same instrument.

*(Remainder of Page Intentionally Left Blank;  
Signature Page Follows.)*

**ABIGAIL HOUSING:**

Abigail Housing Associates LP, a California limited partnership

By: Abigail Manager LLC, a California limited liability company

Its: General Partner

By: Winfield Hill, Inc., a California nonprofit corporation

Its: Sole Member

By: *Rebecca V. Hlebasko*  
Name: Rebecca V. Hlebasko  
Its: Vice President

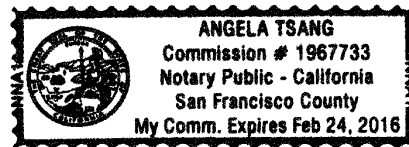
State of California            )  
  ) ss.  
County of San Francisco    )

On September 12, 2014, before me, Angela Tsang, Notary Public, personally appeared Rebecca Hlebasko, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Angela Tsang* (Seal)



## EXHIBIT A

### Legal Description of Burdened Property

Real property in the County of Multnomah , State of Oregon, described as follows:

A PORTION OF PARCEL II OF THAT TRACT OF LAND AS DESCRIBED BY STATUTORY WARRANTY DEED TO HOYT STREET PROPERTIES, L.L.C., AN OREGON LIMITED LIABILITY COMPANY, RECORDED JANUARY 13, 1994 AS DOCUMENT NO. 94-007230, MULTNOMAH COUNTY DEED RECORDS AND ALL OF PARCEL 1, OF PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE SOUTHWEST CORNER OF PARCEL 1, OF SAID PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE NORTH RIGHT OF WAY LINE OF NW RALEIGH STREET (VACATED);

THENCE NORTH 88°32'49"EAST, ALONG THE SOUTH LINE OF SAID PARCEL 1, 200.16 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE NORTH 01°27'11"WEST, ALONG THE EAST LINE OF SAID PARCEL 1, 123.93 FEET, TO THE MOST EASTERLY NORTHEAST CORNER THEREOF AND A POINT ON THE NORTHEASTERLY LINE OF SAID DOCUMENT NO. 94-007230;

THENCE NORTH 50°28'59"WEST, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 1, 116.01 FEET TO THE MOST NORTHERLY NORTHEAST CORNER THEREOF;

THENCE SOUTH 88°32'49"WEST, ALONG THE NORTH LINE OF SAID PARCEL 1, 112.56 FEET TO THE NORTHWEST CORNER THEREOF;

THENCE SOUTH 01°27'11"EAST, ALONG THE WEST LINE OF SAID PARCEL 1, 200.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE NORTHWEST CORNER OF PARCEL 1, OF PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF N.W. SAVIER STREET (VACATED);

THENCE NORTH 88°32'49" EAST, ALONG THE NORTH LINE OF SAID PARCEL 1, 112.56 FEET TO A 5/8 INCH IRON ROD WITH AN ORANGE PLASTIC CAP MARKED "HHPR INC" AT THE MOST NORTHERLY NORTHEAST CORNER THEREOF AND A POINT ON THE NORTHEASTERLY LINE OF SAID DOCUMENT NO. 94-007230;

THENCE NORTH 50°28'59" WEST, ALONG SAID NORTHEASTERLY LINE, 7.63 FEET TO A POINT; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 88°32'49" WEST, PARALLEL WITH THE NORTH LINE OF SAID PARCEL 1, 106.81 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE WEST LINE OF SAID PARCEL 1;

THENCE SOUTH 01°27'11" EAST, ALONG THE SAID NORTHERLY PROLONGATION, 5.00 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE SOUTHWEST CORNER OF PARCEL 1, OF SAID PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE NORTH RIGHT OF WAY LINE OF NW RALEIGH STREET (VACATED);

THENCE NORTH 88°32'49" EAST, ALONG THE SOUTH LINE OF SAID PARCEL 1, 200.16 FEET TO A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC" AT THE SOUTHEAST CORNER THEREOF;

THENCE NORTH 01°27'11" WEST, ALONG THE EAST LINE OF SAID PARCEL 1, 123.93 FEET, TO A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC" AT THE MOST EASTERLY NORTHEAST CORNER THEREOF AND A POINT ON THE NORTHEASTERLY LINE OF SAID DOCUMENT NO. 94-007230;

THENCE SOUTH 50°28'59" EAST, ALONG SAID NORTHEASTERLY LINE, 6.62 FEET TO A POINT; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 01°27'11" EAST, PARALLEL WITH THE EAST LINE OF SAID PARCEL 1, 129.59 FEET TO A POINT;

THENCE SOUTH 88°32'49" WEST, PARALLEL WITH THE SOUTH LINE OF SAID PARCEL 1, 205.16 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF NW 13TH AVENUE; THENCE NORTH 01°27'11" WEST, ALONG SAID EAST RIGHT OF WAY LINE, 10.00 FEET TO THE POINT OF BEGINNING.



## **EXHIBIT B**

### Legal Description of Benefited Property

#### **Phase 5**

A parcel of land located in the Southeast One-Quarter of the Southeast One-Quarter of Section 28, Township 1 North, Range 1 East, of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon, said parcel being a portion of that tract of land as described by Document No. 94-007230, Multnomah County Deed Records, lying northerly of N.W. Quimby Street and westerly of Lot 33 of the Plat of "Hoyt Street Yards No. 2", Plat Book 1259 Pages 84-86, Multnomah County Plat Records.

Containing 261,887 square feet more or less.

#### **Block 15**

Lots 17, 18, 19 and 20, Hoyt Street Yards No. 2, a duly recorded plat in the City of Portland, County of Multnomah and State of Oregon.

#### **Block 20**

Lots 29, 30, 31 and 32, Hoyt Street Yards No. 2, a duly recorded plat in the City of Portland, County of Multnomah and State of Oregon.

4817-5497-0141, v. 2

**AFTER RECORDING RETURN TO:**  
Radler White Parks & Alexander LLP  
Attn: Dina E. Alexander  
111 SW Columbia Street, Suite 1100  
Portland, OR 97201

Multnomah County Official Records R Weldon, Deputy Clerk	<b>2014-099997</b>
	10/07/2014 12:19:22 PM
1R-COVNT Pgs=10 Stn=22 ATWJH \$50.00	\$50.00

**\*\*\* RE-RECORDING AT THE REQUEST OF**

WFG National Title Insurance  
25 NW 23<sup>rd</sup> Pl. Suite 1  
Portland, OR 97210

**TO CORRECT:** Need to add a signature page for Hoyt Street Properties

**PREVIOUSLY RECORDED:** 9/15/14 as Fee No, 2014-091282

## Re-Recording Cover Sheet

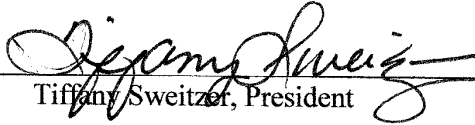
WFG Title Acco 1477

- 1. NAME(S) OF THE TRANSACTION(S)**, described in the attached instrument and required by ORS 205.234(A): **Amended and Restated Restrictive Covenant Agreement**
- 2. Grantor(s)** as described in ORS 205.160: **Hoyt Street Properties, L.L.C., an Oregon limited liability company**
- 3. Grantee(s)** as described in ORS 205.160: **Abigail Housing Associates LP, a California limited liability company**
- 4. TRUE AND ACTUAL CONSIDERATION PAID** for instruments conveying or contracting to convey title to any real estate and all memoranda of such instruments, reference ORS 93.030: \$0.00
- 5. UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING NAME AND ADDRESS:** for instruments conveying or contracting to convey fee title to any real estate reference 93.260.:  
**No Change**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

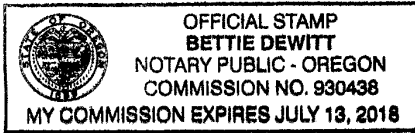
HOYT STREET:

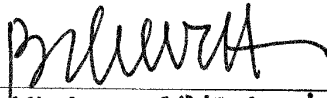
HOYT STREET PROPERTIES, L.L.C.,  
an Oregon limited liability company

By:   
Tiffany Sweitzer, President

STATE OF OREGON            )  
  ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this 28 day of August, 2014, by Tiffany Sweitzer, as President of Hoyt Street Properties, L.L.C., an Oregon limited liability company, on behalf of the limited liability company.



  
Notary Public for: OREGON  
My commission expires: 07-13-18

*(Signatures Continued on Following Page)*

Multnomah County Official Records  
R Weldon, Deputy Clerk

2014-091282

09/15/2014 01:09:49 PM

1R-COVNT Pgs=7 Str=72 ATTLB  
\$35.00 \$11.00 \$10.00 \$20.00

\$76.00

AFTER RECORDING, RETURN TO:  
Radler White Parks & Alexander LLP  
Attn: Dina E. Alexander  
111 SW Columbia Street, Suite 1100  
Portland, OR 97201

UNTIL A CHANGE IS REQUESTED,  
SEND ALL TAX STATEMENTS TO:  
No change.

### AMENDED AND RESTATED RESTRICTIVE COVENANT AGREEMENT

**THIS AMENDED AND RESTATED RESTRICTIVE COVENANT AGREEMENT** (this "Agreement") is made and entered into as of September 12, 2014 (the "Effective Date") by and between **HOYT STREET PROPERTIES, L.L.C.**, an Oregon limited liability company ("Hoyt Street"), and **ABIGAIL HOUSING ASSOCIATES LP, a California limited partnership** ("Abigail Housing").

#### RECITALS

A. On July 14, 2014, Hoyt Street sold to Abigail Housing the real property in Portland, Oregon more particularly described on the attached Exhibit A (the "Burdened Property"). Hoyt Street owns the real property in Portland, Oregon more particularly described on the attached Exhibit B (the "Benefited Property").

B. As part of the consideration for Hoyt Street's sale of the Burdened Property to Abigail Housing, Abigail Housing agreed to the imposition of certain use restrictions on the Burdened Property to ensure that a minimum number of affordable rental housing units will be situated on the Burdened Property and will be made available to tenants who fall within certain income levels, as evidenced by that certain Restrictive Covenant Agreement between Hoyt Street and Abigail Housing dated July 14, 2014, and recorded in the Multnomah County Official Records under recording number 2014-067834 ("Restrictive Covenant").

C. The City of Portland, by and through the Portland Housing Bureau, has required that Abigail Housing make available, in the multi-family housing development to be constructed on the Burdened Property, a minimum of eight (8) units of housing to residents with incomes at or below thirty percent (30%) of the Area Median Income.

D. Due to the change in unit affordability requirements, Hoyt Street and Abigail Housing now desire to enter into this Agreement to amend and restate the Restrictive Covenant, in its entirety, as set forth herein.

WFG Title Acco 1477

AFTER RECORDING, RETURN TO:  
Radler White Parks & Alexander LLP  
Attn: Dina E. Alexander  
111 SW Columbia Street, Suite 1100  
Portland, OR 97201

UNTIL A CHANGE IS REQUESTED,  
SEND ALL TAX STATEMENTS TO:  
No change.

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RESTRICTIVE COVENANT AGREEMENT**

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**RECITALS**

A. On July 14, 2014, Hoyt Street sold to Abigail Housing the real property in Portland, Oregon more particularly described on the attached Exhibit A (the "Burdened Property"). Hoyt Street owns the real property in Portland, Oregon more particularly described on the attached Exhibit B (the "Benefited Property").

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WFG Title ACCO 1477

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hoyt Street and Abigail Housing agree as follows:

1. Use Restriction. During the Term (as defined in Section 2 below), the Burdened Property shall be developed and operated as a rental housing project and ancillary uses (the "Project"), which shall include the following units limited to tenants who fall within the following ranges of median family income for the Portland Metropolitan Area in effect when the units in the Project are leased ("MFI"):

<u>Percentage of MFI</u>	<u>Minimum Number of Units</u>
0-50%	Thirty-five (35)
0-80%	Ninety-two (92)

Notwithstanding the foregoing, the owner of the Burdened Property may, in its sole discretion, elect to develop more than the minimum number of units required in the MFI categories specified above and nothing herein shall be construed to limit the number of unrestricted units that may be included in the Project so long as the Project includes at least the minimum number of restricted units as set forth above.

2. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the earlier to occur of: (a) September 8, 2047; (b) the date on which the Development Agreement (as defined below) is terminated in accordance with its terms; or (c) such earlier date as may be mutually agreed upon in writing among the owners of the Burdened Property and the Benefited Property. As used herein, "Development Agreement" means that certain Amended and Restated Agreement for Development dated March 12, 1999 and executed by and among the City of Portland, Hoyt Street and Hoyt Street Investors, L.L.C.

3. Covenants Running With the Land. The parties intend that the benefits and burdens of this Agreement, and the covenants set forth in this Agreement, shall run with the land and all portions thereof and be binding throughout the Term. Nonuse of the Benefited Property, or any portion thereof, or Hoyt Street's failure to exercise its rights under this Agreement for any period, shall not be deemed abandonment of such rights.

4. Reasonableness of Restrictions. Abigail Housing acknowledges and agrees that the covenants in this Agreement are reasonable in all respects and are of benefit to Hoyt Street and to all or any portion of the Benefited Property, as it may be used, partitioned, subdivided or conveyed.

5. Remedies. Abigail Housing acknowledges and agrees that (a) any breach by Abigail Housing of these covenants, directly or indirectly, will cause Hoyt Street irreparable injury for which there is no adequate remedy at law and (b) Abigail Housing's agreement to these covenants is material consideration for Hoyt Street's agreement to convey the Burdened Property

to Abigail Housing. Accordingly, Abigail Housing expressly agrees that, in the event of any such breach or threatened breach of these covenants, Hoyt Street shall be entitled, in addition to any and all other remedies available to Hoyt Street, to seek and obtain injunctive relief and/or other equitable relief to require specific performance of or prevent a breach of these covenants, without being required to post a bond or show inadequacy of damages as a remedy. Time and strict performance are of the essence of this Agreement.

6. Attorneys' Fees. If any suit or action is initiated arising out of or relating to this Agreement, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its costs and fees (including, without limitation, reasonable attorneys' fees and costs including cost and fees incurred in any bankruptcy or similar proceeding) incurred by such party, including those on appeal or review.

7. Entire Agreement; Severability. Hoyt Street and Abigail Housing acknowledge and agree this Agreement amends and restates the Restrictive Covenant in its entirety as set forth herein. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter of this Agreement. Invalidation of any provision of this Agreement, in whole or in part, or of any application of a provision of this Agreement, by judgment or court order shall in no way affect other provisions or applications.

8. Successors and Assigns. This Agreement shall bind and inure to the benefit of Hoyt Street and Abigail Housing, and their respective successors and assigns, and any party hereafter claiming any interest in all or any portion of the Burdened Property.

9. Amendment. This Agreement may not be amended except by a written agreement executed by all owners of the Burdened Property and the Benefited Property and recorded in the real property records of Multnomah County, Oregon.

10. Counterparts. This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same instrument.

*(Remainder of Page Intentionally Left Blank;  
Signature Page Follows.)*

**ABIGAIL HOUSING:**

Abigail Housing Associates LP, a California limited partnership

By: Abigail Manager LLC, a California limited liability company  
Its: General Partner

By: Winfield Hill, Inc., a California nonprofit corporation  
Its: Sole Member

By: Rebecca V. Hlebasko  
Name: Rebecca V. Hlebasko  
Its: Vice President

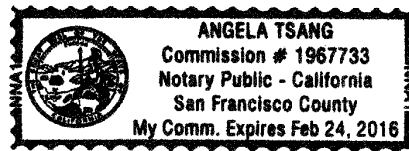
State of California            )  
  ) ss.  
County of San Francisco    )

On September 12, 2014, before me, Angela Tsang, Notary Public, personally appeared Rebecca Hlebasko, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Angela Tsang (Seal)





**EXHIBIT A**

Legal Description of Burdened Property

Real property in the County of Multnomah , State of Oregon, described as follows:

A PORTION OF PARCEL II OF THAT TRACT OF LAND AS DESCRIBED BY STATUTORY WARRANTY DEED TO HOYT STREET PROPERTIES, L.L.C., AN OREGON LIMITED LIABILITY COMPANY, RECORDED JANUARY 13, 1994 AS DOCUMENT NO. 94-007230, MULTNOMAH COUNTY DEED RECORDS AND ALL OF PARCEL 1, OF PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE SOUTHWEST CORNER OF PARCEL 1, OF SAID PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE NORTH RIGHT OF WAY LINE OF NW RALEIGH STREET (VACATED);

THENCE NORTH 88°32'49"EAST, ALONG THE SOUTH LINE OF SAID PARCEL 1, 200.16 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE NORTH 01°27'11"WEST, ALONG THE EAST LINE OF SAID PARCEL 1, 123.93 FEET, TO THE MOST EASTERLY NORTHEAST CORNER THEREOF AND A POINT ON THE NORTHEASTERLY LINE OF SAID DOCUMENT NO. 94-007230;

THENCE NORTH 50°28'59"WEST, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 1, 116.01 FEET TO THE MOST NORTHERLY NORTHEAST CORNER THEREOF;

THENCE SOUTH 88°32'49"WEST, ALONG THE NORTH LINE OF SAID PARCEL 1, 112.56 FEET TO THE NORTHWEST CORNER THEREOF;

THENCE SOUTH 01°27'11"EAST, ALONG THE WEST LINE OF SAID PARCEL 1, 200.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE NORTHWEST CORNER OF PARCEL 1, OF PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF N.W. SAVIER STREET (VACATED);

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THENCE NORTH 50°28'59" WEST, ALONG SAID NORTHEASTERLY LINE, 7.63 FEET TO A POINT; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 88°32'49" WEST, PARALLEL WITH THE NORTH LINE OF SAID PARCEL 1, 106.81 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE WEST LINE OF SAID PARCEL 1;

THENCE SOUTH 01°27'11" EAST, ALONG THE SAID NORTHERLY PROLONGATION, 5.00 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH

BEGINNING AT A 5/8 INCH IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHPR INC", AT THE SOUTHWEST CORNER OF PARCEL 1, OF SAID PARTITION PLAT NO. 2014-003, MULTNOMAH COUNTY PLAT RECORDS, ALSO BEING A POINT ON THE NORTH RIGHT OF WAY LINE OF NW RALEIGH STREET (VACATED);

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## **EXHIBIT B**

### Legal Description of Benefited Property

#### **Phase 5**

A parcel of land located in the Southeast One-Quarter of the Southeast One-Quarter of Section 28, Township 1 North, Range 1 East, of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon, said parcel being a portion of that tract of land as described by Document No. 94-007230, Multnomah County Deed Records, lying northerly of N.W. Quimby Street and westerly of Lot 33 of the Plat of "Hoyt Street Yards No. 2", Plat Book 1259 Pages 84-86, Multnomah County Plat Records.

Containing 261,887 square feet more or less.

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4817-5497-0141, v. 2