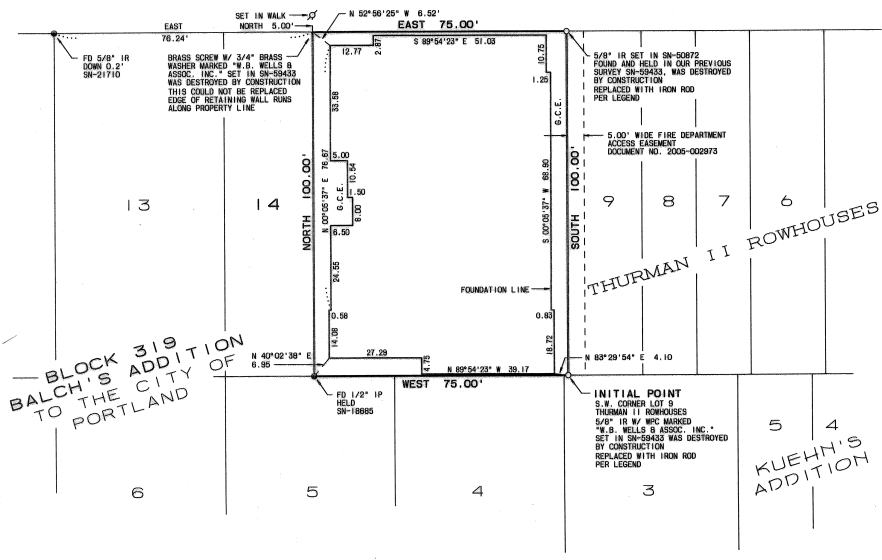


**THURMAN STREET  
LOFTS CONDOMINIUM**

LOT 15, TOGETHER WITH A PORTION OF LOTS 14 AND 16, BLOCK 319, "BALCH'S ADDITION TO THE CITY OF PORTLAND", SITUATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON.  
SCALE: 1" = 20' JANUARY 16, 2006

SCALE: 1" = 20'

**N.W. THURMAN ST.**  
60' WIDE  
EAST  
BASIS OF BEARINGS - SN-58283



**LEGEND**

- SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W.B. WELLS & ASSOC. INC." ON JANUARY 5, 2006
- ⊘ SET 1-5/32" BRASS DISC MARKED "W.B. WELLS" ON JANUARY 14, 2006
- FOUND MONUMENT AS SHOWN
- FD FOUND
- IR IRON ROD
- W/ WITH
- YPC YELLOW PLASTIC CAP
- IR IRON PIPE
- SN SURVEY NUMBER, MULTNOMAH COUNTY SURVEY RECORDS
- G.C.E. GENERAL COMMON ELEMENT

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- PAGE 2 - FIRST FLOOR, SECTION A-I
- PAGE 3 - SECOND FLOOR, THIRD FLOOR
- PAGE 4 - FOURTH FLOOR, FIFTH FLOOR
- PAGE 5 - SURVEYOR'S CERTIFICATE, CERTIFICATE OF COMPLETION, NARRATIVE, DECLARATION, ACKNOWLEDGEMENT, APPROVALS

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1. BUILDING TIES AND DIMENSIONS SHOW ARE TO THE EXTERIOR FACE OF THE FOUNDATION WALL LINE ON THE FIRST FLOOR LEVEL.
2. BUILDING WALLS ARE PERPENDICULAR.

BLOCK 319  
BALCH'S ADDITION  
TO THE CITY OF  
PORTLAND

THURMAN II ROWHOUSES

KUEHN'S  
ADDITION

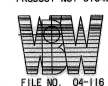
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

(OREGON)  
JULY 12, 2006  
DERKTON T. WACKAI  
73427LS

I HEREBY CERTIFY THIS TO  
BE A TRUE AND EXACT COPY  
OF THE ORIGINAL PLAT

RENEWAL DATE: 12-31-06

I CERTIFY THAT THIS PLAT WAS PREPARED USING HEIMLETT-PACKARD  
PRODUCT NO. 51645A ON OCE # 86-8342 DOUBLE MATTE FILM.



**W.B. WELLS AND ASSOCIATES, INC.**  
SURVEYORS/ENGINEERS/PLANNERS  
4233 N.E. FREMONT STREET  
PORTLAND, OREGON 97213  
PHONE (503) 284-8836  
FAX (503) 284-8830

FILE NO. 04-116 DTM

PAGE 1 OF 5

### THURMAN STREET LOFTS CONDOMINIUM

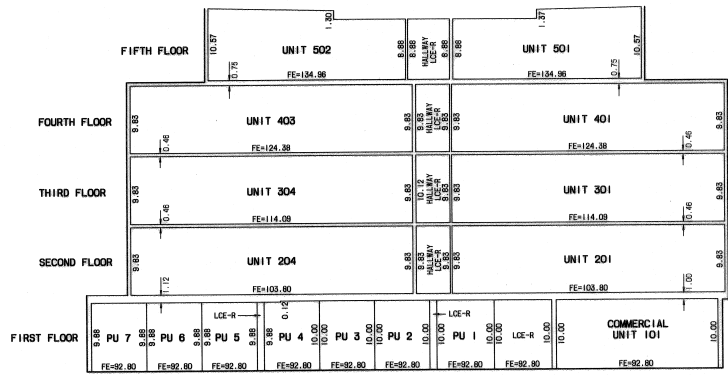
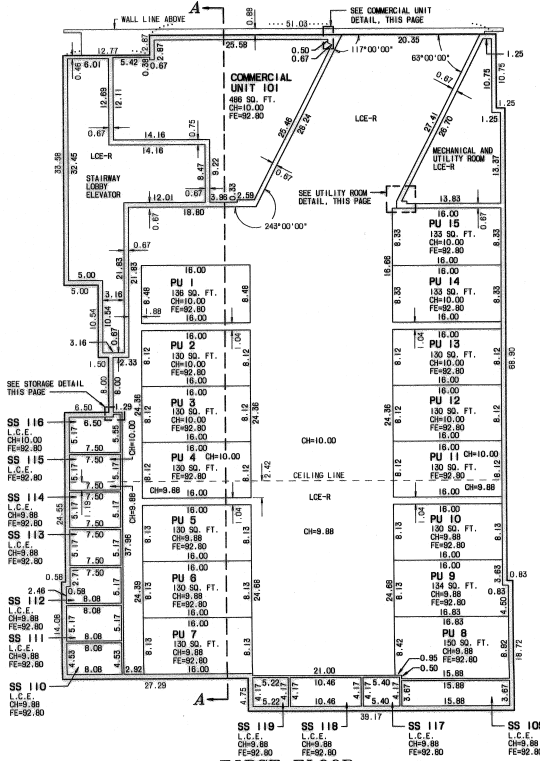
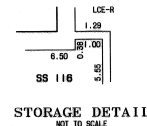
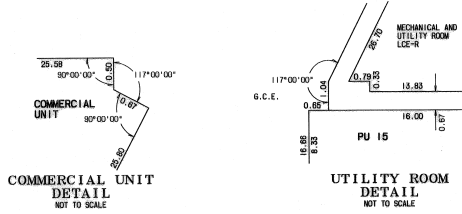
LOT 15, TOGETHER WITH A PORTION OF LOTS 14 AND 16, BLOCK 319, "BALCH'S ADDITION TO THE CITY OF PORTLAND", SITUATED IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON.  
SCALE: 1" = 10'  
JANUARY 16, 2006

#### LEGEND

- SQ. FT. SQUARE FEET
- CH CEILING HEIGHT
- FE FLOOR ELEVATION
- LCE-R LIMITED COMMON ELEMENT APPERTAINING TO THE RESIDENTIAL UNITS
- L.C.E. LIMITED COMMON ELEMENT
- PU PARKING UNIT
- SS STORAGE SPACE

#### NOTES

1. BUILDING WALLS ARE PERPENDICULAR, OR AS NOTED.
2. ELEVATIONS ARE FROM CITY OF PORTLAND BENCHMARK NO. 4485 (OLD BENCHMARK NO. 487), A 2-1/2" BRASS DISC LOCATED IN THE CURB 20' WEST OF THE P.C., SOUTHWEST CORNER OF THE INTERSECTION OF N.W. THURMAN STREET AND N.W. 28TH AVENUE.
3. FIRST FLOOR INTERIOR VERTICAL MEASUREMENTS ARE FROM CONCRETE FLOOR TO CONCRETE CEILING. FIRST FLOOR INTERIOR HORIZONTAL MEASUREMENTS ARE FROM STUD TO STUD OR TO CONCRETE WALL.
4. STORAGE SPACES ARE LIMITED COMMON ELEMENTS AND ARE ASSIGNED IN THE DECLARATION.



INTERIOR WALLS ARE 0.29 WIDE, OR AS NOTED  
EXTERIOR WALLS ARE 0.67 WIDE, OR AS NOTED

REGISTERED PROFESSIONAL LAND SURVEYOR  
*W.B. Wells*  
OREGON  
JULY 12, 2005  
DENYON T. MACKAY  
73427LS  
RENEWAL DATE: 12-31-06

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT

I CERTIFY THAT THIS PLAT WAS PREPARED USING HEMLETT-PACKARD PRODUCT NO. 51645A ON OCE # 86-6342 DOUBLE MATTE FILM.

**W.B. WELLS AND ASSOCIATES, INC.**  
SURVEYORS/ENGINEERS/PLANNERS  
4230 N.E. FREMONT STREET  
PORTLAND, OREGON 97213  
PHONE (503) 284-5896  
FAX (503) 284-8830

FILE NO. 04-116 DTM PAGE 2 OF 5

**THURMAN STREET LOFTS CONDOMINIUM**

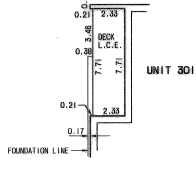
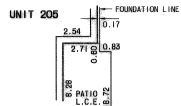
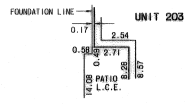
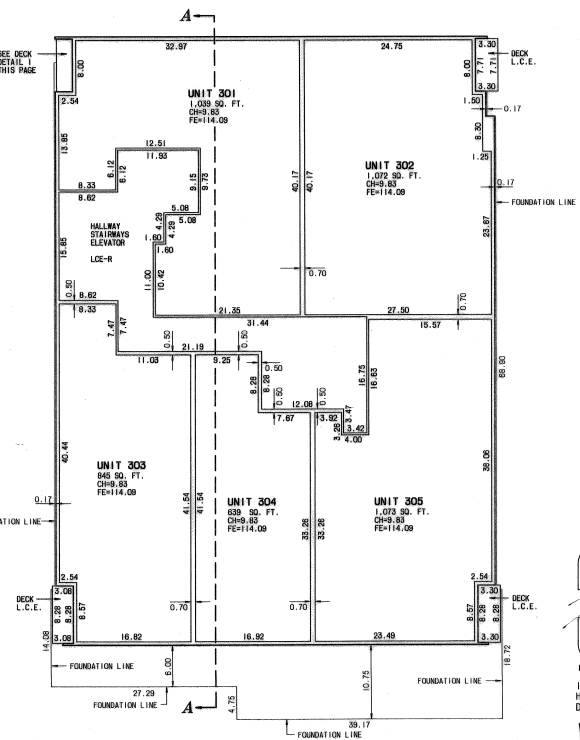
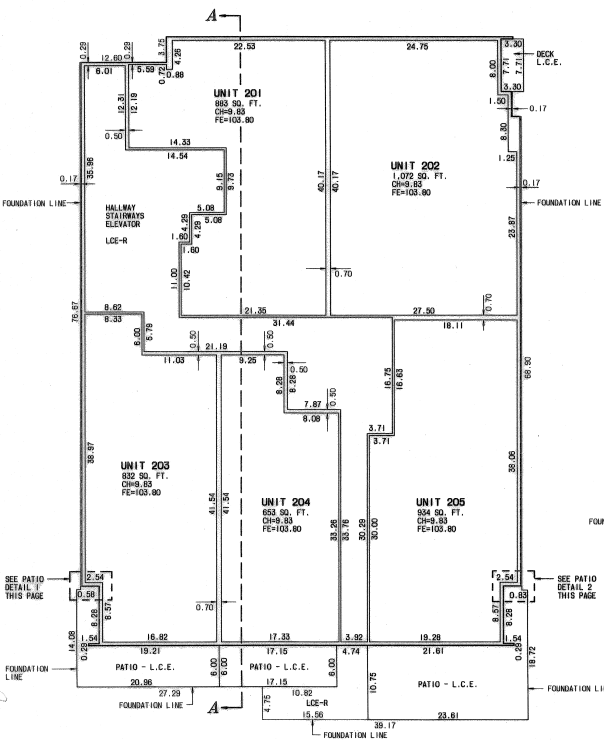
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SCALE: 1" = 10'  
JANUARY 16, 2006

**NOTES**

1. BUILDING WALLS ARE PERPENDICULAR.
2. ELEVATIONS ARE FROM CITY OF PORTLAND BENCHMARK NO. 4493 (OLD BENCHMARK NO. 48), A 2-1/2" BRASS DISC LOCATED IN THE CURB 20' WEST OF THE P.C., SOUTHWEST CORNER OF THE INTERSECTION OF N.W. THURMAN STREET AND N.W. 26TH AVENUE.
3. INTERIOR VERTICAL MEASUREMENTS ARE FROM TOP OF GYP-CRETE TO BOTTOM OF PLYWOOD. INTERIOR HORIZONTAL MEASUREMENTS ARE FROM STUD TO STUD OR TO CONCRETE WALL.
4. DECKS AND PATIOS ARE LIMITED COMMON ELEMENTS AND ARE ASSIGNED TO THE UNIT TO WHICH THEY ADJOIN.

**LEGEND**

- SQ. FT. SQUARE FEET  
CH CEILING HEIGHT  
FE FLOOR ELEVATION  
LCE-R LIMITED COMMON ELEMENT APPERTAINING TO THE RESIDENTIAL UNITS  
L.C.E. LIMITED COMMON ELEMENT



REGISTERED PROFESSIONAL LAND SURVEYOR  
JULY 12, 2005  
DEKTON T. MACKAY  
73427LS

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT

RENEWAL DATE: 12-31-06  
I CERTIFY THAT THIS PLAT WAS PREPARED USING HEWLETT-PACKARD PRODUCT NO. 51645A ON OCE # 86-8342 DOUBLE MATTE FILM.

**W.B. WELLS AND ASSOCIATES, INC.**  
SURVEYORS/ENGINEERS/PLANNERS  
4250 N.E. FREMONT STREET  
PORTLAND, OREGON 97213  
PHONE (503) 284-5896  
FAX (503) 284-6530  
FILE NO. 04-116 DTM

### THURMAN STREET LOFTS CONDOMINIUM

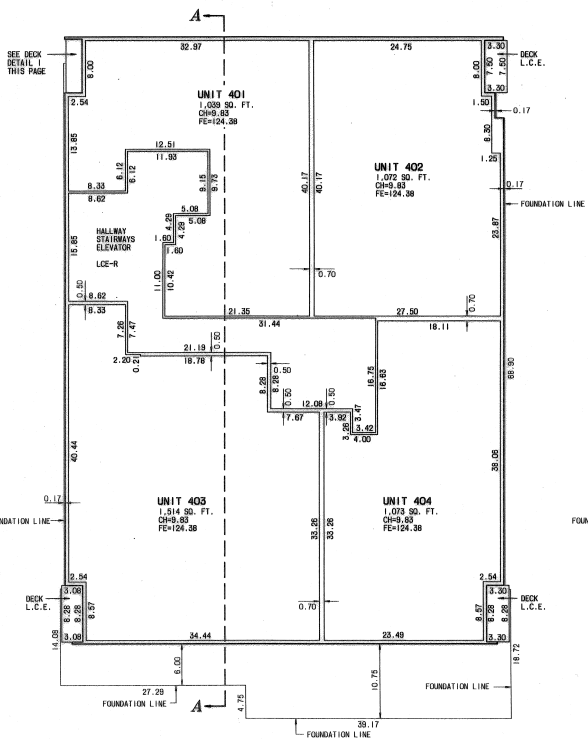
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SCALE: 1" = 10'  
JANUARY 16, 2006

#### NOTES

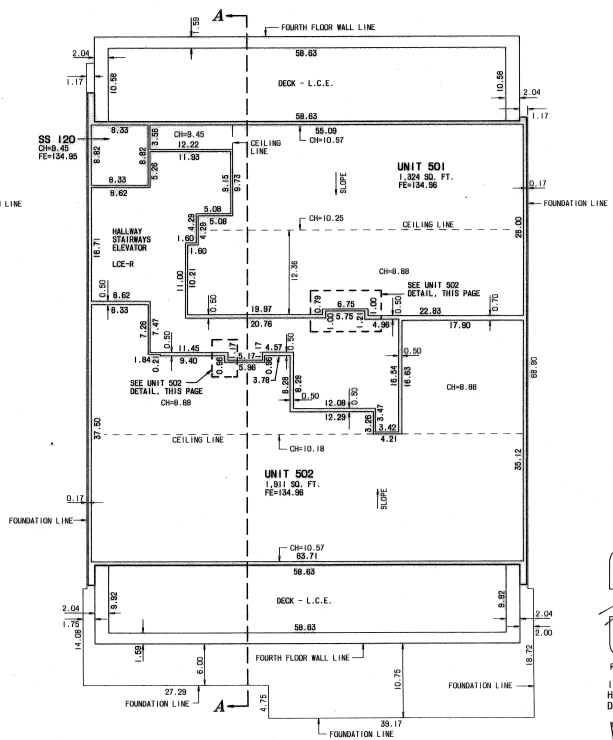
1. BUILDING WALLS ARE PERPENDICULAR.
2. ELEVATIONS ARE FROM CITY OF PORTLAND BENCHMARK NO. 4483 (OLD BENCHMARK NO. 48), A 2-1/2" BRASS DISC LOCATED IN THE CURB 20' WEST OF THE P.C., SOUTHWEST CORNER OF THE INTERSECTION OF N.W. THURMAN STREET AND N.W. 26TH AVENUE.
3. FOURTH FLOOR INTERIOR VERTICAL MEASUREMENTS ARE FROM TOP OF GYP-CRETE TO BOTTOM OF PLYWOOD. FIFTH FLOOR INTERIOR VERTICAL MEASUREMENTS ARE FROM TOP OF GYP-CRETE TO FINISHED CEILING. BOTH FLOORS HORIZONTAL MEASUREMENTS ARE FROM STUD TO STUD.
4. THE STORAGE SPACE AND DECKS ARE LIMITED COMMON ELEMENTS AND ARE ASSIGNED TO THE UNIT TO WHICH THEY ADJOIN. THE STORAGE SPACE IS A LIMITED COMMON ELEMENT AND IS ASSIGNED IN THE DECLARATION.

#### LEGEND

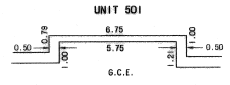
- SO. FT. SQUARE FEET  
 CH CEILING HEIGHT  
 FE FLOOR ELEVATION  
 LCE-R LIMITED COMMON ELEMENT APPERTAINING TO THE RESIDENTIAL UNITS  
 L.C.E. LIMITED COMMON ELEMENT  
 SS STORAGE SPACE



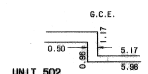
**FOURTH FLOOR**  
 INTERIOR WALLS ARE 0.29 WIDE, OR AS NOTED  
 EXTERIOR WALLS ARE 0.50 WIDE



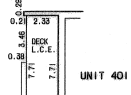
**FIFTH FLOOR**  
 INTERIOR WALLS ARE 0.29 WIDE, OR AS NOTED  
 EXTERIOR WALLS ARE 0.50 WIDE



**UNIT 501 DETAIL**  
 NOT TO SCALE



**UNIT 502 DETAIL**  
 NOT TO SCALE



**UNIT 401 DETAIL**  
 NOT TO SCALE

**DECK DETAIL 1**  
 NOT TO SCALE

REGISTERED PROFESSIONAL LAND SURVEYOR  
 W.B. WELLS AND ASSOCIATES, INC.

OREGON  
 JULY 12, 2005  
 DEKRON T. MACKAY  
 754275  
 RENEWAL DATE: 12-31-06

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT.

I CERTIFY THAT THIS PLAT WAS PREPARED USING HEWLETT-PACKARD PRODUCT NO. 51645A ON OCE # 86-8342 DOUBLE MATTE FILM.

**W.B. WELLS AND ASSOCIATES, INC.**  
 SURVEYORS/ENGINEERS/PLANNERS  
 4233 N.E. FREMONT STREET  
 PORTLAND, OREGON 97213  
 PHONE (503) 284-8896  
 FAX (503) 284-8300  
 FILE NO. 04-116 DTM PAGE 4 OF 5



### THURMAN STREET LOFTS CONDOMINIUM

LOT 15, TOGETHER WITH A PORTION OF LOTS 14 AND 16, BLOCK 319, "BALCH'S ADDITION TO THE CITY OF PORTLAND", SITUATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON.  
JANUARY 16, 2006

### DECLARATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT W B K DEVELOPMENT LLC, AN OREGON LIMITED LIABILITY COMPANY, HEREBY DECLARES THE ANNEXED MAP OF "THURMAN STREET LOFTS CONDOMINIUM", AS DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, TO BE A TRUE AND CORRECT MAP AND PLAT THEREOF, AND HEREBY COMMITS SAID LAND TO THE OPERATION OF OREGON CONDOMINIUM ACT AS LAID OUT IN CHAPTER 100 OF THE OREGON REVISED STATUTES. THE PROPERTY AND IMPROVEMENTS DESCRIBED AND DEPICTED ON THE PLAT ARE SUBJECT TO THE PROVISIONS OF OREGON REVISED STATUTES 100.005 TO 100.625.

### SURVEYOR'S CERTIFICATE

I, DEKKION T. MACKAI, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ANNEXED MAP OF "THURMAN STREET LOFTS CONDOMINIUM", SAID LAND BEING DESCRIBED AS FOLLOWS:  
THAT TRACT OF LAND DESCRIBED IN DOCUMENT 2004-217917, MULTNOMAH COUNTY DEED RECORDS, BEING LOT 15, TOGETHER WITH A PORTION OF LOTS 14 AND 16, BLOCK 319, "BALCH'S ADDITION TO THE CITY OF PORTLAND", SITUATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT THE INITIAL POINT, SAID POINT BEING A SET 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W.B. WELLS & ASSOC. INC." LOCATED AT THE SOUTHWEST CORNER OF LOT 9, "THURMAN 11 ROWHOUSES"; THENCE WEST, ALONG THE SOUTH LINE OF SAID LOTS 16, 15 AND 14, A DISTANCE OF 75.00 FEET TO THE SOUTHWEST CORNER OF SAID DOCUMENT NO. 2004-217917 TRACT; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 9, ALONG THE WEST LINE OF SAID DOCUMENT NO. 2004-217917 TRACT, A DISTANCE OF 100.00 FEET TO THE NORTH LINE OF SAID LOT 14 AND THE SOUTH RIGHT-OF-WAY LINE OF N.W. THURMAN STREET; THENCE EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE AND THE NORTH LINE OF SAID LOTS 14, 15 AND 16, A DISTANCE OF 75.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 9; THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT 9, A DISTANCE OF 100.00 FEET TO THE INITIAL POINT.  
CONTAINING 7,800 SQUARE FEET.

### CERTIFICATE OF COMPLETION

I, DEKKION T. MACKAI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PLAT OF "THURMAN STREET LOFTS CONDOMINIUM" FULLY AND ACCURATELY DEPICTS THE BOUNDARIES OF THE UNITS OF THE BUILDING AND THAT CONSTRUCTION OF THE UNITS AND BUILDINGS AS DEPICTED ON THE PLAT HAS BEEN COMPLETED AS OF JANUARY 5, 2006.

I CERTIFY THAT THIS PLAT WAS PREPARED USING HEWLETT-PACKARD PRODUCT NO. 51645A ON OCE # 86-6342 DOUBLE MATTE FILM.

REGISTERED PROFESSIONAL LAND SURVEYOR  
*Dekktion T. Mackai*  
OREGON  
JULY 22, 2005  
DEKKION T. MACKAI  
7342715  
RENEWAL DATE: 12-31-06

I HEREBY CERTIFY THIS TO BE A TRUE AND EXACT COPY OF THE ORIGINAL PLAT

### NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO CREATE A CONDOMINIUM OF THAT TRACT OF LAND DESCRIBED IN DOCUMENT NO. 2004-217917, MULTNOMAH COUNTY DEED RECORDS.  
THE BOUNDARY AND BASIS OF BEARINGS WERE HELD AS ESTABLISHED IN OUR PREVIOUS SURVEY FILED AS SN-59433, MULTNOMAH COUNTY SURVEY RECORDS.

W B K DEVELOPMENT LLC, AN OREGON LIMITED LIABILITY COMPANY  
BY: PHK INVESTMENTS, INC., AN OREGON CORPORATION, MEMBER  
BY: *Patrick H. Kessi*  
PATRICK H. KESSI, PRESIDENT  
BY: WENKER ENTERPRISES LLC, AN OREGON LIMITED LIABILITY COMPANY, MEMBER  
BY: *Geoffrey J. Wenker*  
GEOFFREY J. WENKER, MEMBER

### ACKNOWLEDGEMENT

STATE OF OREGON )  
                          ) SS  
COUNTY OF MULTNOMAH )  
THIS IS TO CERTIFY THAT ON THIS 20<sup>th</sup> DAY OF January, 2006, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, PERSONALLY APPEARED PATRICK H. KESSI, PRESIDENT OF PHK INVESTMENTS, INC., AN OREGON CORPORATION, WHO DID SAY THAT HE IS THE IDENTICAL PERSON NAMED IN THE FOREGOING DECLARATION, AND THAT SAID INSTRUMENT WAS EXECUTED ON BEHALF PHK INVESTMENTS, INC., AND THAT HE EXECUTED SAID INSTRUMENT FREELY AND VOLUNTARILY.

*JG*  
NOTARY SIGNATURE  
James CHRISTMAS  
NOTARY PUBLIC - OREGON  
COMMISSION NO. 574327  
MY COMMISSION EXPIRES November 28, 2007

### ACKNOWLEDGEMENT

STATE OF OREGON )  
                          ) SS  
COUNTY OF MULTNOMAH )  
THIS IS TO CERTIFY THAT ON THIS 20<sup>th</sup> DAY OF June, 2006, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, PERSONALLY APPEARED GEOFFREY J. WENKER, MEMBER OF WENKER ENTERPRISES LLC, AN OREGON LIMITED LIABILITY COMPANY, WHO DID SAY THAT HE IS THE IDENTICAL PERSON NAMED IN THE FOREGOING DECLARATION, AND THAT SAID INSTRUMENT WAS EXECUTED ON BEHALF WENKER ENTERPRISES LLC, AND THAT HE EXECUTED SAID INSTRUMENT FREELY AND VOLUNTARILY.

*JG*  
NOTARY SIGNATURE  
James CHRISTMAS  
NOTARY PUBLIC - OREGON  
COMMISSION NO. 374327  
MY COMMISSION EXPIRES November 28, 2007

### APPROVALS

APPROVED THIS 8<sup>th</sup> DAY OF February, 2006  
COUNTY SURVEYOR, MULTNOMAH COUNTY, OREGON  
BY: Robert A. Hurdon

ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY O.R.S. 100.110 HAVE BEEN PAID AS OF February 16<sup>th</sup>, 2006  
DIRECTOR, DIVISION OF ASSESSMENT AND TAXATION  
MULTNOMAH COUNTY, OREGON  
BY: Jeff Nelson  
DEPUTY

STATE OF OREGON )  
                          ) SS  
COUNTY OF MULTNOMAH )  
I DO HEREBY CERTIFY THAT THE ATTACHED CONDOMINIUM PLAT WAS RECEIVED FOR RECORD AND RECORDED  
February 10, 2006 AT 12:39 P.M.  
IN BOOK 1272, PAGES 95-99  
COUNTY RECORDING OFFICE  
BY: K. Monahan  
DEPUTY  
DOCUMENT NO. 2006-025554

**W.B. WELLS & ASSOCIATES, INC.**  
SURVEYORS/ENGINEERS/PLANNERS  
4230 N.E. FREMONT STREET  
PORTLAND, OREGON 97213  
PHONE (503) 284-8530  
FAX (503) 284-8530  
FILE NO. 04-116 07M  
PAGE 5 OF 5

AFTER RECORDING, RETURN TO:

*Fidelity National Title*  
*1001 SW Fifth St.*  
*Portland, OR 97204*

PREPARED BY:

Howard M. Feuerstein  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, Oregon 97204

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk

E41 60 ATKLM  
Total : 316.00

2006-025555 02/10/2006 12:39:25pm

**DECLARATION SUBMITTING  
THURMAN STREET LOFTS CONDOMINIUM  
TO CONDOMINIUM OWNERSHIP**

**W & K DEVELOPMENT LLC  
Declarant**

*60*

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**DECLARATION SUBMITTING  
THURMAN STREET LOFTS CONDOMINIUM  
TO CONDOMINIUM OWNERSHIP**

**THIS DECLARATION**, pursuant to the provisions of the Oregon Condominium Act, is made and executed this 21<sup>st</sup> day of December, 2005, by **W & K DEVELOPMENT LLC**, an Oregon limited liability company ("**Declarant**").

Declarant proposes to create a condominium to be known as Thurman Street Lofts Condominium, that will be located in the City of Portland, Multnomah County, Oregon. The purpose of this Declaration is to submit the property described in Article 2 below to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act.

**NOW, THEREFORE**, Declarant does hereby declare and provide as follows:

**Article 1**

**DEFINITIONS**

When used in this Declaration the following terms shall have the following meanings:

1.1 "**Association**" means the association of unit owners established pursuant to Article 14 below.

1.2 "**Bylaws**" means the Bylaws of the Thurman Street Lofts Condominium Owners Association adopted pursuant to Section 14.4 below as the same may be amended from time to time.

1.3 "**Commercial Unit**" means the commercial unit labeled as such in the attached Exhibit B.

1.4 "**Condominium**" means all of that property submitted to the condominium form of ownership by this Declaration.

1.5 "**Declarant**" means W & K Development LLC, an Oregon limited liability company, and its successors and assigns.

1.6 "**Declaration**" means this Declaration as the same may hereafter be amended.

1.7 "**Eligible Mortgage Insurer or Guarantor**" means an insurer or governmental guarantor of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below.

1.8 "**Eligible Mortgage Holder**" means a holder of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 13.1 below, but shall not include a contract vendor.

1.9 “**Mortgage**” and “**Mortgagee**” mean, respectively, a recorded mortgage, trust deed or contract of sale that creates a lien against a unit, and the holder, beneficiary or vendor of such a mortgage, trust deed or contract of sale.

1.10 “**Parking Units**” means those units for parking of vehicles labeled as such in the attached Exhibit B.

1.11 “**Plat**” means the plat of Thurman Street Lofts Condominium recorded simultaneously with the recording of this Declaration.

1.12 “**Residential Limited Common Elements**” means the limited common elements that pertain to Residential Units, as set forth in Section 6.2.

1.13 “**Residential Section**” means the Residential Units and all limited common elements that pertain to all Residential Units.

1.14 “**Residential Units**” means those dwelling units labeled as such in the attached Exhibit B.

1.15 **Incorporation by Reference**. Except as otherwise provided in this Declaration, each of the terms defined in ORS 100.005, a part of the Oregon Condominium Act, shall have the meanings set forth in such section.

## Article 2

### SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE

The property submitted to the Oregon Condominium Act by this Declaration is held by Declarant and conveyed by Declarant in fee simple estate. The land submitted is located in the City of Portland, Multnomah County, Oregon, and is more particularly described in the attached Exhibit A. The property submitted includes the land so described, all buildings, improvements and structures, all easements, and rights and appurtenances located on, belonging to or used in connection with such land.

## Article 3

### NAME OF CONDOMINIUM

The name by which the Condominium shall be known is “**Thurman Street Lofts Condominium.**”

## Article 4

### UNITS

4.1 **General Description of Buildings**. The Condominium consists of one building containing five stories, without basement. The building is of metal frame construction with IPE wood siding and built-up Bituminous roof.

4.2 **General Description, Location and Designation of Units.** The Condominium contains 16 Residential Units, 1 Commercial Unit and 15 Parking Units for a total of 32 units. The designation, location, description of boundaries and area in square feet of each unit are shown on the Plat and the attached Exhibit B.

4.3 **Boundaries of Units.**

(a) **Residential and Commercial Units.** Each Residential Unit and Commercial Unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim. The unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces, except those portions of the walls, floors or ceilings that materially contribute to the structural or shear capacity of the Condominium. All other portions of the walls, floors or ceilings shall be a part of the common elements. In addition, each unit shall include the following: (a) All spaces, nonbearing interior partitions, window glass, interior doors and door frames and all other fixtures and improvements within the boundaries of the unit; and (b) All outlets of utility and communications service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, air conditioning and waste disposal, security, cable television and telephone, within the boundaries of the unit, but shall not include any part of such lines or ducts themselves.

(b) **Parking Units.** Parking Units are bounded by the surface of floors, ceilings and perimeter walls (if any). Parking Units without perimeter walls are bounded by a vertical plane at the boundary shown on the Plat. Parking Units do not include the floor, ceiling or perimeter walls themselves.

## Article 5

### **GENERAL COMMON ELEMENTS**

The general common elements consist of all portions of the Condominium that are not part of a unit or a limited common element, including, but not limited to, the following:

5.1 The land, pathways, driveways, fences, grounds, mechanical and utility room and sandfilter system.

5.2 Pipes, ducts, flues, chutes, conduits, wires and other utility and communications installations to their outlets.

5.3 Roofs, foundations, bearing and shear walls, perimeter walls, beams, columns and girders to the interior surfaces thereof, exterior doors and door frames, and window frames.

5.4 All other elements of the buildings and the Condominium necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated in this Declaration as part of a unit or a limited common element.

## Article 6

### **LIMITED COMMON ELEMENTS**

The following shall constitute limited common elements, the use of which shall be restricted to the units to which they pertain:

6.1 All patios and decks, each of which shall pertain to the unit that it adjoins as shown on the Plat.

6.2 Stairways, landings, hallways, lobbies, elevators, entrances and exits, garage parking areas, except parking spaces designated as Parking Units by this Declaration, and all other areas marked LCE-R on the Plat, which shall pertain to the Residential Units based upon the relative square footage of each Residential Unit compared to all Residential Units combined.

6.3 Storage areas on the first floor designated as limited common elements in the Plat, each of which shall pertain to the unit indicated in the attached Exhibit C.

## Article 7

### **ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS**

Each unit will be entitled to an undivided ownership interest in the common elements determined by the ratio by which the square footage of the particular unit bears to the total square footage of all units combined, as shown on the attached Exhibit B. Each unit's interest in the common elements shall be inseparable from the unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the common elements shall be void unless the unit to which that interest is allocated is also transferred.

## Article 8

### **COMMON PROFITS AND EXPENSES; VOTING**

8.1 **Allocation of Common Profits and Expenses.** The common profits and common expenses of the Condominium shall be allocated to the owner of each unit according to the allocation of undivided interest of such unit in the common elements, except that the costs of operating, maintaining and repairing the Residential Limited Common Elements shall be charged exclusively to the Residential Units based upon their relative square footage as shown on the attached Exhibit B. If any utilities are separately metered as between the Commercial Unit and Residential Units, or if separate trash collection is provided for the Commercial Unit and the Residential Units, the costs of such services shall be allocated separately to the Commercial Unit and Residential Units, with the Commercial or each Residential Unit assessed based upon relative square footage within such unit type. Upon the sale of each unit to a person other than a successor declarant, the purchaser shall make a contribution to the working capital of the Association equal to two month's of regular Association assessments for the unit as further described in the Bylaws. Except upon termination of the Condominium or as otherwise provided in the Bylaws with respect to damage, destruction or condemnation, any such common profits shall be used solely for the purpose of maintaining, repairing and replacing the common



elements or for other expenses or reserves of the Association. If the board of directors determines that a particular unit's use of any commonly billed utilities or services is greater than the average of other unit owners or that the use causes an increase in fire or other insurance premiums, the board may assess to such owner the cost attributable to such extra use.

8.2 **Allocation of Voting Rights**. Each owner of a Residential or Commercial Unit shall be entitled to a vote in the affairs of the Association equal to the owner's allocation of undivided interest in the common elements for each Residential or Commercial Unit owned by such owner; provided, however, that Declarant shall have five times the voting rights otherwise allocable to each Residential or Commercial Unit owned by Declarant until the earlier of (a) when Declarant has sold and conveyed to a person other than a successor declarant 75 percent or more of the units in the Condominium, or (b) three years after the date of the first conveyance of a unit to a person other than a successor declarant. No voting rights shall attach to Parking Units. The method of voting shall be as specified in the Bylaws.

## Article 9

### **SERVICE OF PROCESS**

The designated agent to receive service of process in cases provided in subsection (1) of ORS 100.550 is named in the Condominium Information Report that has been filed in accordance with ORS 100.250(1)(a).

## Article 10

### **USE OF PROPERTY**

Each unit is to be used for the purposes set forth below. Additional limitations on use are contained in the Bylaws and the rules and regulations adopted pursuant to the Bylaws. Each unit owner shall be bound by each of such documents.

10.1 **Residential Units**. Residential Units shall be used primarily for residential purposes as defined in the Bylaws.

10.2 **Commercial Unit**. The Commercial Unit shall be used for any retail, commercial or professional purposes permitted by applicable zoning regulations; provided, however, that Commercial Units may not be used for sales of pornographic or erotic videos, literature, objects or similar merchandise, for video or amusement centers or arcades, for preparation or serving of food or beverages or as a nightclub or other facility providing nighttime entertainment.

10.3 **Parking Units**. Parking Units may be used only for parking of vehicles and may be owned only by Declarant, the Association or the owner of a Residential or Commercial Unit in the Condominium. Parking Units may not be used by any person other than Declarant, the Association or an owner, occupant or guest of a Residential or Commercial Unit in the Condominium. Transfer of Parking Units by Declarant or by or among unit owners shall be accomplished by deed or other form of real property conveyance instrument.

## Article 11

### MAINTENANCE OF COMMON ELEMENTS

11.1 **Responsibility for Maintenance.** The necessary work to maintain, repair or replace the common elements shall be the responsibility of the board of directors of the Association and shall be carried out as provided in the Bylaws.

11.2 **Mortgagee's Rights upon Failure to Maintain.** If the mortgagee of any unit determines that the board of directors is not providing an adequate maintenance, repair and replacement program for the common elements, such mortgagee, at its option, may give a notice to the board of directors by delivering same to the registered agent, setting forth the particular defect that it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within 90 days subsequent to receipt of such notice, then the mortgagee, upon written notice to the registered agent that it is exercising its proxy rights, shall have the right to attend succeeding annual or special meetings of the Association and to cast a vote for each unit on which it holds a mortgage on all business coming before such meeting. Such proxy rights shall continue until the defects listed on the notice are corrected.

11.3 **Rights of City Upon Failure to Maintain.** The provisions of this Declaration and of the Bylaws regarding the maintenance, repair and replacement of the common elements shall be deemed to be for the benefit of the City of Portland as well as the unit owners, and the City may enforce such provisions by appropriate proceedings at law or in equity. Without limitation to the foregoing, the City may deliver a written notice to the board of directors by delivering the same to the registered agent, setting forth the particular defect that it believes exists in the maintenance, repair and replacement program. If the specified defects are not corrected within 30 days after receipt of the notice, or, if such correction cannot reasonably be completed within such time, the Association fails within such time to commence and pursue the correction with reasonable diligence, then the City may take necessary curative action. In such event, the cost of correction by the City shall constitute a lien against each unit and its interest in the common elements based upon such unit's share of the common expenses as provided in this Declaration.

## Article 12

### EASEMENTS

12.1 **In General.** Each unit has an easement in and through each other unit and the common elements for all support elements and utility, wiring, heat, plumbing, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each unit and all the common elements are specifically subject to easements as required for the electrical wiring and plumbing for each unit. The Commercial Unit owner shall have an easement over the lobby and mailroom portion of the Condominium for the purpose of accessing its mailbox. Each unit owner shall have, in common with all other unit owners, an easement for ingress and egress through the Residential Section and the Commercial Unit, as the case may be, to the extent necessitated by an emergency. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common elements reserved by law. Each unit owner has an unrestricted

right of ingress and egress to his or her unit. This right is perpetual and passes with the ownership of the unit.

12.2 **Encroachments**. Each unit and all common elements shall have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection as long as the physical boundaries of the units are in substantial accord with the description of those boundaries that appears in the Declaration. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments shall exist, and the rights and obligations of owners shall not be altered in any way by the encroachment. This provision does not relieve a unit owner of liability in the case of willful misconduct of the unit owner, or relieve Declarant or any contractor, subcontractor or materialman from any liability as a result of failure to adhere to the Plat. The encroachments described in this Section 12.1 shall not be construed to be encumbrances affecting the marketability of title to any unit.

12.3 **Granting of Easements by Association**. Subject to the requirements of ORS 100.405(6), the Association may grant, execute, acknowledge, deliver and record on behalf of the unit owners leases, easements, rights-of-way, licenses, and similar interests affecting the common elements and consent to vacation of roadways within and adjacent to the Condominium. Any such instrument shall be executed by the chairperson and secretary of the Association. No such interest may be granted with regard to a limited common element unless the owners and mortgagees of the units having the right to use such limited common element consent to and join in the instrument granting the interest.

12.4 **Right of Entry**. The board of directors of the Association, managing agent, manager or any other person authorized by the board of directors shall have the right to enter any unit and limited common element in the case of an emergency originating in or threatening such unit or other condominium property, whether or not the owner is present at the time. Such persons shall also have the right to enter any unit and limited common element for the purpose of performing installations, alterations or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in this Declaration and the Bylaws, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner.

12.5 **Easements for Declarant**. Declarant and Declarant's agents, successors and assigns shall have an easement over and upon the common elements as may be reasonably necessary for the purpose of completing or making repairs to existing structures, for the purpose of carrying out sales and rental activities necessary or convenient for the sale or rental of units, including, without limitation, the right to use the units owned by Declarant as model units and the right to use a unit as a sales office, and for the purpose of discharging any other obligation of Declarant or exercising any other special Declarant right, whether arising under the Oregon Condominium Act or reserved in this Declaration or the Bylaws. For a period of ten (10) years following recording of this Declaration, Declarant shall have a right to inspect the common elements of the Condominium and the Association's records regarding inspections and maintenance of the Condominium.

12.6 **Fire Department Access Easement.** The owner of the real property adjacent to the Condominium has granted a perpetual access easement over and across a portion of such property five feet in width for purposes of emergency access by the Portland Fire Department through a document recorded in the Official Records of Multnomah County, Oregon as Document No. 2005-002973. The access easement is shown on the Plat.

### Article 13

#### **APPROVAL BY MORTGAGEES**

13.1 **Notice of Action.** Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the unit number or address of the unit on which it has (or insures or guarantees) the mortgage, any such eligible mortgage holder or eligible insurer or guarantor shall be entitled to timely written notice of the following:

(a) Any condemnation or casualty loss that affects a material portion of the Condominium or affects the unit securing its mortgage.

(b) Any 60-day delinquency in the payment of assessments or charges owed by an owner of any unit on which it holds the mortgage.

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

(d) Any proposed action that would require consent of a specified percentage of eligible mortgage holders as required by this article.

#### 13.2 Termination and Amendment to Documents.

(a) The approval of eligible holders holding mortgages on units that have at least 67 percent of the voting rights of units subject to eligible holder mortgages shall be required to terminate the legal status of the project as a condominium for reasons other than substantial destruction or condemnation of the property.

(b) Except when a greater percent is required by the Declaration or Bylaws, or a greater or lesser percent is required by the Oregon Condominium Act, the consent of the owners of units holding at least 67 percent of the voting rights and the approval of eligible holders holding mortgages on units that have at least 51 percent of the voting rights of the units subject to eligible holder mortgages shall be required for any amendments of a material nature to the Declaration or Bylaws. Any amendment to the Declaration or Bylaws that changes any of the provisions of such documents governing the following shall constitute a material change:

(1) Voting rights;

(2) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of such liens;

(3) Reduction in reserves for maintenance, repair and replacement of the common elements;

- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interests in the general or limited common elements, or rights to their use;
- (6) The boundaries of any unit;
- (7) Convertibility of units into common elements or of common elements into units;
- (8) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (9) Hazard or fidelity insurance requirements;
- (10) Imposition of any restrictions on the leasing of units;
- (11) Imposition of any restriction on the right of a unit owner to sell or transfer his or her unit;
- (12) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than specified in this Declaration or the Bylaws;
- (13) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (14) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

(c) An addition or amendment to the Declaration or Bylaws shall not be considered material for purposes of Section 13.2(b) if it is for the purpose of correcting technical errors, or for clarification only. Any eligible mortgage holder who receives a written request to approve any termination, additions or amendments and who does not deliver or post to the requesting party a negative response within 30 days shall after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, be deemed to have approved such request.

13.3 **Additional Approvals.** In addition to any other approvals required by the Oregon Condominium Act, this Declaration or the Bylaws, the prior written approval of two-thirds of the holders of first mortgages on units in the Condominium (based upon one vote for each first mortgage owned) or unit owners (other than Declarant) must be obtained for the following:

- (a) Abandonment or termination of the Condominium regime.
- (b) Any change in the pro rata interest or obligations of any individual unit for (a) purpose of levying assessments or charges or allocating distributions of hazard insurance

proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each unit in the common elements.

(c) The partition or subdivision of any unit.

(d) Abandonment, partition, subdivision, encumbrance, sale or transfer of the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause.

(e) Use of hazard insurance proceeds for losses to any condominium property, whether to units or to common elements, for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the units and/or common elements of the condominium project.

13.4 **Notice to First Mortgagees of Defaults.** Any first mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the owner of the mortgaged unit of any obligation under this Declaration, the rules and regulations or the Bylaws that is not cured within 60 days.

## Article 14

### **ASSOCIATION OF UNIT OWNERS**

14.1 **Organization.** Upon the recording of this Declaration an association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management and operation of the Condominium. The name of this association shall be “Thurman Street Lofts Condominium Owners Association,” and the Association shall be an Oregon nonprofit corporation.

14.2 **Membership; Board of Directors.** Each unit owner shall be a member of the Association. The affairs of the Association shall be governed by a board of directors as provided in the Bylaws.

14.3 **Powers and Duties.** The Association shall have such powers and duties as may be granted to it by the Oregon Condominium Act, including each of the powers set forth in ORS 100.405(4), together with such additional powers and duties afforded it by this Declaration or the Bylaws.

14.4 **Adoption of Bylaws, Declarant Control of Association.** Upon the execution and the recording of this Declaration, Declarant shall adopt Bylaws for the Association, which Bylaws are attached as Exhibit D. Declarant specifically reserves the right to control the Association by appointing the interim directors of the Association until the organizational and turnover meeting of the Association has been held and the unit owners have elected regular directors as provided in Sections 2.2 and 3.4 of the Bylaws. In addition, Declarant shall have the right to consent to any amendment to the Declaration or the Bylaws as provided in Section 15.2 below and Section 9.2 of the Bylaws, and a weighted vote in the Association as provided in Section 8.2 above.

## Article 15

### AMENDMENT

15.1 **How Proposed.** Amendments to the Declaration shall be proposed by either a majority of the board of directors or by unit owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

15.2 **Approval Required.** Except as may otherwise be provided in this Declaration or by the Oregon Condominium Act, this Declaration may be amended if such amendment is approved by unit owners holding 75 percent of the voting rights of the Condominium, without regard to any weighted vote otherwise allocable to units owned by Declarant, and by mortgagees to the extent required by Article 13. Declarant's prior written consent shall also be required so long as Declarant owns 25 percent or more of the units in the Condominium, but no such consent shall be required after three years from the date of conveyance of the first unit to a person other than a successor declarant. Except as otherwise permitted by the Oregon Condominium Act, no amendment may change the size, location, allocation of undivided interest in the common elements, the method of determining liability for common expenses, the method of determining the right to common profits, or the method of determining voting rights of any unit unless such amendment has been approved by the owners and mortgagees of the affected unit. Any amendment that would limit or diminish any special Declarant rights established in this Declaration or the Bylaws shall require the written consent of Declarant. Any provision of this Declaration pertaining to the Commercial Unit may not be amended without the written consent of the owner of the Commercial Unit.

15.3 **Recordation.** The amendment shall be effective upon recordation in the Deed Records of Multnomah County, Oregon, of the Declaration as amended or of the amendment thereto, certified to by the chairperson and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Oregon Condominium Act, and approved by the county assessor and the Real Estate Commissioner if such approvals are required by the Oregon Condominium Act.

## Article 16

### SEVERABILITY

Each provision of this Declaration and the Bylaws shall be deemed independent and severable, and the validity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision of this Declaration or the Bylaws.

Article 17

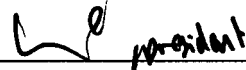
**APPLICABILITY**

Each unit owner, including Declarant as to any unsold unit, shall be subject to all of the rights and duties assigned to unit owners under the terms of the Declaration and Bylaws. All present and future owners, tenants, subtenants and occupants of units, and all present and future employees, agents, visitors and licensees of unit owners, shall be subject to and comply with the provisions of this Declaration, the Bylaws and all rules and regulations adopted thereunder, as they may be amended from time to time.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first set forth above.

**W & K DEVELOPMENT LLC**, an Oregon  
limited liability company

By: **PHK Investments, Inc.**, an Oregon  
corporation, Member

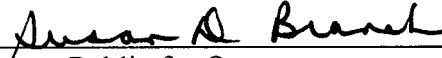
By:   
Patrick H. Kessi, President

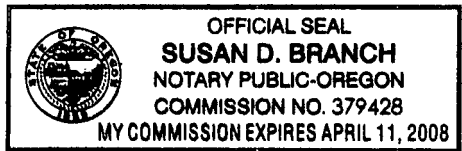
By: **Wenker Enterprises LLC**, an Oregon  
limited liability company, Member

By:   
Geoff Wenker, Member

STATE OF OREGON         )  
  ) ss.  
County of Multnomah     )

The foregoing instrument was acknowledged before me this 31 day of December  
2005 by Patrick H. Kessi, as President of PHK Investments, Inc., an Oregon corporation, as  
Member of W & K Development LLC, an Oregon limited liability company, on its behalf.

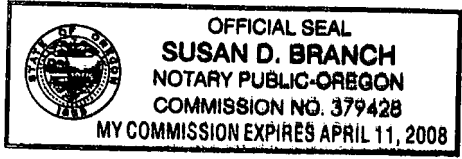
  
Notary Public for Oregon  
My commission expires: 4-11-08  
Commission No.:





STATE OF OREGON            )  
  ) ss.  
County of Multnomah    )

The foregoing instrument was acknowledged before me this 21 day of December, 2005 by Geoff Wenker, Member of Wenker Enterprises LLC, an Oregon Limited Liability Company, as Member of W & K Development LLC, an Oregon limited liability company, on its behalf.



Susan D Branch  
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: 4-11-08  
Commission No.:

The foregoing Declaration is approved this 10<sup>th</sup> day of FEBRUARY, 2006.

**ASSESSOR AND TAX COLLECTOR  
FOR MULTNOMAH COUNTY**

By [Signature]  
\_\_\_\_\_

The foregoing Declaration is approved pursuant to ORS 100.110 this 30<sup>th</sup> day of January, 2006 and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within two (2) years from this date.

**SCOTT W. TAYLOR,  
Real Estate Commissioner**

By Laurie Skillman  
\_\_\_\_\_  
Laurie Skillman

## **EXHIBIT A**

### **Legal Description**

THE REAL PROPERTY DESCRIBED AS THAT TRACT OF LAND DESCRIBED IN DOCUMENT NO. 2004-217917, MULTNOMAH COUNTY DEED RECORDS, BEING LOT 15, TOGETHER WITH A PORTION OF LOTS 14 AND 16, BLOCK 319, "BALCH'S ADDITION TO THE CITY OF PORTLAND", SITUATED IN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, SAID POINT BEING A SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "W.B. WELLS & ASSOC. INC." LOCATED AT THE SOUTHWEST CORNER OF LOT 9, "THURMAN II ROWHOUSES"; THENCE WEST, ALONG THE SOUTH LINE OF SAID LOTS 16, 15 AND 14, A DISTANCE OF 75.00 FEET TO THE SOUTHWEST CORNER OF SAID DOCUMENT NO. 2004-217917 TRACT; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 9, ALONG THE WEST LINE OF SAID DOCUMENT NO. 2004-217917 TRACT, A DISTANCE OF 100.00 FEET TO THE NORTH LINE OF SAID LOT 14 AND THE SOUTH RIGHT-OF-WAY LINE OF N.W. THURMAN STREET; THENCE EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE AND THE NORTH LINE OF SAID LOTS 14, 15 AND 16, A DISTANCE OF 75.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 9; THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT 9, A DISTANCE OF 100.00 FEET TO THE INITIAL POINT.

**EXHIBIT B****Unit Square Footages and Undivided Interests**

<u>Unit</u>	<u>Type</u>	<u>Square Footage</u>	<u>Undivided Interest In Common Elements</u>	<u>Residential Interest in Common Elements</u>
201	Residential	883	883/19447	883/16975
202	Residential	1072	1072/19447	1072/16975
203	Residential	832	832/19447	832/16975
204	Residential	653	653/19447	653/16975
205	Residential	934	934/19447	934/16975
301	Residential	1039	1039/19447	1039/16975
302	Residential	1072	1072/19447	1072/16975
303	Residential	845	845/19447	845/16975
304	Residential	639	639/19447	639/16975
305	Residential	1073	1073/19447	1073/16975
401	Residential	1039	1039/19447	1039/16975
402	Residential	1072	1072/19447	1072/16975
403	Residential	1514	1514/19447	1514/16975
404	Residential	1073	1073/19447	1073/16975
501	Residential	1324	1324/19447	1324/16975
502	Residential	1911	1911/19447	1911/16975
	TOTAL RESIDENTIAL	16975		
101	Commercial	486	486/19447	
PU1	Parking	136	136/19447	
PU2	Parking	130	130/19447	
PU3	Parking	130	130/19447	
PU4	Parking	130	130/19447	
PU5	Parking	130	130/19447	
PU6	Parking	130	130/19447	
PU7	Parking	130	130/19447	
PU8	Parking	150	150/19447	
PU9	Parking	134	134/19447	
PU10	Parking	130	130/19447	
PU11	Parking	130	130/19447	
PU12	Parking	130	130/19447	
PU13	Parking	130	130/19447	
PU14	Parking	133	133/19447	
PU15	Parking	133	133/19447	
	TOTAL	19447	1	

EXHIBIT C

Storage Assignments

<u>Unit</u>	<u>Storage Assignment</u>
201	--
202	SS-109
203	--
204	--
205	SS-119
301	SS-117
302	SS-110
303	SS-112
304	--
305	SS-111
401	SS-113
402	SS-114
403	SS-115
404	SS-116
501	SS-118
502	SS-120

**EXHIBIT D**

**BYLAWS**

**OF**

**THURMAN STREET LOFTS CONDOMINIUM OWNERS ASSOCIATION**

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**BYLAWS OF  
THURMAN STREET LOFTS CONDOMINIUM OWNERS ASSOCIATION**

**Article 1**

**PLAN OF CONDOMINIUM OWNERSHIP**

1.1 **Name and Location.** These are the bylaws of the **THURMAN STREET LOFTS CONDOMINIUM OWNERS ASSOCIATION** (the “**Association**”). Thurman Street Lofts Condominium (the “**Condominium**”) is located in the City of Portland, Multnomah County, Oregon, and has been submitted to the Oregon Condominium Act by a declaration recorded simultaneously with these Bylaws (the “**Declaration**”). The location of the Condominium is more specifically described in the Declaration.

1.2 **Principal Office.** The principal office of the Association shall be located at such address as may be designated by the board of directors from time to time.

1.3 **Purposes.** This Association is formed under the provisions of the Oregon Condominium Act to serve as the means through which the unit owners may take action with regard to the administration, management and operation of the Condominium.

1.4 **Applicability of Bylaws.** The Association, all unit owners, and all persons using the Condominium property shall be subject to these Bylaws and to all rules and regulations that may be adopted pursuant to these Bylaws.

1.5 **Composition of Association.** The Association shall be composed of all the unit owners of the Condominium, including W & K Development, LLC and its successors and assigns (the “**Declarant**”), and the Association, itself, to the extent any of these own any unit or units of the Condominium.

1.6 **Incorporation.** The Association shall be incorporated under the Oregon Non-Profit Corporation Law. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the bylaws of the incorporated association.

1.7 **Definitions.** The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

**Article 2**

**MEETINGS OF ASSOCIATION**

2.1 **Place of Meetings.** The Association shall hold meetings at such suitable place convenient to the unit owners as may be designated by the board of directors from time to time.

2.2 **Organizational and Turnover Meeting.** Within three years after the date of conveyance of the first unit to a person other than a successor declarant, or within ninety (90) days after Declarant has sold and conveyed to a person other than a successor declarant seventy-five percent (75%) or more of the units in the Condominium, whichever is earlier, the Declarant shall call the first meeting of the unit owners to organize the Association and to elect directors. Notice of such meeting shall be given to all owners as provided in Section 2.5. If Declarant fails to call the meeting, the meeting may be called and notice given by any unit owner or mortgagee of a unit. The expense of giving notice shall be paid or reimbursed by the Association. At the meeting, Declarant shall deliver to the Association such information and documents as may be required by the Oregon Condominium Act. Nothing in this Section shall be construed as preventing the Declarant from calling the organizational and turnover meeting prior to such date, or from calling informal, informational meetings of the unit owners.

2.3 **Annual Meetings.** The annual meetings of the Association shall be held on such date each year as may be established by the board of directors from time to time, or if the board does not establish such a date, then in the month of February at such hour and on such date as the chairperson may designate, or if the chairperson should fail to designate such date by the first day of February then on the last Tuesday in February. The annual meetings shall be for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting.

2.4 **Special Meetings.** Special meetings of the Association may be called by the chairperson or by a majority of the board of directors, and must be called by such officers upon receipt of a written request from at least thirty percent (30%) of the voting rights stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice of meeting.

2.5 **Notice of Meetings.** Notice of the annual meeting and all other meetings of the Association stating the time and place and the purpose or purposes for which the meeting is being called shall be given by the chairperson or secretary. Such notice shall be in writing and mailed not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting to each unit owner at his or her address as it appears on the books of the Association and to any first mortgagee requesting such notice. Proof of such mailing shall be given by the affidavit of the person giving the notice. For a period of ten (10) years following recording of the Declaration, notices of meetings shall also be given to Declarant in the same manner as given to unit owners, and Declarant or a representative of Declarant shall be entitled to attend such meetings. Notice of meeting may be waived by any unit owner before or after meetings. When a meeting is adjourned for less than 30 days, no notice of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

2.6 **Voting.** Each owner of a Residential or Commercial Unit shall have a vote equal to the unit's allocation of undivided interest in the common elements of the Condominium; provided, however, that Declarant shall have five times the voting rights otherwise allocable to each Residential or Commercial Unit owned by Declarant until the earlier of (a) when Declarant has sold and conveyed to a person other than a successor declarant 75 percent or more of the units in the Condominium, or (b) three years after the date of the first conveyance of a unit to a person other than a successor declarant. No voting rights shall attach to Parking Units. The

Declarant shall be entitled to vote as the unit owner of any then existing Residential or Commercial Unit retained by the Declarant, and the board of directors shall be entitled to vote on behalf of any Residential or Commercial Unit that has been acquired by or on behalf of the Association; provided, however, that the board of directors shall not be entitled to vote such units in any election of directors.

2.7 **Absentee Ballots and Proxies.** A vote may be cast in person, by absentee ballot or by proxy. A proxy given by a unit owner to any person who represents such owner at meetings of the Association shall be in writing and signed by such owner, and shall be filed with the secretary at any time prior to or at the start of the meeting. An owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting or to the board of directors if a vote is being conducted by written ballot in lieu of a meeting. A proxy shall not be valid if it is undated or purports to be revocable without notice. A proxy shall terminate one year after its date unless the proxy specifies a shorter term. Every proxy shall automatically cease upon sale of the unit by its owner. A unit owner may pledge or assign such owner's voting rights to a mortgagee. In such a case, the mortgagee or its designated representative shall be entitled to receive all notices to which the unit owner is entitled under these Bylaws and to exercise the unit owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the board of directors. Any first mortgagee may designate a representative to attend all or any meetings of the Association.

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

2.9 **Tenants and Contract Vendors.** Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a unit shall be exercised by the owner/landlord. Unless otherwise stated in the contract, all voting rights allocated to a unit shall be exercised by the vendee of any recorded land sale contract on the unit.

2.10 **Quorum of Unit Owners.** At any meeting of the Association, members holding twenty percent (20%) of the voting rights, present in person or by proxy, shall constitute a quorum. The subsequent joinder of a unit owner in the action taken at a meeting by signing and concurring in the minutes of the meeting shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a unit owner or owners. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. The quorum for the adjourned meeting shall be reduced to ten percent (10%) of the voting rights, present in person or by proxy.

2.11 **Majority Vote.** The vote of the holders of more than fifty percent (50%) of the voting rights, present in person or by proxy at a meeting at which a quorum is constituted, shall be binding upon all unit owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these Bylaws.

2.12 **Order of Business.** The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

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

2.14 **Ballot Meetings.**

(a) At the discretion of the board of directors, any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every member that is entitled to vote on the matter; provided, however, that a ballot meeting may not substitute for the organizational and turnover meeting described in Section 2.2 or, if a majority of the units are the principal residences of the occupants, for the annual meetings of the Association. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(b) The board of directors shall provide owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. If, at least three (3) days before written ballots are scheduled to be mailed or otherwise distributed, at least ten percent (10%) of the owners petition the board of directors requesting secrecy procedures, a written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the owner and instructions for marking and returning the ballot. The notice shall state the general subject matter of the vote, the right of the owners to request secrecy procedures, the date after which

ballots may be distributed, the date and time by which any petition must be received by the board requesting secrecy procedures and the address where any petition must be received. Notwithstanding the applicable provisions of paragraph (c) of this Section, written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

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

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

### Article 3

#### **BOARD OF DIRECTORS**

3.1 **Number and Qualification.** The affairs of the Association shall be governed by a board of directors composed of one (1) interim director or three (3) to four (4) regular directors, as provided in Sections 3.2 and 3.3 of this Article. All directors, other than interim directors appointed by Declarant, shall be owners or co-owners of units of the Condominium. For purposes of this Section, the officers members, partners and any duly appointed employees of any corporation, limited liability company or partnership shall be considered co-owners of any units owned by such corporation, limited liability company or partnership.

3.2 **Interim Directors.** Upon the recording of the Declaration submitting the Condominium to the Oregon Condominium Act the Declarant shall appoint an interim board of one (1) director, who shall serve until replaced by Declarant or his or her successors have been elected by the unit owners as provided below.

3.3 **Election and Term of Office.** At the first organizational and turnover meeting called by Declarant pursuant to Section 2.2 of these Bylaws, the interim directors shall resign and three (3) successors shall be elected. There shall be two classes of directors, Commercial Directors and Residential Directors. Commercial Directors shall be elected by the Commercial Unit owner, and Residential Directors shall be elected by the Residential Unit owners, based upon the voting rights assigned to such units. At the first organizational meeting, one (1) Commercial Director shall be elected by the Commercial Unit owner to serve until the second annual meeting after his or her election; and two (2) Residential Directors shall be elected by the Residential Unit owners, one (1) to serve until the next annual meeting and one (1) to serve until the second annual meeting after his or her election. The director receiving the greatest number of votes shall serve for the two-year term. In the event of a tie, the terms shall be determined by lottery. Thereafter, at the expiration of the initial term of office of each respective director, his or her successor shall be elected to serve for a term of two years, so that the term of not less than one-third of the directors shall expire annually. Directors shall hold office until their respective successors have been elected by the unit owners. Election shall be by plurality. Upon a vote of the majority of the voting rights of owners of Residential Units present in person or by proxy at a meeting called for such purpose, the number of directors may be increased to four (4) directors. Upon such increase, one additional Residential Director shall be elected to serve until the second annual meeting after his or her election. Thereafter, each successor shall be elected to serve for a two-year term.

3.4 **Vacancies.** Vacancies in Commercial Directors shall be filled by the Commercial Unit owner. Vacancies in Residential Directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the remaining Residential Director. Each person so elected shall be a director until a successor is elected to fill the unexpired term at the next annual meeting of the Association or the next special meeting of the Association called for that purpose. Vacancies in interim directors shall be filled by Declarant.

3.5 **Removal of Directors.** At any regular or special meeting of the Association duly called, any one or more of the Residential Directors, other than interim directors, may be removed with or without cause by a majority vote of the Residential Unit owners present in person or by proxy, and a successor shall be elected at that meeting to fill the vacancy thus created. The notice of any such meeting shall state that such removal is to be considered, and any director whose removal has been proposed shall be given an opportunity to be heard at that meeting. Commercial Directors may be removed, at any time, by a the Commercial Unit owner, who shall elect a replacement.

3.6 **Powers and Duties.** The board of directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the board of directors by the unit owners. The powers and duties to be exercised by the board of directors shall include, but shall not be limited to the following:

(a) Operation, care, upkeep, maintenance, repair and replacement of the general and limited common elements and Association property.



(b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.

(c) Preparation and adoption of budgets, preparation, review and update of reserve studies and assessment and collection of the common expenses, all in accordance with the provisions of these Bylaws.

(d) Employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep and repair of the common elements.

(e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association; provided, however, the board may not incur or commit the Association to incur legal fees in excess of \$5,000 for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$100,000 unless the unit owners have enacted a resolution authorizing the incurring of such fees or contract by a vote of seventy-five percent (75%) of the total voting rights of the Association. These limitations shall not be applicable to legal fees incurred in defending the Association and the board of directors from claims or litigation brought against them. The limitations set forth in this paragraph shall increase by ten percent on each fifth anniversary of the recording of the Declaration. To the extent required by ORS 100.490, the board shall notify the owners prior to instituting litigation or administrative proceedings. With regard to any pending litigation involving the Association, the board shall periodically report to the unit owners as to the status (including settlement offers), progress, and method of funding such litigation. Nothing in this paragraph shall be construed as requiring the board to disclose any privileged communication between the Association and its counsel.

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Preparation and distribution of annual financial statements in accordance with these Bylaws and annual preparation and filing of all required income tax returns or forms for the Association.

(h) Purchasing units of the Condominium at foreclosure or other judicial sales in the name of the Association, or its designee, on behalf of all the unit owners as provided in these Bylaws.

(i) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with units of the Condominium acquired by the Association or its designee on behalf of all the unit owners.

(j) Obtaining insurance or bonds pursuant to the provisions of these Bylaws and at least annually review the insurance coverage of the Association.

(k) Making additions and improvements to, or alterations of, the common elements; provided, however, that no such project may be undertaken by the board if the total cost will exceed the amount of \$20,000 unless the unit owners have enacted a resolution authorizing the project by a majority vote of the members, except that no such vote shall be

required for work that is urgently needed for life, safety or structural integrity reasons. This limitation shall not be applicable to maintenance, repairs or replacement undertaken pursuant to paragraph (a) above. The limitation set forth in this paragraph shall increase by \$1,000 on each anniversary of the recording of the Declaration.

(l) Modify, close, remove, eliminate or discontinue the use of a general common element facility or improvement or portion of the common element landscaping, except that modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of the unit owners voting on such matter at a meeting or by written ballot held or conducted in accordance with these Bylaws.

(m) Designating one or more committees which, to the extent provided in the resolution designating the committee, shall have the powers of the board of directors in the management of the affairs of the Association. At least one member of each committee shall be a member of the board of directors.

(n) Enforcement by legal means of the provisions of the Oregon Condominium Act, the Declaration, these Bylaws and any rules and regulations adopted hereunder. Nothing in these Bylaws shall be construed as requiring the Association to take any specific action to enforce violations.

(o) Maintain a current mailing address for the Association, file an Annual Report and any amendment in accordance with ORS 100.250, and maintain and keep current the information required to enable the Association to comply with ORS 100.480(7).

(p) Subject to the restrictions in subsection (e) above, initiate or intervene in litigation or administrative proceedings (including mediation under Article 10 of these Bylaws) in the name of the Association, and without joining the individual unit owners, as permitted under ORS 100.405(4)(e) and (11); provided that no litigation or administrative proceeding may be initiated on a matter relating to or affecting the unit or interest of a unit owner unless the unit owner has consented in writing to such action after full disclosure of the potential cost, duration and outcomes of the proposed litigation or administrative proceeding.

(q) Establish, periodically update, and implement a Maintenance Plan that identifies those components of the common elements requiring periodic maintenance, including a maintenance manual defining how and when such maintenance should be performed and setting forth the estimated cost of such maintenance. The Maintenance Plan shall provide for not less than annual inspections of the property for evidence of water intrusion or other needed repairs by a knowledgeable independent party, and the board shall reasonably address any matters revealed by the inspection. For a period of ten (10) years following recording of the Declaration, Declarant shall be notified prior to the inspections, shall have a right for Declarant or its employees or contractors to be present during the inspections and have a right to receive a copy of the inspection reports. The operating and reserve budgets of the Association shall take into account the costs of complying with the Maintenance Plan. Changes or updates to the Maintenance Plan should be based upon the advice of competent experts or consultants.

3.7 **Managing Agent or Manager.** On behalf of the Association, the board of directors may employ or contract for a managing agent or a manager at a compensation to be established by the board of directors. Any such management agreement shall be terminable by the Association upon not more than 90 days' written notice thereof. The board of directors may delegate to the managing agent or manager such duties and powers as the board of directors may authorize. In the absence of such appointment, the board of directors shall act as manager.

3.8 **Contracts Entered into by Declarant or Interim Board.** Notwithstanding any other provision of these Bylaws, any management contracts, service contracts or employment contracts entered into by the Declarant or the interim board on behalf of the Association shall have a term not in excess of three years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or board of directors upon not less than 30 days' notice to the other party given not later than 60 days after election of the permanent board at the organizational and turnover meeting described in Section 2.2 of these Bylaws or in the case of management contracts, at any time after such organizational and turnover meeting.

3.9 **Organizational Meeting.** Unless otherwise agreed by the board, within fourteen (14) days following the annual meeting of the Association or following any meeting at which an election of directors has been held, the board of directors shall hold an organization meeting at such place and time as shall have been fixed by the directors at the meeting at which the election was held.

3.10 **Regular and Special Meetings.** Regular meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the board of directors may be called by the chairperson and must be called by the secretary at the written request of at least two directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting, and shall state the time, place and purpose of such meeting. For a period of ten (10) years following recording of the Declaration, notices of meetings shall also be given to Declarant in the same manner as given to Directors. Unless other rules of order are adopted by resolution of the Association or the board of directors, all meetings of the board of directors shall be conducted according to the latest edition of *Robert's Rules of Order* published by Robert's Rules Association.

3.11 **Open Meetings.**

(a) All meetings of the board of directors shall be open to unit owners and, for a period of ten (10) years following recording of the Declaration, to Declarant or a representative of Declarant, except that, in the discretion of the board, the following matters may be considered in executive session: (i) consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters; (ii) personnel matters, including salary negotiations and employee discipline; (iii) negotiation of contracts with third parties; and (iv) collection of unpaid assessments. Except in the case of an emergency, the board of directors shall vote in an open meeting whether to meet in executive session. If the board of directors votes to meet in executive session, the presiding officer shall state the general nature of the action to be considered, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in the

executive session shall be included in the minutes of the meeting, and any contract or action considered in executive session shall not become effective unless the board, following the executive session, reconvenes in open meeting and votes on the contract or action, which shall be reasonably identified in the open meeting and included in the minutes.

(b) Meetings of the board of directors may be conducted by telephonic communication or by other means of communication that allows all members of the board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting, except that if a majority of the units are principal residences of the occupants, then: (i) for other than emergency meetings, notice of each board of directors' meeting shall be posted at a place or places on the property at least three (3) days prior to the meeting, or notice shall be provided by a method otherwise reasonably calculated to inform the unit owners of such meeting; and (ii) only emergency meetings of the board of directors may be conducted by telephonic communication or such other means. The meeting and notice requirements of this Section may not be circumvented by chance or social meetings or by any other means.

3.12 **Waiver of Notice.** Any director may, at any time, waive notice of any meeting of the board of directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board shall constitute a waiver of notice by such director, except where the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all of the directors are present at any meeting of the board, no notice to directors shall be required and any business may be transacted at such meeting.

3.13 **Quorum of Board of Directors.** At all meetings of the board of directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the board of directors. If at any meeting of the board of directors less than a quorum should be present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice to directors.

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

3.15 **Liability and Indemnification of Directors, Officers and Manager.** A member of the board of directors or an officer of the Association shall not be liable to the Association, any unit owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. A director appointed under Section 3.2 of these Bylaws and Section 14.4 of the Declaration, or acting under ORS 100.200, shall not be liable to the Association, any unit owner or any third party under ORS 65.357-65.361, ORS 100.417 or associated rules of common law for any damage, loss or prejudice suffered or claimed on account of any action or failure to act that represents the exercise of

authority established in Section 14.4 of the Declaration and ORS 100.200, including any action or failure to act requested by the Declarant or resulting from any prior or concurrent duty or loyalty owed by such director to the Declarant; provided that nothing in this section limits the liability of the Declarant for such actions or failure to act by a director. In the event any member of the board of directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The manager of the Association, and its officers and employees, shall not be liable to the Association, the unit owners or any third party on account of any action or failure to act in the performance of its duties as manager, except for acts of gross negligence or intentional acts. Prior to the Organizational and Turnover Meeting described in Section 2.2, the manager shall not be liable to the Association, any unit owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act that represents the exercise of authority established in Section 14.4 of the Declaration and ORS 100.200, including any action or failure to act requested by the Declarant or resulting from any prior or concurrent duty or loyalty owed by such director to the Declarant; provided that nothing in this section limits the liability of the Declarant for such actions or failure to act by the manager. In the event the manager is threatened with or made a party to any proceeding, the Association shall defend the manager against such claims and indemnify the manager and its officers and employees from any such claims to the maximum extent permitted by law.

3.16 **Insurance.** The board of directors shall obtain the insurance and fidelity bonds required in Article 8 of these Bylaws. In addition, the board of directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association or unit owners. The board of directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the Condominium.

## Article 4

### **OFFICERS**

4.1 **Designation.** The principal officers of the Association shall be the chairperson, the secretary and the treasurer, all of whom shall be elected by the board of directors. The directors may appoint a vice chairperson, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary. The chairperson shall be a member of the board of directors, but the other officers need not be directors or unit owners.

4.2 **Election of Officers.** The officers of the Association shall be elected annually, by the board of directors at the organization meeting of each new board and shall hold office at the pleasure of the board. If any office shall become vacant, the board of directors shall elect a successor to fill the unexpired term at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

4.3 **Removal of Officers.** Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and a successor may be elected at any

regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose.

4.4 **Chairperson.** The chairperson shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the board of directors. The chairperson shall have all of the general powers and duties that are usually vested in the chief executive officer of an association, including but not limited to the power to appoint committees from among the unit owners from time to time as the chairperson may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4.5 **Secretary.** The secretary shall keep the minutes of all proceedings of the board of directors and the minutes of all meetings of the Association. He or she shall attend to the giving and serving of all notices to the unit owners and directors and other notices required by law. The secretary shall keep the records of the Association, except for those of the treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the chairperson. In addition, the secretary shall act as vice chairperson, taking the place of the chairperson and performing the chairperson's duties whenever the chairperson is absent or unable to act, unless the directors have appointed another vice chairperson.

4.6 **Treasurer.** The treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of required financial statements. He or she shall be responsible for overseeing the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the board of directors, and shall disburse or cause to be disbursed funds of the Association upon properly authorized vouchers. The treasurer shall perform all other duties incident to the office of treasurer of an association and such other duties as may be assigned to him or her by the board of directors.

4.7 **Execution of Instruments.** All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the board of directors and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the chairperson. All checks shall be signed by the treasurer, or in the absence or disability of the treasurer, by the chairperson or any duly elected assistant treasurer, or by the manager.

4.8 **Compensation of Officers.** No officer who is a member of the board of directors shall receive any compensation from the Association for acting as an officer, unless such compensation is authorized by a resolution duly adopted by the unit owners. The board of directors may fix any compensation to be paid to any officers who are not also directors.

## Article 5

### **BUDGET, EXPENSES AND ASSESSMENTS**

5.1 **Budget.** The board of directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the common expenses expected to be incurred, less any previous overassessment and plus any underassessment, and assess the common expenses to each unit owner in the proportion set forth in the Declaration. The budget shall provide for a reserve fund in accordance with Section 5.5 below and shall take into account the Maintenance Plan adopted pursuant to Section 3.6(q) above. Within thirty (30) days after adopting the annual budget, the board of directors shall provide a summary of the budget to all owners. If the board of directors fails to adopt an annual budget, the last adopted budget shall continue in effect.

5.2 **Determination of Common Expenses.** Common expenses shall include:

- (a) Expenses of administration, including management fees.
- (b) Expenses of maintenance, repair or replacement of common elements, any other portions of the Condominium required to be maintained by the Association pursuant to the Declaration or these Bylaws, and any Association property.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) A general operating reserve, including an amount sufficient to cover the deductible under the property damage insurance policy.
- (e) Reserve for replacements, repairs and maintenance.
- (f) Any deficit in common expenses for any prior period.
- (g) Utilities and services for the common elements and other utilities and services with a common meter or commonly billed, such as trash collection, central heating and hot water system, water and sewer. If the board of directors determines that a particular unit's use of such services is greater than the average of other unit owners, the board may assess to such owner the cost attributable to such extra use.
- (h) Any other items properly chargeable as an expense of the Association.

5.3 **Assessment of Common Expenses.**

(a) **Obligation to pay.** All unit owners shall be obligated to pay common expenses assessed to them by the board of directors on behalf of the Association pursuant to these Bylaws and the Declaration. No unit owner by the owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the owner of use or enjoyment of any of the common elements or by abandonment by the owner of the owner's unit. A unit owner may not claim an offset against an assessment for failure of the Association to perform its obligations and no unit owner may offset amounts owing or claimed

to be owing by the Association or Declarant to the unit owner. Declarant shall be assessed as the unit owner of any unsold unit, but such assessments shall be prorated to the date of sale of the unit. The board of directors, on behalf of the Association shall assess the common expenses against the unit owners from time to time, and at least annually, and shall take prompt action to collect from a unit owner any common expense due that remains unpaid for more than thirty (30) days from the due date for its payment. The board may elect to round assessments to the nearest dollar.

(b) **Working capital fund.** At the time of closing of the initial sale of each unit to a person other than a successor declarant and thereafter on any subsequent sale of a unit, the purchaser shall make a contribution to the working capital of the Association equal to two months' regular association assessments for the unit, which sums shall be held in a segregated working capital fund established in the name of the Association. At the time of the organizational and turnover meeting, the Declarant shall pay such contribution for all unsold units, but may obtain reimbursement for such sums from the purchaser upon the sale of each such unit. Such contribution shall be in addition to the regular monthly common expense assessment and shall not be considered as an advance payment of regular assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund at the time of the organizational and turnover meeting. Declarant may not use the working capital fund to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association. After the organizational and turnover meeting, the board of directors, at its discretion, may use working capital funds for regular operating expenses, extraordinary items of maintenance, repair or replacement or capital additions, or may deposit all or a portion of such funds into the reserve account.

(c) **Commencement of regular operating expense assessments.** Regular monthly assessments for common operating expenses shall commence upon closing of the first sale of a unit in the Condominium.

(d) **Commencement of assessment for replacement reserves.** Regular monthly assessments for replacement reserves as described in Section 5.5 for all units in the Condominium shall commence upon the closing of the sale of the first unit in the Condominium. Declarant may elect to defer payment of such reserve assessments to the Association for each unit owned by Declarant until the closing of the sale of such unit, but not beyond the date of the turnover meeting referred to in Section 2.2 above, or if no turnover meeting is held, the date the owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all reserve assessments.

#### 5.4 **Special or Extraordinary Assessments.**

(a) **Special Assessments for Capital Improvements.** In the case of any duly authorized capital improvement to the common elements, the board of directors may by resolution establish separate assessments for the same, which may be treated as capital contributions by the unit owners, and the proceeds of which shall be used only for the specific capital improvements described in the resolution. The Association shall not assess units owned



by the Declarant for additional capital improvements to the Condominium without the written consent of Declarant as long as Declarant owns more than two units.

(b) **Other Special or Extraordinary Assessments.** In the event the board of directors determines that the assessments established upon adoption of the budget as provided in Section 5.1 above will be insufficient to pay the common expenses, or the board of directors determines that additional funds will be needed to meet unexpected or unbudgeted common expenses, the board may levy an additional special or extraordinary assessment. Such assessment shall be allocated to each unit in the same proportion set forth in the Declaration, and may be payable in installments over a specified period, in a lump sum, or in a lump sum with option to pay in installments with interest, as determined by the board of directors.

#### 5.5 **Replacement Reserves.**

(a) **Establishment of Account.** The Declarant shall conduct a reserve study as described in paragraph (c) of this Section and establish a reserve account for replacement of those common elements all or a part of which will normally require replacement in more than three (3) and less than thirty (30) years, for significant future maintenance items as required by the Maintenance Plan established pursuant to Section 3.6(q) and for exterior painting if the common elements include exterior painted surfaces. The reserve account need not include those items that could reasonably be funded from operating assessments.

(b) **Funding of Account.** The reserve account shall be funded by assessments against the individual units for the purposes for which the reserve account is being established, which sums shall be included in the regular monthly assessment for the unit, except as otherwise provided in Section 5.3(b). The reserve account shall be established in the name of the Association.

(c) **Reserve Studies.** The board of directors annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements for the items described in paragraph (a) of this Section and may adjust the amount of payments in accordance with the study or review and may provide for other reserve items that the board of directors, in its discretion, may deem appropriate. The reserve account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (1) Identification of all items for which reserves are to be established;
- (2) The estimated remaining useful life of each item as of the date of the reserve study;
- (3) An estimated cost of maintenance, repair or replacement of each item at the end of its useful life;
- (4) An update of the Maintenance Plan based upon the advice of competent experts or consultants; and

(5) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Funds.** The reserve account shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the organizational and turnover meeting described in Section 2.2, however, the board of directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the board of directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the board of directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. In addition to the authority of the board of directors under paragraph (c) of this Section, after the organizational and turnover meeting, the Association may, on an annual basis, elect not to fund the reserve account described in paragraph (a) of this Section by unanimous vote of the owners or elect to reduce or increase future assessments for the reserve account by an affirmative vote of at least seventy-five percent (75%) of the voting power.

(e) **Sale of Units.** Nothing in this Section shall prohibit prudent investment of the reserve account. Assessments paid into the reserve account are the property of the Association and are not refundable to sellers of units. Sellers of the units, however, may treat their outstanding share of the reserve account as a separate item in any sales agreement.

5.6 **Default in Payment of Assessments.** In the event of default by any unit owner in paying any assessments to the Association, including assessed common expenses and any other charge imposed or levied by the Association pursuant to the provisions of the Declaration, these Bylaws or the Oregon Condominium Act, such unit owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on such assessment from the due date thereof, or at such greater rate as may be established by the board of directors from time to time, not to exceed the maximum lawful rate, if any. In addition, the defaulting unit owner shall pay a late charge for any assessment not paid within ten (10) days of its due date in the amount of five percent (5%) of the delinquent payment, or such other reasonable late charge or administrative fee, or both, as may be established by the board of directors from time to time by resolution that is delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing address designated by the unit owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the board of directors may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable and may terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Condominium until assessments have been brought current. The board of directors shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorneys' fees, by an action brought against such unit owner or by foreclosure of the lien upon the unit granted by the Oregon Condominium Act. The board of directors shall notify the holder

of any first mortgage upon a unit and any eligible mortgage insurer or guarantor thereof of any default not cured within sixty (60) days of the date of default.

5.7 **Foreclosure of Liens for Unpaid Assessments.** In any suit brought by the Association to foreclose a lien on a unit because of unpaid assessments, the unit owner shall be required to pay a reasonable rental for the use of the unit during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The board of directors, acting on behalf of the Association, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the unit. A suit or action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing the liens securing the same.

5.8 **Statement of Assessments.** The board of directors shall advise each unit owner in writing of the amount of assessments payable by such owner, and furnish copies of each budget on which such assessments are based to all unit owners and, if requested, to their mortgagees. The board of directors shall promptly provide any unit owner who makes a request in writing with a written statement of the owner's unpaid assessments.

5.9 **Priority of Lien; First Mortgages.** Any lien of the Association against a unit for assessments shall be subordinate to tax and assessment liens and any first mortgage of record. Where the purchaser or mortgagee of a unit obtains title to the unit as a result of foreclosure of a first mortgage, such purchaser or mortgagee, its successors and assigns, shall not be liable for any of the assessments chargeable to such unit that became due prior to the acquisition of title to such unit by such purchaser or mortgagee. Such unpaid share of assessments shall be a common expense and reallocated on a pro rata basis for all units, including the mortgaged unit. The purchaser or mortgagee shall not be relieved of the obligation to pay further assessments. A deed in lieu of foreclosure accepted by the holder of a first mortgage shall extinguish a lien filed by the Association to secure unpaid assessments under the circumstances described in ORS 100.465.

5.10 **Voluntary Conveyance.** In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an owner or an owner's agent, for the benefit of a prospective purchaser, the board of directors shall make and deliver a statement of the unpaid assessments against the prospective grantor or the unit effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid assessments against the grantor not included in the written statement.

## Article 6

### **RECORDS AND AUDITS**

6.1 **General Records.** The board of directors and the manager, if any, shall keep detailed records of the actions of the board of directors and the manager or manager, minutes of the meetings of the board of directors and minutes of the meetings of the Association. The board

of directors shall maintain a Book of Resolutions containing the rules, regulations and policies adopted by the Association, board of directors and the manager. The board of directors shall maintain a list of owners entitled to vote at meetings of the Association and a list of all mortgagees of units. All documents, information and records delivered to the Association by the Declarant pursuant to ORS 100.210 and other records of the Association shall be kept within the State of Oregon for the time periods specified in ORS 100.480.

6.2 **Financial Records and Accounts.** The board of directors or its designee shall keep within the State of Oregon financial records sufficient for proper accounting purposes and as required by the Oregon Condominium Act. All assessments shall be deposited in a separate bank account, located in the State of Oregon, in the name of the Association. All expenses of the Association shall be paid from the Association's bank account.

6.3 **Assessment Roll.** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.

6.4 **Payment of Vouchers.** The treasurer or manager shall pay all vouchers for all budgeted items and for any nonbudgeted items up to \$1,000 signed by the chairperson, managing agent, manager or other person authorized by the board of directors. Any voucher for nonbudgeted items in excess of \$1,000 shall require the authorization of the chairperson. Any checks written on reserve accounts must be signed by a member of the board of directors.

6.5 **Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the board of directors to all unit owners and to all mortgagees of units who have requested the same within ninety (90) days after the end of each fiscal year. Commencing with the fiscal year following the Turnover Meeting, if the annual assessments exceed \$75,000 for the year, then the Board of Directors shall cause such financial statements to be reviewed within 180 days after the end of the fiscal year by an independent certified public accountant licensed in Oregon in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, or if the annual assessments are \$75,000 or less, shall cause such review within 180 days after receipt of a petition requesting such review signed by at least a majority of owners. The board of directors need not cause such a review to be performed if so directed by an affirmative vote of at least sixty percent (60%) of the owners, not including votes of Declarant with respect to units owned by Declarant. Upon written request, any holder, insurer or guarantor of a first mortgage shall be entitled to an audited financial statement for the immediately preceding fiscal year at the expense of the requesting party, if one is not otherwise available.

6.6 **Notice of Sale, Mortgage, Rental or Lease.** Immediately upon the sale, mortgage, rental or lease of any unit, such unit owner shall promptly inform the secretary or manager of the name and address of the vendee, mortgagee, lessee, or tenant.

6.7 **Availability of Records.** Except as otherwise provided in ORS 100.480(5)(b), during normal business hours or under other reasonable circumstances, the Association shall make reasonably available for examination and, upon written request, available for duplication, by unit owners, lenders and holders, insurers, or guarantors of any first mortgage that make the request in good faith for a proper purpose, current copies of the Declaration, bylaws, other rules concerning the Condominium, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. The Association, within ten (10) business days after receipt of a written request by a unit owner, shall furnish copies of such documents to the requesting unit owner. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The board of directors, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of such documents, information or records. The fee may include reasonable personnel costs incurred to furnish the information.

6.8 **Statement of Assessments Due.** The Association shall provide, within ten (10) business days of receipt of a written request from an owner, a written statement that provides: (a) the amount of assessments due from the owner and unpaid at the time the request was received, including regular and special assessments, fines and other charges, accrued interest, and late payment charges; (b) the percentage rate at which interest accrues on assessments that are not paid when due; and (c) the percentage rate used to calculate the charges for late payment or the amount of a fixed rate charge for late payment. The Association is not required to comply with this Section if the Association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.

## Article 7

### **MAINTENANCE AND USE OF CONDOMINIUM PROPERTY**

7.1 **Maintenance and Repair.** Except as otherwise provided in Section 7.3 for damage or destruction caused by casualty:

(a) **Units.** All maintenance of and repairs to any unit shall be made by the owner of such unit, who shall keep the same in good order, condition and repair and shall do all redecorating, painting and staining that at any time may be necessary to maintain the good appearance and condition of the unit. In addition, each unit owner shall be responsible for the maintenance, repair, or replacement of window glass, interior doors, any plumbing, heating or air conditioning fixtures, telephones, water heaters, fans, vents, lighting fixtures and lamps, electrical outlets, blinds, garbage disposals, fireplaces, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in or connected with such owner's unit. The Association, however, may repair or replace, at the Association's expense, portions of units to the extent reasonably necessary for the preservation of the common elements in good condition and working order.

(b) **Common elements.** All maintenance, repairs and replacements to the general and limited common elements and to Association property shall be made by the

Association and shall be charged to all the unit owners as a common expense. Each unit owner, however, shall keep the limited common elements that pertain to such owner's unit in a safe, neat, clean and sanitary condition.

## 7.2 **Additions, Alterations or Improvements.**

(a) A unit owner may not make any improvements or alterations to such owner's unit without first notifying the Association and obtaining approval by the board of directors of the proposed alteration. The owner shall have the burden of establishing, to the reasonable satisfaction of the board of directors, that the proposed improvements or alterations will not impair the structural integrity or mechanical systems of the Condominium, lessen the support of any portion of the Condominium, jeopardize the soundness or safety of the Condominium, reduce its value, impair any easement or hereditament, increase the common expenses or increase sound transmissions to other units. The board of directors may elect to require contractors to coordinate their access and working hours so as to minimize disruption to the Condominium. A unit owner shall reimburse the Association for any actual costs incurred by the Association in reviewing and monitoring such alterations.

(b) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may submit a written request to the board of directors for permission to remove or alter any intervening partition or to create apertures therein, even if the partition in whole or in part is a common element. The board of directors shall approve the change unless it determines within forty-five (45) days that the proposed change will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The board of directors may require the unit owner, at such owner's own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

(c) A unit owner may not change the appearance of the common elements or the exterior appearance of a unit without the prior written permission of the board of directors. No person shall install wiring for electrical or telephone installation, television antennas or satellite dishes, machines or air conditioning units, or similar devices on the exterior of the Condominium or cause them to protrude through the walls or the roof of the Condominium except as authorized by the board of directors. No exterior window guards, awnings, or shades shall be installed without prior consent of the board of directors.

7.3 **Damage or Destruction by Casualty of Condominium Property.** In the case of damage or destruction that affects a material portion of the Condominium, timely written notice shall be given to the unit owners and their mortgagees and any eligible mortgage insurer or guarantor and the following provisions shall apply:

(a) In the event of damage or destruction by casualty of Condominium property, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within fourteen (14) days of such damage or destruction, the board of directors or more than ten percent (10%) of the unit owners shall have requested a special meeting of the Association. Such special

meeting must be held within sixty (60) days of the date of damage or destruction. At the time of such meeting, unless unit owners holding ninety percent (90%) of the voting power, whether in person, by writing or by proxy, with the approval of mortgagees as required by the Declaration, vote not to repair, reconstruct or rebuild the damaged property, the damage or destruction shall be repaired, reconstructed or rebuilt. If the damage or destruction is not repaired, reconstructed or rebuilt, then the property shall be removed from condominium ownership in the manner provided in the Oregon Condominium Act.

(b) The Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the common elements and, to the extent of the Association's insurance coverage, all such damage or destruction to the units. Each unit owner shall be responsible for the cost of such repairing, reconstructing or rebuilding of his or her unit as is not so covered by the Association's insurance and to the extent of any deductible under the Association's insurance.

(c) If, due to the act or neglect of a unit owner, or of a member of such owner's family or household pet or of a guest or other occupant or visitor of such unit owner, damage shall be caused to the common elements or to a unit owned by others, or maintenance, repairs or replacements shall be required that would otherwise be a common expense, then such unit owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not fully covered by the Association's insurance.

(d) In the event any portion of the insurance proceeds paid to the Association is not used to repair, reconstruct or rebuild the damaged or destroyed property, the Association shall distribute the proceeds among the unit owners and their mortgagees (as their interests may appear) in the same proportion as common expenses are shared, unless the property is removed from unit ownership. If the property is removed from unit ownership, the insurance proceeds, together with the proceeds from the sale of the property, shall be distributed to the unit owners and their mortgagees (as their interests may appear) in the manner described in the Oregon Condominium Act.

7.4 **Condemnation.** If any portion of the Condominium is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each unit owner and to each mortgagee and any eligible mortgage insurer or guarantor. The Association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the common elements, and each unit owner appoints the Association to act as his attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking, other than any award for moving expenses of specific unit owners, shall be payable to the Association and allocated and distributed as provided in this Section 7.4.

(a) **Complete Taking.** If the entire Condominium property is taken, or if unit owners holding ninety percent (90%) of the voting power agree that such substantial portion of the Condominium has been taken as to make the project obsolete, then the property shall be deemed removed from unit ownership. In such event, any proceeds of the condemnation paid to the Association, together with any other proceeds upon sale of the remaining Condominium

property, shall be distributed among the unit owners and their mortgagees, as their interests may appear, in accordance with the provisions of the Oregon Condominium Act.

(b) **Partial Taking.** If less than the entire Condominium property is taken and the property is not determined to be obsolete as provided in paragraph (a) above, then as soon as practicable the board of directors shall, reasonably and in good faith, allocate the award among the units in accordance with the reduction in the value of each unit and its interest in the common elements, compared to the total reduction in value of all units and their interest in the common elements. In the event any unit owner or mortgagee objects to the allocation determined by the board of directors, the matter shall be submitted to arbitration in accordance with Article 10 below. The cost of such determination shall be paid out of the proceeds of the condemnation. Any portion of the award allocated to a unit owner under this paragraph shall be paid first to all mortgagees and holders of liens on the unit owner's interest in accordance with the existing priorities, and the balance to the unit owner. If any reconstruction or repair is undertaken as a result of the condemnation, the board of directors may retain and apply such portion of each unit owner's share of the award as is necessary to discharge the owner's liability for any special assessment arising from such reconstruction or repair.

7.5 **Restrictions and Requirements Respecting Use of Condominium Property.**  
The following restrictions and requirements are in addition to all other restrictions and requirements contained in the Declaration and these Bylaws:

(a) **Residential Units.** No commercial activities of any kind shall be carried on in any Residential Unit without the consent of the board of directors of the Association, except activities relating to the rental or sale of units. This provision, however, shall not be construed so as to prevent or prohibit a Residential Unit owner from using his or her unit as a home office or studio, including meeting with associates, clients or customers on a by-appointment basis, to the extent permitted by applicable zoning codes.

(b) **Use of common elements.** The common elements shall be used for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the units. The use, operation and maintenance of the common elements shall not be obstructed, damaged or unreasonably interfered with by any unit owner.

(c) **Offensive or unlawful activities.** No noxious or offensive activities shall be carried on in any unit nor shall anything be done in or placed upon any unit or common element that interferes with or jeopardizes the enjoyment of other units or the common elements or which is a source of annoyance to residents. Unit occupants shall exercise extreme care not to make noises that may disturb other unit occupants, including the use of musical instruments, radios, televisions and amplifiers. Speakers for audio equipment may not be mounted on or against walls or floors without an adequate sound barrier to prevent vibration and transmission of bass sounds outside of the unit. Occupants may not discard or throw items out of windows or from decks, including, without limitation cigarettes or ashes. So long as commercially reasonable efforts are made to reduce noise transmission to Residential Units, activities related to the normal course of permitted commercial uses of the Commercial Unit shall not be deemed a violation of this paragraph. No unlawful use shall be made of the Condominium nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental bodies having



jurisdiction thereof shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other owners, occupants, guests, or invitees, or directed at the manager, its agents or employees, or vendors.

(d) **Animals.** No animals or fowls shall be raised, kept or permitted within the Condominium or any part thereof, except domestic dogs, cats, and other ordinary household pets kept within a unit. No such dogs shall be permitted to run at large, nor shall any dogs, cats or pets be kept, bred or raised for commercial purposes or in unreasonable numbers. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof, and owners shall be responsible for clean up and removal of wastes of their animals. All pets shall be kept under reasonable control at all times and shall be carried or kept on a leash while outside a unit. Each Owner and occupant shall be responsible for seeing that his or her pets do not endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners and occupants of other units. The board of directors, after notice and a hearing, may require the permanent removal of any animal that the board determines to be a danger to the health and safety of any occupant in the Condominium, or otherwise to be a nuisance within the Condominium. The board may find that an animal is a nuisance if the animal or its owner continue to violate these Bylaws or the rules regulating pets after receipt by the Owner of a written demand from the board to comply with these Bylaws or the rules.

(e) **Exterior lighting or noisemaking devices and antennas.** Except with the consent of the board of directors of the Association, no exterior lighting or noisemaking devices shall be installed or maintained on any unit. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday. Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon the general common elements, and may not be placed on any unit or limited common element except in accordance with rules established by the board of directors.

(f) **Windows, decks, patios and outside walls.** In order to preserve the attractive appearance of the Condominium the board of directors of the Association may adopt rules regulating the nature of items that may be placed in or on Residential Unit windows, decks, patios, and the outside walls so as to be visible from other units, the common elements, or outside the Condominium. Garments, rugs, laundry, sheets, reflective surfaces and other similar items may not be hung from windows, facades, patios or decks.

(g) **Signs.** Unless written approval is first obtained from the board of directors, no sign of any kind shall be displayed to the public view on or from any Residential Unit or the common elements except signs used by the Declarant to advertise units for sale or lease. The board of directors shall not unreasonably withhold consent for an exterior sign for the Commercial Unit, provided such sign complies with all applicable governmental regulations.

(h) **Trash.** No part of any unit or any part of the common elements shall be used or maintained as a dumping ground for rubbish, trash, garbage, recycling materials or other waste. No garbage, trash, recycling materials or other waste shall be kept or maintained on any part of the property, except in sanitary containers in the designated areas.

(i) **Insurance.** In the event any use shall lead to an increase in fire or other insurance premiums otherwise payable on the insurance obtained by the board of directors pursuant to Article 8 of these Bylaws, or insurance procured by an individual Residential Unit owner, the party causing such increase shall be liable for payment of the same to the board of directors or individual Residential Unit owner, as the case may be. The party so charged with increasing the premium cost shall have the right to contest the validity of such increase. A levy made against such unit owner for such increase in premiums may be enforced by the board of directors by adding the same to the common charges allocable to such unit owner.

(j) **Water beds.** Water beds may not be placed in any unit, except with the prior consent of the board of directors. If such consent is given, the unit owner shall carry insurance covering damage caused by the water bed and shall be responsible for all damages to any unit or the common elements that might be caused by the water bed.

(k) **Washing Machines.** Each unit contains a washing machine hookup. The unit owner shall be responsible for all damages to any unit or the common elements that might be caused by the washing machine or leakage from the washing machine.

(l) **Association rules and regulations.** In addition, the board of directors from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the units and common elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Condominium property, including, without limitation, establishment of reasonable administrative fees, such as fees for new owner set-up and owner's packet, move-in and move-out fees, etc. Any action by the board of directors adopting, modifying or revoking any rule or regulation may be overruled by a vote of not less than seventy-five percent (75%) of the voting rights present, in person or by proxy, at any meeting, the notice of which shall have stated that such adoption, modification or revocation or rules and regulations will be under consideration. Any rules or regulations affecting the Commercial Unit must be approved by the owner of the Commercial Unit. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the secretary promptly to each unit owner and shall be binding upon all unit owners and occupants of all units from the date of delivery.

7.6 **Leasing and Rental of Residential Units.** The following shall apply to all leases and rentals of Residential Units:

(a) Any owner who wishes to lease or rent his or her unit must meet each of the following requirements, and the lease or rental agreement will be subject to these requirements whether or not they are included within the lease or rental agreement:

- (1) all leases and rentals must be in writing;
- (2) the unit may not be rented for transient or hotel purposes, and all leases and rentals shall be for a term of not less than thirty (30) days;
- (3) the lease or rental must be for the entire unit and not merely parts of the unit, unless the owner remains in occupancy;

(4) all such leases and rentals shall be subject in all respects to provisions of the Declaration, these Bylaws, and all rules and regulations adopted by the Board;

(5) all owners who lease or rent their units shall promptly notify the Association in writing of the names of all tenants and members of tenants' family occupying such units and shall provide the Association with a complete copy of the lease or rental agreement. All owners leasing their unit shall promptly notify the Association of the address and telephone number where such owner can be reached.

(b) Any failure of a tenant to comply with the Declaration, Bylaws, and Association rules and regulations, shall be a default under the lease or rental agreement, regardless of whether the lease or rental agreement so provides. In the event of any such default, the owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

(c) If any tenant is in violation of the provisions of the Declaration, Bylaws, or rules and regulations of the Association, the Association may bring an action in its own name and/or in the name of the owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, these Bylaws, or the rules and regulations of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association may have. If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

(d) The Association shall give the tenant and the owner notice in writing of the nature of the violation, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

(e) Each owner shall provide a copy of the Declaration, these Bylaws and all rules and regulations of the Association to each tenant of his or her unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, these Bylaws and the rules and regulations of the Association, and recognizes and accepts the right and power of the Association to evict a tenant for any violation by the tenant of the Declaration, these Bylaws, and rules and regulations of the Association.

**7.7 Failure to Follow Maintenance Plan.** If the Association fails to follow the maintenance and inspection requirements contained in the Maintenance Plan described in Section 3.6(q) above, then the Association hereby waives any claim it might otherwise have against Declarant and its design professionals, contractors and subcontractors and their consultants, including without limitation, all of their officers, members, directors, employees, agents, brokers and affiliates, for loss or damage to the extent the same results from such failure to follow the Maintenance Plan, and shall indemnify such persons and entities from and against claims by unit owners or other persons or entities for loss or damage resulting from such failure.

7.8 **Abatement and Enjoining of Violations.** The violation of any provision of the Declaration or these Bylaws, of any rule or regulation adopted pursuant to these Bylaws, or of any decision of the Association made pursuant to such documents, shall give the board of directors, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws, to do any or all of the following after giving written notice and an opportunity to be heard:

(a) to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the board of directors shall not thereby be deemed guilty of any manner of trespass, provided, however, that judicial proceedings shall be instituted before any items of construction may be altered or demolished; or

(b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings; or

(c) to levy reasonable fines based upon a resolution adopted by the board of directors that is delivered to each unit, mailed to the mailing address of each unit or mailed to the mailing address designated by the owner of each unit in writing; or

(d) to terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Condominium until the correction of the violation has occurred.

The offending unit owner shall be liable to the Association for a reasonable administrative fee as established by the board of directors and all costs and attorneys' fees incurred by the Association, whether or not legal proceedings are instituted and including attorneys' fees at trial, in arbitration or on appeal or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or unit owners, or fines so levied. Such sums shall be assessed against the offending unit as an assessment and enforced as provided in Article 5. In addition, any aggrieved unit owner may bring an action against such other unit owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

## Article 8

### **INSURANCE**

8.1 **Types of Insurance.** For the benefit of the Association and the unit owners, the board of directors shall obtain and maintain at all times, and shall pay for out of the common expense funds, the following insurance:

(a) **Property Damage Insurance.**

(1) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association may deem desirable.

(2) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the units and common elements (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a maximum deductible of the lesser of \$10,000 or one percent (1%) of the policy amount.

(3) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the common elements and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each Residential Unit.

(4) Such policy or policies shall name the Association as insured, and shall provide for loss payable in favor of the Association, as a trustee for each unit owner and each such unit owner's mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) that is commonly accepted by institutional mortgage investors in Oregon.

(b) **Liability Insurance.**

(1) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the board of directors, the unit owners and the manager, against liability to the public or to the owners of units and of common elements, and their invitees or tenants, incident to the operation, maintenance, ownership or use of the property, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of a unit owner (other than as a member of the Association or board of directors) for liability arising out of acts or omission of such unit owner and liability incident to the ownership and/or use of the part of the property as to which such unit owner has the exclusive use or occupancy.

(2) Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000) on a combined single limit basis.

(3) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

(c) **Workers' Compensation Insurance.** The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) **Fidelity Insurance.**

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

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

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

(e) **Directors' and Officers' Liability Insurance.** The Association shall maintain a policy of directors' and officers' liability insurance with coverage in the amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible.

(f) **Insurance by Unit Owners.** The Association has no responsibility to procure or assist in procuring property loss insurance for any owner or tenant for (i) damage to a unit or limited common elements not covered by the Association's policy (because of the deductible amount or because the claim for loss or damage is one not covered by fire and property loss insurance policies required by these Bylaws or held by the Association); or (ii) for any damage or loss to the owner's or tenant's personal property. Owners must be responsible for purchasing insurance policies insuring their units and appurtenant limited common elements for the deductible amount under the Association's policies and for insuring their own personal property for any loss or damage. Proof of such insurance coverage must be provided to the Association by the unit owner. Tenants must be responsible for insuring their own personal property for any loss or damage. The Association shall notify all owners of the amount of the deductible under the Association policies. To the extent reasonably practicable, the Association shall give at least thirty (30) days' notice to the owners of any increase in the deductible proposed in renewal or replacement insurance policies. Owners and tenants of all units must procure and maintain comprehensive liability policies having combined limits in amounts reasonably set by the board of directors no more often than every three years. Such insurance must provide coverage for, without limitation, the negligent acts of the owner and tenant and their guests or other occupants of the unit for damage to the general and limited common elements and other units and the personal property of others located therein.

8.2 **Other Insurance Requirements.** Insurance obtained by the Association shall be governed by the following requirements:

(a) All policies shall be written with the State of Oregon or a company licensed to do business in the State of Oregon acceptable to FannieMae which falls into a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports – International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency

Review, or a “BBB” or better claims – paying ability in Standard and Poor’s International Confidential Rating Service.

(b) Notwithstanding the provisions of Section 8.1 above, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement, or any successor to such trustee. Such insurance trustee shall have exclusive authority to negotiate losses under any property or liability insurance policy. Each unit owner appoints the Association, or any insurance trustee or substitute trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purchase. The Association or insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

(c) All property insurance policies shall contain a “Special Condominium Endorsement” or its equivalent providing for the following: recognition of any Insurance Trust Agreement, a waiver of the right of subrogation against unit owners individually, that the insurance is not prejudiced by any act or neglect of individual unit owners that is not in the control of such owners collectively, and that the policy is primary in the event the unit owner has other insurance covering the same loss.

(d) For purposes of this article, insurance policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against FannieMae, the designee of FannieMae, or the Association or unit owners, or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (iii) policy includes any limiting clauses (other than insurance conditions) that could prevent FannieMae or the owners from collecting insurance proceeds.

(e) All policies required by this article shall provide that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy. Evidence of insurance shall be issued to each unit owner and mortgagee upon request.

(f) Each unit owner shall be required to notify the board of directors of all improvements made by the owner to his or her unit, the value of which is in excess of Five Hundred Dollars (\$500). Nothing in this paragraph shall permit an owner to make improvements without first obtaining the approval of the board of directors pursuant to Section 7.2.

(g) Any unit owner who obtains individual insurance policies covering any portion of the property other than such owner's personal property and fixtures shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

8.3 **Optional Provisions.** The board of directors shall make every effort to secure insurance policies that will provide for the following:

(a) To the extent appropriate and available at reasonable cost, the Association shall maintain additional coverages against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employer's liability insurance, comprehensive automobile liability insurance, and an endorsement patterned after "use and occupancy" insurance providing relief from monthly assessments while a unit is uninhabitable due to a covered loss.

(b) If reasonably available, the insurance policies shall include Inflation Guard Endorsement, and Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement, and an Increased Cost of Construction Endorsement).

(c) A Steam Boiler and Machinery Coverage Endorsement if the Condominium has central heating or cooling, which coverage per accident shall at least equal the lesser of Two Million Dollars (\$2,000,000) or the insurable value of the building housing the boiler or machinery.

(d) Flood Insurance, if the Condominium is in a Special Flood Hazard Area.

(e) If reasonably available, waiver of subrogation by the insurer as to any claims against the board of directors, any unit owner or any guest of a unit owner.

8.4 **FannieMae and GNMA Requirements.** Notwithstanding any other provisions of this article, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity requirements for condominium projects established by FannieMae and Government National Mortgage Association, so long as either is a mortgagee or owner of a unit within the Condominium, except to the extent such coverage is not available or has been waived in writing by FannieMae or Government National Mortgage Association. FannieMae or FannieMae's servicer, its successors and assigns, shall be named as a mortgagee in the Association's policies.

## Article 9

### **AMENDMENTS TO BYLAWS**

9.1 **How Proposed.** Amendments to the bylaws shall be proposed by either a majority of the board of directors or by unit owners holding thirty percent (30%) of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

9.2 **Adoption.** A resolution adopting a proposed amendment may be proposed by either the board of directors or by the unit owners and may be approved by the unit owners at a meeting called for this purpose or by ballot vote. Unit owners not present at the meeting



considering such amendment may express their approval in writing or by proxy. Any resolution must be approved by unit owners holding a majority of the voting rights and by mortgagees to the extent required by the Declaration, except that (a) any provision of these Bylaws that is also contained in the Declaration must be approved by the same voting requirement for amendment of such provision of the Declaration, and (b) any amendment relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units, or limitations on the rental or leasing of units must be approved by unit owners holding seventy-five percent (75%) of the voting rights. Declarant's consent shall also be required so long as Declarant owns twenty-five percent (25%) or more of the units in the Condominium. Such consent shall not be required after three years from the date of conveyance of the first unit to a person other than a successor declarant. Any amendment that would limit or diminish any special Declarant rights established in these Bylaws shall require the written consent of Declarant and any amendment to Sections 3.6, 3.15, 7.7, 9.2 and 10.3 of these Bylaws shall require the written consent of Declarant for a period of ten (10) years after the date of the Organizational and Turnover Meeting described in Section 2.2. Any provision of these Bylaws pertaining to the Commercial Unit may not be amended without the written consent of the owner of the Commercial Unit.

9.3 **Execution and Recording.** An amendment shall not be effective until certified by the chairperson and secretary of the Association as being adopted in accordance with these Bylaws and the provisions of the Oregon Condominium Act and recorded as required by law. Any amendment adopted within five (5) years after the recording of the initial bylaws shall be approved by the Oregon Real Estate Commissioner to the extent required by the Oregon Condominium Act.

## Article 10

### **DISPUTE RESOLUTION**

10.1 **Initial Dispute Resolution Procedures.** In the event of a claim by the Association or any unit owner against Declarant or any contractor, subcontractor, or supplier for a construction defect, the parties shall first comply with the provisions contained in ORS 701.550 to 701.595. In the event the claim is not for a construction defect, but relates to a claimed defect in the condition of the project, the parties shall follow the same procedures as set forth in such provisions, except that the notice of defect shall include a statement of the basis upon which the recipient is claimed to be liable for the defect. Compliance with the procedures contained in this Section 10.1 shall be a condition precedent to mediation, arbitration or litigation of any such claims.

#### 10.2 **Mediation.**

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

mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

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

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

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

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

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

10.3 **Arbitration**. Any claim, controversy or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), the Association, the manager or manager, or one or more unit owners, or any of them, arising out of or related to the Declaration, these Bylaws or the Condominium shall be first subject to mediation as provided in Section 10.2 above or otherwise, and, if not timely settled by mediation, resolved by arbitration in accordance with this Article 10. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in Portland, Oregon, or such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Oregon and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action (“lis pendens”).

10.4 **Selection of Arbitrator**. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any

party, the Presiding Judge of the Circuit Court of Multnomah County, Oregon shall designate the arbitrator.

10.5 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration. Notwithstanding the provisions of this Article 10, in the event any claim, controversy or dispute involves a claim by either party against a third party who is not required to and does not voluntarily agree to submit such claim to arbitration, then either party may elect to have the matter determined by a court of law in a consolidated proceeding, rather than by arbitration. In such case, the parties hereby waive trial by jury and agree that the matter shall be determined by a judge sitting without a jury.

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

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

10.8 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 10 (but shall be subject to the applicable provisions of Section 10.9 below): (a) actions relating to the collection of fees, assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above), and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 10. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article.

10.9 **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of the Declaration or these Bylaws, to obtain a judicial construction of any provision of the Declaration or these Bylaws, to rescind the Declaration or these Bylaws or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in

connection with such dispute, as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred prior to and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings). Notwithstanding any provision of this Section 10.9 to the contrary, in the event of a claim, controversy or dispute between the unit owners or the Association and Declarant, each party shall bear their own costs, including, without limitation, filing fees, attorney's fees, investigation expenses, consultant's fees and expert's fees. The other costs of arbitration and other court costs shall be divided and paid equally by the parties.

10.10 **Survival.** The mediation and arbitration agreement set forth in this Article 10 shall survive the transfer by any party of its interest or involvement in the Condominium and any unit therein and the termination of the Declaration or these Bylaws.

## Article 11

### MISCELLANEOUS

11.1 **Notices.** All notices to the Association or to the board of directors shall be sent care of the manager, or if there is no manager, to the principal office of the Association or to such other address as the board of directors may designate from time to time. All notices to any unit owner shall be sent to such address as may have been designated by such owner from time to time, in writing, to the board of directors, or, if no address has been designated, then to the owner's unit.

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

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

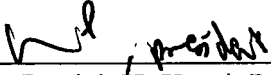
11.4 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine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

11.5 **Conflicts.** These Bylaws are intended to comply with the Oregon Condominium Act and the Declaration. In case of any irreconcilable conflict, such statute and document shall control over these Bylaws or any rules and regulations adopted hereunder.

DATED this 21<sup>st</sup> day of December, 2005.

**W & K DEVELOPMENT LLC**, an Oregon  
limited liability company

By: **PHK Investments, Inc.**, an Oregon  
corporation, Member

By:   
Patrick H. Kessi, President

By: **Wenker Enterprises LLC**, an Oregon  
limited liability company, Member

By:   
Geoff Wenker, Member

AFTER RECORDING, RETURN TO:

Michelle D. DaRosa  
Stoel Rives LLP  
900 SW Fifth Street, Suite 2600  
Portland, OR 97204

*MD*

Multnomah County Official Records  
C Swick, Deputy Clerk

2010-152098



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**FIRST AMENDMENT TO BYLAWS OF  
THURMAN STREET LOFTS CONDOMINIUM OWNERS ASSOCIATION**

**THIS FIRST AMENDMENT TO BYLAWS OF THURMAN STREET LOFTS  
CONDOMINIUM OWNERS ASSOCIATION** is made as of this 22 day of  
September, 2010, by **THURMAN STREET LOFTS CONDOMINIUM  
OWNERS ASSOCIATION** (the "Association").

**RECITALS**

A. Association is a condominium association established pursuant to the Declaration Submitting Thurman Street Lofts Condominium to Condominium Ownership recorded February 10, 2006 in the Records of Multnomah County, Oregon, as Document No. 2006-025555 (the "**Declaration**").

B. The Bylaws of the Association (the "**Bylaws**") were recorded in the Records of Multnomah County, Oregon, as Exhibit D to the Declaration.

C. Not less than 75 percent of the owners of units within Thurman Street Lofts Condominium have voted to amend the Bylaws to impose certain restrictions on the renting and leasing of units within the condominium.

**NOW, THEREFORE**, pursuant to Article 9 of the Bylaws and ORS 100.410, the Bylaws are hereby amended to delete Section 7.6 and add the following Section 7.6 in its place:

"Section 7.6. **Leasing and Rental of Residential Units**. No Residential Unit may be leased or rented except in compliance with this Section 7.6.

"(a) **Leasing Restrictions**. As of the date this Amendment is recorded, any Residential Unit owner not currently renting his or her unit may not enter into any new rental arrangement for such unit except in compliance with this section. As used in this section, "owner-occupied" shall mean any period during which the Residential Unit is occupied by an owner or an owner's spouse, domestic partner,

*6*

children, or parents as a primary or secondary residence and no rent is charged such occupants.

“(1) **Term of Lease.** With the exception of a lender in possession of a unit following default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure and except for units held for sale under subparagraph (d) of this section, no Residential Unit owner shall rent or lease his or her Residential Unit for a period of less than 12 months. Any 12-month or longer lease may be extended beyond such term on a month-to-month basis.

“(2) **Limitation on Number of Rental Residential Units.** Except in the event of a hardship, as defined below, the maximum number of Residential Units that may be non-owner occupied shall be six units. Occupancy shall be limited to the tenants, their household members, visitors and guests.

“(3) **Professional Management.** Owners renting their Residential Units as provided in this section shall have the rented unit managed by a professional property manager during the rental period unless the Board of Directors consents otherwise in writing.

“(4) **Damage Deposit.** The tenant shall deposit with the Association an amount equal to one month’s rent, which will be applied to any damage to the common elements caused by the tenant or the tenant’s guests, or to any fines imposed by the Association for the acts of the tenant. The unused portion of any deposit will be refunded to the tenant within 30 days after termination of the tenancy.

“(5) **Insurance.** Any Residential Unit owner who leases or rents a unit shall obtain and maintain in full force and effect a policy providing coverage for liability related to, arising out of or resulting from the tenant’s occupancy or use of the unit and common elements, with limits of not less than \$1,000,000. The Association and its individual members shall be named as additional insureds on the policy.

“(6) **Tenant Background Check.** The Residential Unit owner shall obtain a background check for each tenant, including as a minimum, a national criminal records search and a sex offender registry search, and shall provide the Association with a copy of the report within 30 days of the commencement of the lease of the owner’s Residential Unit.

“(7) **Other Restrictions.** The Residential Unit owner shall provide a fully executed copy of each lease to the Board of Directors. No Residential Unit owner may lease or rent less than his or her entire unit.

“(b) **Hardship.** If the 6-unit threshold set forth in subparagraph (a)(ii) has already been reached, a Residential Unit owner may apply to the Board of Directors for a hardship-based exception to the 6-unit threshold; provided, however, that no hardship-based exception shall be granted if doing so causes the number of non-owner occupied units to exceed 8 Residential Units. The following situations may be considered for hardship-based exceptions, and if the Board determines that a hardship exists, the Board shall have the options specified below: (i) If the Residential Unit owner or his or her spouse relocates for work or educational purposes, the Board may permit the unit to be leased for a period of up to one year; (ii) if the Residential Unit owner dies, becomes permanently disabled or suffers from a long-term debilitating illness that precludes the owner from regular work or, in the case of a retired or unemployed owner, would preclude the owner from the type of work the owner formerly performed, if the owner is hospitalized for a protracted illness, or is placed in a nursing home or a convalescent home or other facility or with family members due to illness, the Board may permit the unit to be leased for a period of up to one year; (iii) in the case of any type of hardship, the Board may permit a Residential Unit to be leased to an immediate family member, such as a child, sibling or parent for a period to be set by the Board, not to exceed one year; and (iv) if inability to rent a Residential Unit will result in serious financial hardship to the owner, the Board may permit the unit to be leased to any party for a period to be set by the Board, not to exceed one year. The Board of Directors, in its sole and unfettered discretion, shall determine whether a Residential Unit owner’s situation meets any of the factual situations set forth above and thus qualifies for a hardship-based exception. The Board may then grant such exception only if doing so would not cause the number of non-owner occupied units to exceed 8 Residential Units.

“(c) **Existing Tenancies.** The restrictions on renting or leasing Residential Units shall not apply to any Residential Unit that, as of the date of adoption of this Amendment, is being leased or rented (an “**Exempt Unit**”). However, an Exempt Unit shall count toward the 6- or 8-unit maximum, whichever is applicable. The owner of such Exempt Unit may continue to rent such unit until expiration or termination of the existing tenancy, after which the owner no longer may continue to rent such Residential Unit without complying with the other provisions of this section. An owner with one Exempt Unit is not automatically entitled to an exception with respect to any other Residential Unit. The renting restrictions contained in this section apply independently to each Residential Unit owned by an owner and exemptions may not be transferred to an owner’s successors and assigns, including, but not limited to, persons who acquire a Residential Unit through inheritance or gift.




“(d) **Residential Units Held for Sale.** The owner of a Residential Unit may lease such unit for a term shorter than 12 months and may lease such unit on a month-to-month basis if, and only if, such unit is being held for sale and such rental will not cause the number of non-owner occupied units to exceed the maximum permitted by this section. Such exemption does not automatically apply to any other Residential Unit owned by the same owner, and the 12-month requirement applies independently to such other Residential Units and to such owner’s successors and assigns, including, but not limited to, persons who acquire the unit through inheritance or gift.

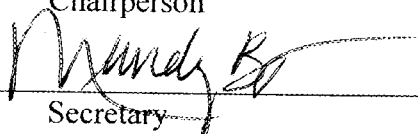
“(e) **Procedure.** Prior to entering into any lease agreement, a Residential Unit owner shall notify the Board of Directors in writing of his or her intent to lease or rent such owner’s unit, and the circumstances of the proposed arrangement. Within 15 days of such notification, the Board shall advise the Residential Unit owner whether such proposed tenancy would or would not exceed the restriction on the number of rented Residential Units, and if it would exceed such restriction, the Board shall place the unit owner on a waiting list and shall notify such owner when such owner’s unit may be rented. Once a unit owner is notified that his or her unit may be rented, such owner, within 6 months from the date of such notice, may enter into a 12-month lease with a tenant. If a notified owner has not entered into such a lease within such period, the Board shall place such unit owner at the end of the waiting list and shall notify the next owner on such list that such owner may rent his or her Residential Unit. An owner who receives permission from the Board to rent his or her unit may continue to rent such unit upon the expiration or termination of such tenancy, provided that if the unit becomes owner-occupied or vacant for any period exceeding 30 days, the owner no longer may rent the unit and shall reapply to the Board.

“(f) **Compliance with Documents.** All tenants and guests of tenants shall be subject to the terms of the Declaration, these Bylaws and Rules and Regulations of the Association and the Board of Directors. Each tenant shall be provided copies of the Declaration, these Bylaws and Rules and Regulations by the owner of the Residential Unit being leased at the beginning of the lease term and thereafter with any amendments to such documents. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and these Bylaws, and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease. Owners shall be responsible for the acts of their tenants, and owners and tenants shall be responsible for the acts of the tenant’s guests. A unit owner may be assessed personally for any expenses incurred by the Association resulting from damage to the common elements caused by such owner’s tenant. After giving notice and an opportunity to be heard, owners may be fined for their tenant’s noncompliance with any provision of the Declaration, these Bylaws and Rules and Regulations, and such fines shall be collectible as assessments as elsewhere provided in these Bylaws.

“(g) **Enforcement.** If a Residential Unit owner fails to follow the procedures set forth in this section with respect to the leasing of his or her unit, then at any time after learning of such leasing, the Board of Directors may charge such owner an administrative fee, the amount of which shall be determined from time to time by Board resolution. The purpose of the fee is to reimburse the Association for time, costs and expenses of management time incurred to obtain information about the tenant and to provide such tenant with copies of Association documents. Charging an owner an administrative fee or providing such owner’s tenant with copies of Association documents, however, shall not bar or limit the Association’s remedies arising from such owner’s violations of the provisions of the Declaration, these Bylaws, and the Rules and Regulations. In addition to all other remedies of the Association, including the right to file suit to remove the tenant in the event that the tenancy violates any provision of this section, the Board shall have the power to levy a fine against the owner of the Residential Unit which is rented or leased in violation of this section, in an amount not to exceed \$500 per month, until such time as the violation is cured. All outstanding fees or fines shall accrue interest at a rate of 12 percent and may be enforced as lien against the Residential Unit and foreclosed in accordance with the terms of the Oregon Condominium Act.”

**THURMAN STREET LOFTS  
CONDOMINIUM OWNERS ASSOCIATION**

By   
Chairperson

By   
Secretary

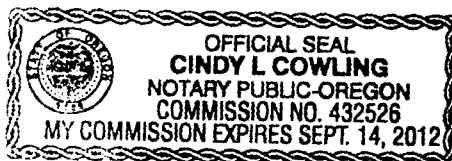
**Certification**

The undersigned chairperson and secretary of Thurman Street Lofts Condominium Owners Association hereby certify that the attached First Amendment to Bylaws of the Thurman Street Lofts Condominium Owners Association has been adopted in accordance with the Bylaws and the provisions of ORS 100.410.

By [Signature]  
Chairperson

By [Signature]  
Secretary

STATE OF OREGON )  
 )ss.  
County of Multnomah )



~~CRC 2006~~ The foregoing was acknowledged before me this 22<sup>nd</sup> day of September, 2010, by Patrick H Kessi and Mandy Burns, chairperson and secretary, respectively, of Thurman Street Lofts Condominium Owners Association, on its behalf.

[Signature]  
Notary Public for Oregon  
My commission expires: 9/14/2012  
Commission No.: 432526

The foregoing First Amendment to Bylaws of Thurman Street Lofts Condominium Owners Association is approved pursuant to ORS 100.410 this 29<sup>th</sup> day of NOVEMBER, 2010 and in accordance with ORS 100.410(6), this approval shall automatically expire if this First Amendment is not recorded within one year from this date.

**OREGON REAL ESTATE COMMISSIONER**

By [Signature]  
Laurie Skillman

**RECORDING SHEET COUNTY RECORDER'S COPY**

**LAND USE REVIEW APPLICANT**

Your LU decision may be recorded on or after: October 5, 2004  
You must record your decision on or after this date, as required by the Portland Zoning Code.

If you would like to record by mail, please send:

- The two recording documents and attached decision.
- A check payable to: Multnomah County Recorder in the amount of: \$ 91.00  
(*\$16 for recording sheet, \$5 per page of decision, each side if 2-sided*)
- A self-addressed, stamped envelope.

Mail to: Multnomah County Recorder, PO Box 5007, Portland OR 97208

**FOR MULTNOMAH COUNTY RECORDER USE ONLY**

Please stamp the Applicant's copy of the recording sheet and give to the applicant.

Please stamp the County Recorder's copy of the recording sheet and return with attached decision to:

City of Portland, BDS  
299/4500/BDS LUR

MULTNOMAH COUNTY RECORDER STAMP HERE

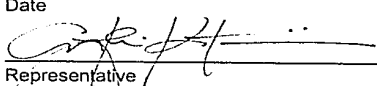
Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
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I hereby certify Land Use Review Document, No. LU 04-033639 DZM  
to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody.

Rebecca Esau, Principal Planner  
City of Portland  
Bureau of Development Services  
1900 SW Fourth Ave, #4500  
Portland, OR 97201

10/4/04

Date

  
Representative

**THIS DOCUMENT IS FOR THE COUNTY RECORDER**

County Recorders Recording Sheet 7/16/03

10-22-04

114



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave. Suite 5000  
Portland, Oregon 97201  
Telephone: 503-823-7300  
TDD: 503-823-6868  
FAX: 503-823-5630  
www.bds.ci.portland.or.us

**Date:** September 21, 2004  
**To:** Interested Person  
**From:** Kara Fioravanti, Land Use Services  
503-823-5892

**NOTICE OF A TYPE II DECISION ON A PROPOSAL IN  
YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 04-033639 DZM  
NEW MIXED-USE DEVELOPMENT**

**GENERAL INFORMATION**

**Applicant:** Mihalina Najdek, Listed Owner  
2538 NW Thurman Street/ Portland, OR 97210-2524  
  
W&K Development, Stated Owner  
PO Box 1105/ Scappoose, OR 97056

**Representative:** John Holmes, Architect  
Holst Architecture  
110 SE 8<sup>th</sup> Avenue/ Portland, OR 97214

**Site Address:** 2538 NW THURMAN STREET  
**Legal Description:** E ½ OF LOT 14, BLOCK 319 and LOT 15, BLOCK 319; BALCHS ADD  
**Tax Account No.:** R051001320  
**State ID No.:** 1N1E29DD 11900  
**Quarter Section:** 2826  
**Neighborhood:** Northwest District, contact John Bradley at 503-227-7484.  
**Business District:** Nob Hill, contact Mary Edmeades at 503-417-8960.  
**District Coalition:** Neighbors West/Northwest, contact David Allred at 503-223-3331.  
**Plan District:** Northwest Plan District  
**Zoning:** CMd, Mixed Commercial/Residential with Design overlay  
**Case Type:** DZM, Design Review w/ Modifications to Zoning Code development standards  
**Procedure:** Type II, an administrative decision with appeal to the Design Commission.

**Proposal:**

The applicant seeks design review approval to construct a new 5-story building with a small commercial space and parking [15 spaces] on the first level and 16 condominium units on levels 2-5. The exterior building materials include IPE horizontal and vertical 1 X 4 siding, IPE vertical 2 X siding, deep set metal clad wood windows with IPE extensions, concrete, and vine screens. The main entry ramp and stairs are accessed from NW Thurman at the west end of the site. The parking entry is accessed from NW Thurman, closer to the east lot line.

10-22-04

**Four Requested Modifications to Zoning Code development standards:**

1. **33.130.210 Height.** Maximum height allowed in this CM zone is 45'.  
**Proposed:** The tallest portion of the building is measured at 47'.
2. **33.130.240 Pedestrian Standards.** An on-site pedestrian circulation system must be provided. The system must connect all buildings on the site, and provide connections to other areas of the site, such as parking areas, bicycle parking, recreational areas, common outdoor areas, and any pedestrian amenities. The circulation system must be hard-surfaced, and be at least 6'-wide.  
**Proposed:** The required "internal connections" are not 6'-wide. The path along the south and west lot lines is 4'-wide and the path at the east lot line 4.5'-wide at its most narrow point.
3. **Table 266-4 Minimum Parking Space and Aisle Dimensions.** Required dimensions for 90-degree parking stalls are width 8.5' x depth 16'.  
**Proposed:** The plan includes columns that decrease the width of a majority of the stalls to 8'.
4. **33.562.240 D. Ground Floor Active Use Standard.** In order to accommodate active uses, the ground floor of buildings must be designed and constructed as follows. This standard must be met along at least 50% of the ground floor of walls that front onto a main street or streetcar alignment. Areas designed to accommodate active uses must meet the following four standards:
  - A. The distance from the finished floor to the bottom of the structure above must be at least 12'. The bottom of the structure above includes supporting beams;
  - B. The area must be at least 25'-deep, measured from the street-facing façade;
  - C. At least 25% of the area of the street-facing façade of the portion of the building designed to meet the requirements of this subsection must be windows and doors; and
  - D. Parking is not allowed in the areas designed to meet the standards of this subsection.**Proposed:** Two of the four standards are not met [standards A and B]: The proposed distance from finished floor to the bottom of the structure at the ground level tenant space is 9.59'. The ground level tenant space is between 15'- and 18'-deep.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- |                               |   |
|-------------------------------|---|
| ■ 33.420, Design Overlay      | ■ 33.825.040 Modifications That Will Better Meet Design Review Requirements |
| ■ 33.825, Design Review       | ■ Statewide Planning Goals  |
| ■ Community Design Guidelines |   |

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. This application was submitted on July 8, 2004 and determined to be complete on August 3, 2004.

**ANALYSIS**

**Site and Vicinity:** The area recently underwent an extensive planning process. [The Plan, adopted by Council, is on appeal to LUBA.] Through that process, among many things, an urban design concept was formulated and NW Thurman Street was designated a "Main Street". The zoning designation for this site was changed from CN1 [Neighborhood Commercial 1] to CMd [Mixed Commercial/Residential with design overlay]. NW Thurman Street is unique and varied in its development. The NW District Plan states, "NW Thurman Street includes a predominance of residential structures not typical of other main streets, including Victorian workers cottages in the Queen Anne style and modern rowhouses with architecture derivative of traditional styles." Commercial use is evident along NW Thurman. However this stretch of NW Thurman, between 25<sup>th</sup> and 26<sup>th</sup> is more residential than commercial.

10-22-04

The 7,500 square foot lot is located on NW Thurman Street where NW Thurman Street is a designated neighborhood collector street, a transit access street, a city bike and walkway and is within the Northwest Pedestrian District. To the west, the property is bordered by a single-dwelling residence and, to the east, by a four-unit row house development. The subject site is developed with a 2-story single-dwelling residence that is raised a few feet from the sidewalk. A two-car garage is at the back of the lot, accessed from NW Thurman Street. Across the street is also a variety of housing types: from 1-story single-family residences to 3.5-story condominium buildings. NW Thurman Street has experienced a great deal of development in the recent past and is continuing its transformation into a neighborhood main street with various commercial spaces and a unique mix of housing types.

**Zoning:** The Mixed Commercial/Residential zone [CM] zone promotes development that combines commercial and housing uses on a single site. This zone allows increased development on busier streets without fostering a strip commercial appearance. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in the City. The emphasis of the nonresidential uses is primarily on locally oriented retail, service, and office uses. Other uses are allowed to provide a variety of uses that may locate in existing buildings. Development is intended to consist primarily of businesses on the ground floor with housing on upper stories. Development is intended to be pedestrian-oriented with buildings close to and oriented to the sidewalk, especially at corners.

The Design Overlay Zone [d] promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

**Land Use History:** City records indicate there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **August 6, 2004**. The following Bureaus have responded comments:

The Bureau of Environmental Services responded with the following comment: Please see Exhibit E-1 for additional details.

The following conditions of approval and informational comments are based on the land use review information provided to the Bureau of Environmental Services (BES). The comments section of this document is intended for informational purposes only.

**Physical Characteristics:**

There is a 21" CSP Combination sewer in NW Thurman St that may serve the needs of this property.

**Conditions of Approval:**

BES has no recommendations that are required to be included as conditions of Land Use Review approval.

**Comments:**

The plans for this facility have already been reviewed and approved by BES under the building plan review process under application # 04-009723-RS. The approval of the requested adjustments under this LUR does not alter BES requirements as outlined by the building plan review. Storm water mitigation and disposal as shown on the previously reviewed and approved application #04-033321-CO is still required in its entirety. **If these adjustments affect the facilities required for storm water mitigation, a revision to application # 04-033321-CO will be required.**

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1. Currently the street and surrounding area is served by an existing public combination sewer, which carries both stormwater and sanitary discharges. This type of sewer contributes to the combined sewer overflow (CSO's) problems within the city. The City is currently in the process of disconnecting all possible storm water from this system to the maximum extent practicable. Any new connections or additional stormwater disposal to the combination system will be restricted through the requirement of City of Portland's Stormwater Management Manual.

2. Any improvement or new construction that creates or replaces more than 500 square feet of impervious area is subject to the stormwater management requirements of the City of Portland's Stormwater Management Manual that is current when the building plans are submitted for permit review. The applicant must provide a detailed site utility plan that identifies the proposed storm water management system when submitting building plans for review. Storm water management includes water quality, flow control and disposal.

3. The Stormwater Management Manual has various examples of how storm water can be managed. A free CD-ROM disc of the 2002 Stormwater Management Manual is available at the City of Portland permit center, 1900 SW 4th Ave. or on the Internet at [www.cleanrivers-pdx.org](http://www.cleanrivers-pdx.org).

4. Due to the pollutants that can be released or transported by facility or development activities, the City has included a chapter in the City of Portland's Stormwater Management Manual to address activity-based source controls. Source control requirements of the Stormwater Management Manual are activity and/or exposure based and could have an impact to the design of your development. Source controls are applicable to all new development, redevelopment, and tenant improvements regardless to the amount of impervious area being disturbed. In brief, the proposed development for this site may require additional design requirements to be met. Please refer to Chapter 4 (see the sections on Trash Storage and Covered Parking areas) for technical guidance and a listing of current design requirements. The BES Source Control Division highly recommends reviewing the manual before final design decisions and building permit applications are made. For additional assistance, you can call BES Source Control at (503) 823-7122. The Stormwater Management Manual is available on the Internet at: [www.cleanrivers-pdx.org/tech\\_resources](http://www.cleanrivers-pdx.org/tech_resources)

**Suggestions:**

1. If restaurants or commercial kitchens will be proposed for future tenant improvements, the BES Source Control Division highly recommends the removal of all food/garbage disposals and the installation of grease management devices where appropriate. These steps will help "reduce" the extra strength sewer charges this facility may incur in the near future. [By reducing the amount of food wastes, grease and starches that are rinsed down the drain, this facility's potential to cause an obstruction in the main sewer line will be reduced: Chapter 17.34.110 of the City Code authorizes the City to assess civil penalties of up to \$5,000 per day, and recover costs incurred by the City for administration and maintenance, in response to facilities that have discharged substances that may cause obstruction of the flow of wastewater, resulting in the violation of City Code Chapter 17.34.030(a) and 17.34.030(b)(3) and (9).]

The Fire Bureau responded with the following comment: Please see Exhibit E-2 for additional details.

The proposed project must meet the requirements of Policy B-1 at the time of development. There may be issues related to access to the condominiums above the ground level. The applicant will be required to show additional detailed plans and meet the fire code at that time.

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The Site Development Section of BDS responded with the following comment: Please see Exhibit E-3 for additional details.

Because the proposed design does not provide sufficient space for stormwater disposal, Site Development recommends that, after pretreatment and detention, stormwater be directed to the public sewer, with BES approval.

The Water Bureau responded with the following comment: Please see Exhibit E-4 for additional details.

The site at 2538 NW Thurman Street has an existing 5/8" metered water service located 199 feet west of the west line of NW 25th Avenue. This meter will need to be permanently removed, and a larger meter will need to be purchased in order to supply the proposed increased demand. Meter size will be determined by the Water Bureau during building permit review. Water is supplied to the water meter by a 6" main located in NW Thurman Street. Static water pressure at this site ranges from approximately 46-57 psi. Please call me if you have any questions or comments. My phone number is 503-823-7364.

The Bureau of Parks-Forestry Division responded with the following comment: Please see Exhibit E-5 for additional details.

City code Title 20.40 requires street trees to be planted for new construction or improvements that exceed \$25,000 in value. Street trees may be required along all developed public street frontages. Trees required for commercial sites are to be 3.5" caliper in size. Trees required for residential sites are to be 2" caliper in size.

All existing trees on private property that are 12 inches in diameter and greater may not be removed unless permitted through Title 33 (land use review, development permit) or through a written permit issued from the City Forester as detailed in Title 20/Chapter 20.42. Existing street trees and Heritage Trees are to be protected and preserved. A written permit from the City Forester is required to remove, destroy, cut, break, injure, or plant any tree of any size in or upon any street, park, or public area.

Street trees may be required in an existing planting strip that is at least 2.5 feet in width, in tree wells placed in the sidewalk, or in some cases, behind the sidewalk. If commercial planting strips are 2.5 to 3 feet wide, the minimum tree size will be 2" caliper. Tree wells are not permitted in walks less than 9 feet wide. Portland Department of Transportation regulates walk and tree well requirements and issues permits for tree wells. Locate utility lines away from existing and required trees.

The following are street tree location guidelines. Street trees are to be shown on the site or landscape plans at the time a building permit is applied for. Trees shall not be planted closer than:

- 25-feet from the curb line of an intersection
- 7-feet from alley margins and driveways
- 5-feet from fire hydrants, underground utilities, and utility poles
- 10-feet from directional traffic signs
- 2-feet from property lines
- 20-feet from stop or yield signs
- 25-feet from street lights, if a columnar variety is selected, the distance can be reduced but species selection is determined by the Urban Forestry Inspector.
- 20-feet or more from adjacent trees depending on species

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The Bureau of Transportation Engineering responded with the following comment: Please see Exhibit E-6 for additional details.

Portland Transportation/Development Review reviewed the above case for its conformance with adopted policies, street designations, T33 approval criteria, T17, and for potential impacts upon transportation services.

The applicant has provided plans showing an angled drive aisle from behind the sidewalk into the parking area. Although these are not preferred the Office of Transportation will not object due to the low volume expected, as these will serve residential housing and not retail use so long as the applicant can provide adequate vehicular turning movement information acceptable to the Office of Transportation at the time of building permit. A visual warning system will also be required warning pedestrians of vehicles exiting the proposed parking area. This system will need to be provided with the building plan submittal.

Additionally the curb and sidewalk along the property frontage will be reviewed at the time of building permit. If these items are in poor repair they will need to be replaced prior to building permit issuance.

Transportation/Development Review has no objection to this proposal.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **August 6, 2004**. Six written responses have been received in response to the proposal. Two phone calls were also received, both in opposition to the proposal. Staff addressed concerns that directly relate to approval criteria in the findings below. Summaries of the comments are described below.

➤ Exhibit F.1, summary:

This project would be "the highest building in the area" and an "eye sore among other things". Existing development on Thurman includes 3-story condominiums. A taller building will hurt the light and air. Already existing problems on Thurman between 25<sup>th</sup> and 26<sup>th</sup> include: 3 bus stops, 1 cleaning establishment, 1 mini market, 11 town houses, 2 condo buildings (one with underground parking).

"This was a residential street that you are changing and driving the homeowners out, which he realizes is not important to the City. There will be more tax payers per square foot under the Bureau's changes."

"Since the addition of the Bureau's last two approved condos, the parking HAS NOT IMPROVED, even with underground parking, since many residents have 2 cars and park on street. If the Bureau approves the proposal, parking will all but evaporate."

➤ Exhibit F.2, summary:

"The current height restriction is ample. In fact, it is already too high. A five-story building will block the light and completely overshadow the adjoining homes. This is primarily a residential area, not a commercial zone."

"Virtually every residence on this street has a small front yard. Is any space in this plan for anything other than street trees to grow? Is there any provision for greenery? She points out that Portland prides itself on its livability, and it seems inconsistent with this concept."

"The building depicted in the Bureau's information package is monolithic and industrial in appearance. Is there is no interest in maintaining residential feel of the neighborhood? The new row homes on the southeast corner of 25<sup>th</sup> and Thurman at least made an effort to look like homes."

"I fail to see a benefit to granting all of the requested variances, although a negative visual impact on the neighborhood is quite clear. Five stories is too tall and the overall design is inconsistent with the neighborhood."

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➤ Exhibit F.3, summary:

"All of the buildings on the north side of the block, with the exception of the corner properties, have deep backyards. It appears that the proposed building would run up to the property lines at both sides and the back of the property. This would be very much at odds with the rest of the properties on this side of the block."

"On the south side of the block, while there are apartment buildings that run up close to the property lines, these are all two-story structures. There are also four-story buildings on the south side of the block, but these all have deep backyards. This proposed structure would be the only one in the block to be both very tall and to have no backyard."

"Six zoning modifications have been requested. Four of the requested modifications – the height, the ground floor windows, the transit street main entrance, and the ground floor active use standard – would seriously degrade the character of this residential block. The north side of this block is made up entirely of single-family residences and row houses, except for the convenience store at the corner of 26<sup>th</sup> Ave and Thurman. A five-story condominium would not fit in with the character of this block. The requested modifications, rather than adapting the building to the neighborhood, make it intrude even more."

"If the proposed structure were in keeping with the existing buildings in this block, he would have no objections to granting zoning modifications. However, given that it is so out of keeping with the character of this block, he recommends that the proposal be rejected."

➤ Exhibit F.4, summary:

"The NWDA voted to recommend denial of the application."

Height – "Any modification to the height standard in the CM zone on the south side of Thurman will be out of character with that desired, in recognition of conditions on Thurman and Savier"

Pedestrian Standards – "The committee felt this modification could be approved."

Parking Space and Aisle Dimensions – "The committee felt this modification could be approved."

Ground Floor Active Use Standard – "The committee expresses a strong sentiment against this modification. This sentiment was largely based on the need for a heightened and traditional ground floor design expression that would further delineate uses and reflect those uses in the façade."

Large storefront windows – "The design of the building would be improved through the addition of larger, taller storefront windows."

Awnings – "The design includes no awnings or overhangs."

Cornices and ornamental parapets – "The thoughtful design of this thoroughly modern building does not preclude the inclusion of some element that draws the eye up and then defines an end to the building plane."

Masonry construction – "This guideline, while not met, was better achieved by the newly proposed materials."

Buildings of 1 to 4 stories – "This height and the number of stories presents a dangerous precedent fore development on the south side of Thurman, that, in complimenting its neighbors, should be no higher than the code allows."

Upper-story residences – "This guideline is met."

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➤ Exhibit F.5, summary:

"I support the project with the following conditions:

- Raise the ground floor ceiling to 12'. Use an overhead door on the garage and provide a sidewalk entry to the tenant space.
- Approve the building height adjustment that would be required to implement the 12' ground floor height. The overall building height is mitigated by the north and south setbacks of the top floor.
- Move the residential entry door to the base of stairway 3 at the sidewalk.
- Minimize ground floor blank wall by using a large single door driveway and entrance and maximize glass to the tenant.
- Consider adding some greenery to the building façade with vines or narrow vertical [bamboo?] planting strips along front façade or ???
- Have tenant floor level close to sidewalk level so it doesn't appear "sunken" and have so much "travel time" to reach [as by ramp currently indicated]."

➤ Exhibit F.6, summary:

"I recommend approval with the following conditions:

- Start the main entry stair #3 at or close to the north property line and relocate the entry door at the top of the stair so that it faces north and is visible from the Thurman Street sidewalk.
- Include an exterior door from Thurman Street to the tenant space.
- Break the continuous horizontal line at ele. 107' to give more articulation to the raised floor areas needed to gain access to the garage and tenant space.
- Re-submit these modifications for Design Review approval.
- With the present access the tenant space is practically worthless except as a manager office for the building.
- As presently designed the street façade is a very flat plane – which, except for the staggered window locations and sizes, has little animation. The continuous line at ele. 107' artificially suggests a continuous floor level. A perfect opportunity exists to add animation/liveliness to the façade by recognizing the raised floor levels of the 2<sup>nd</sup> floor units and articulating this in some way.
- The penthouse wall at the west elevation should step back 11'-6" from the property line, as it does at the east elevation."

## **ZONING CODE APPROVAL CRITERIA**

### **Chapter 33.825 Design Review**

#### **Section 33.825.010 Purpose of Design Review**

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

#### **Section 33.825.055 Design Review Approval Criteria**

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

**Findings:** The site is designated with design overlay zoning (d), therefore the proposal requires Design Review approval. Because of the site's location, the applicable design guidelines are the Community Design Guidelines.

#### **Community Design Guidelines**

The Community Design Guidelines consist of a set of guidelines for design and historic design cases in community planning areas outside of the Central City. These guidelines address the unique and special characteristics of the community plan area and the historic and conservation districts. The Community Design Guidelines focus on three general categories: (P)

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**Portland Personality**, which establishes Portland's urban design framework; **(E) Pedestrian Emphasis**, which states that Portland is a city for people as well as cars and other movement systems; and **(D) Project Design**, which assures that each development is sensitive to both Portland's urban design framework and the users of the city.

Staff has considered all guidelines and has addressed only those guidelines considered applicable to this project.

#### DESIGN REVIEW

**P1. Community Plan Area Character.** Enhance the sense of place and identity of community plan areas by incorporating site and building design features that respond to the area's unique characteristics and neighborhood traditions.

**D7. Blending into the Neighborhood.** Reduce the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.

**D8. Interest, Quality, and Composition.** All parts of a building should be interesting to view, of long lasting quality, and designed to form a cohesive composition.

**Findings for P1, D7, D8:** The area recently underwent an extensive planning process. [The Plan, adopted by Council, is on appeal to LUBA.] Through that process, among many things, an urban design concept was formulated and NW Thurman Street was designated a "Main Street". The zoning designation for this site was changed from CN1 [Neighborhood Commercial 1] to CMD [Mixed Commercial/Residential with design overlay]. NW Thurman Street is unique and varied in its development. The NW District Plan states, "NW Thurman Street includes a predominance of residential structures not typical of other main streets, including Victorian workers cottages in the Queen Anne style and modern rowhouses with architecture derivative of traditional styles." Commercial use is evident along NW Thurman. However this stretch of NW Thurman, between 25<sup>th</sup> and 26<sup>th</sup> is more residential than commercial.

The project provides housing opportunities along a thriving, newly designated Main Street. The project's mixed-use, high-density nature is supportive of the transit-oriented focus of this street and surrounding neighborhood. The building continues the urban edge of the street and will enhance the activity and interest for passers-by through its successful design concepts and elements.

The building will incorporate quality materials with subtle, interesting detailing such as a shifting in the window placement at the wall planes, varied window sizes, deep set windows with IPE extensions, prominent corner vertical elements, a prominent entry, various balcony and deck configurations, and varied building skin systems. The massing of the building is broken down by breaking open the corner, creating dramatic vertical elements at the corner decks. The intentional window offset will create a less rigid, more playful residential feeling. The architecture and composition of the building will be very interesting and will testify quality and thoughtfulness.

Concern was raised about the height of the building. Though 2' taller than allowed by Code, the overall project is less massive at most vantage points than what would be allowed by Code [as described in the Height Modification findings below]. The result mitigates concerns raised.

*These guidelines are met.*

**E1. The Pedestrian Network.** Create an efficient, pleasant, and safe network of sidewalks and paths for pedestrians that link destination points and nearby residential areas while visually and physically buffering pedestrians from vehicle areas.

**E3. The Sidewalk Level of Buildings.** Create a sense of enclosure and visual interest to buildings along sidewalks and pedestrian areas by incorporating small scale building design features, creating effective gathering places, and differentiating street level facades.

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**D4. Parking Areas and Garages.** Integrate parking in a manner that is attractive and complementary to the site and its surroundings. Locate parking in a manner that minimizes negative impacts on the community and its pedestrians. Design parking garage exteriors to visually respect and integrate with adjacent buildings and environment.

**Findings for E1, E3, D4:** Street trees and a planting strip will help maintain a safe, accessible public pathway and establish a green counterpoint to concrete and automobiles along NW Thurman Street. Parking is not required by Code. However, the project provides approximately 1 parking stall per unit. All on-site parking is well-screened from the public realm for the following reasons: [1] it is entirely within the structure, [2] it is depressed a few feet from sidewalk grade, [3] it is screened with an integrated design element, and [4] the angled driveway and location of parking approximately 26' from the property line help diminish views of the parking from the street.

The entryway of the building is articulated with a figural wood screen to help animate the entrance. Additionally, the entryway will be internally lit, acting like a lantern at night. A wood and concrete boardwalk/pathway along the west edge of the building connects the front and back of the site. All pathways are illuminated with lighting for a safe environment; the fixture proposed, a subtle step light, was chosen to avoid glare impacts on neighbors.

NW Thurman Street was recently designated a "Main Street" in the Northwest District Plan. This designation, through the Zoning Code, encourages active ground level uses. The Plan calls for, "a mix of uses, but with an emphasis on residential uses", at NW Thurman Street. This block of NW Thurman Street is largely residential with a mixture of single family and multi-family housing evident in a variety of housing types. Overall, the proposed ground level meets desired pedestrian-focused characteristics for this street with the inclusion of a pedestrian ramp, two main entrances facing the street, and a small commercial space. Furthermore, as described above, the design succeeds in screening parking from the public realm. Including a ground level tenant space supports the transit activity on NW Thurman and its Main Street designation. However, it is appropriately proportioned for this block of Thurman - it is small and intimate, unlike the more intensely retail-focused streets such as NW 21<sup>st</sup> and 23<sup>rd</sup>. In addition, the building differentiates between the building façade at the sidewalk level and the residential floors above - a lower height at the building base is more appropriately proportioned for this design concept and allows visual emphasis at the bulk of the wall plane and the main entrance, while still providing active uses and views into the building along the public sidewalk.

*These guidelines are met.*

**E5. Light, Wind, and Rain.** Enhance the comfort of pedestrians by locating and designing buildings and outdoor areas to control the adverse effects of sun, shadow, glare, reflection, wind, and rain.

**D2. Main Entrances.** Make the main entrances to houses and buildings prominent, interesting, pedestrian accessible, and transit-oriented.

**Findings for E5, D2:** The main entry sequence is a dominant element of the street-facing elevation through its careful design - the main plane of the façade is cut away at this location, a figural wood screen is integrated into the space, lighting is incorporated, and a generous amount of glass is provided. Overhead cover is included at the doors leading to the main lobby and tenant space. Street trees, the stormwater planter, and the vine walls will provide shade and/or reduce the effects of wind and rain.

*These guidelines are met.*

**D1. Outdoor Areas.** When sites are not fully built on, place buildings to create sizable, usable outdoor areas. Design these areas to be accessible, pleasant, and safe. Connect outdoor areas to the circulation system used by pedestrians.

**D3. Landscape Features.** Enhance site and building design through appropriate placement, scale, and variety of landscape features.

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**Findings for D1, D3:** Generous unit patios, a stormwater planter, and pathways are included in the unbuilt portions of the site. The pathway system acts as an exiting route and also leads visitors and residents to the main entrance lobby. The unit patios are sizable. Vine walls provide privacy and softening opportunities. The stormwater planter is functional and also provides screening/softening opportunities.

*These guidelines are met.*

**D5. Crime Prevention.** Use site design and building orientation to reduce the likelihood of crime through the design and placement of windows, entries, active ground level uses, and outdoor areas.

**Findings for D5:** This guideline is met in the following ways: [1] the entries are well-lit and transparent at the street edge, [2] the ground level tenant space is also transparent adjacent to the public sidewalk, [3] site paths are adequately lit for safety, while avoiding negative glare impacts on neighbors, [4] windows and unit balconies are generous at all four elevations to survey the site and surroundings.

*This guideline is met.*

#### **MODIFICATION REQUESTS**

##### **Section 33.825.040, Modifications That Will Better Meet Design Review Requirements:**

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

**The following four modifications to Zoning Code development standards are requested:**

1. **33.130.210 Height.** Maximum height allowed in this CM zone is 45'.  
**Proposed:** The tallest portion of the building is measured at 47'.

**Findings:** *The height limits are intended to control the overall scale of buildings. The height limits in the CO2, CM, CS, and CG zones allow for a greater building height at a scale that generally reflects Portland's commercial areas. Light, air, and the potential for privacy are intended to be preserved in adjacent residential zones.*

The penthouse level, the fifth floor, exceeds the height limit by 2'. This is determined [as required by Code] by measuring from the base point, which is the elevation of the highest adjoining sidewalk or ground surface within a 5' horizontal distance of the exterior wall of the building. The base point provided by survey is 99.27'.

To mitigate for the resulting bulk and mass, the north-facing wall of the penthouse is setback 12' from the north property line and the south-facing wall of the penthouse is setback 21'-6" from the south property line. The result is: [1] the bulk of north façade, at the property line, 38.24' in height, and [2] the bulk of the south façade 37.7' in height.

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Clearly, this result is less visual and physical mass than what is allowed outright by Code - a 45' tall wall built to the north property line and a 45' tall wall built 11' from the south property line.

At the side property lines, the facades are setback 5' from the property lines [the Code does allow a 45'-tall building wall to be built to the side property lines]. The proposed side wall planes are larger and more massive than the north and south. The interesting window pattern and quality of window type do help to mitigate the visual impacts. Additionally, the architectural composition established by the design team is rationalized by the solid wall planes of these two side elevations. The prominence of the light and dramatic vertical building corners are bracketed by strong, solid wall planes.

The project has improved since the first public mailing - the height modification was decreased from 5' to 2', the materials are lighter, the windows more interesting, and the corner elements stronger. These improvements help alleviate impacts from visual and physical mass at all elevations.

For these reasons, the resulting development is consistent with the purpose statement and design guideline D8 is better met.

*The criteria are met.*

2. **33.130.240 Pedestrian Standards.** An on-site pedestrian circulation system must be provided. The system must connect all buildings on the site, and provide connections to other areas of the site, such as parking areas, bicycle parking, recreational areas, common outdoor areas, and any pedestrian amenities. The circulation system must be hard-surfaced, and be at least 6'-wide.

**Proposed:** The required "internal connections" are not 6'-wide. The path along the south and west lot lines is 4'-wide and the path at the east lot line 4.5'-wide at its most narrow point.

**Findings:** *The pedestrian standards encourage a safe, attractive, and usable pedestrian circulation system in all developments. They ensure a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site. In addition, they provide for connections between adjacent sites, where feasible.*

Though noncompliant with Title 33 in terms of width, the paths provided are adequate, extensive, well lit, integrated into the overall design concept, and, most importantly, will meet fire and life safety requirements. Given the relatively small scale of this project, the paths will be functional and serve the visitors and residents adequately. For these reasons, the path system provided is consistent with the purpose statement. The quality of the path system mitigates the decrease in width, better meeting design guidelines E1 and D8.

*The criteria are met.*

3. **Table 266-4 Minimum Parking Space and Aisle Dimensions.** Required dimensions for 90-degree parking stalls are width 8.5' x depth 16'.
- Proposed:** The plan includes columns that decrease the width of a majority of the stalls to 8'.

**Findings:** *The parking area layout standards are intended to promote safe circulation within the parking area, provide for the effective management of stormwater runoff from vehicle areas, and provide for convenient entry and exit of vehicles.*

The parking will be private - only for use by the residents of this building. Furthermore, the spaces will be assigned to residents. Thus, only those familiar with maneuvering in this parking area will be using this parking area. For these reasons, the proposed design will maintain safety. Less area devoted to parking means more area for other uses that are

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deserving – bike parking, street-facing active uses, lobby areas, etc. For this reason, design guidelines P1, E3, D7 are better met.

*The criteria are met.*

4. **33.562.240 D. Ground Floor Active Use Standard.** In order to accommodate active uses, the ground floor of buildings must be designed and constructed as follows. This standard must be met along at least 50% of the ground floor of walls that front onto a main street or streetcar alignment. Areas designed to accommodate active uses must meet the following four standards:
- The distance from the finished floor to the bottom of the structure above must be at least 12'. The bottom of the structure above includes supporting beams;
  - The area must be at least 25'-deep, measured from the street-facing façade;
  - At least 25% of the area of the street-facing façade of the portion of the building designed to meet the requirements of this subsection must be windows and doors; and
  - Parking is not allowed in the areas designed to meet the standards of this subsection.
- Proposed:** Two of the four standards are not met [standards A and B]; The proposed distance from finished floor to the bottom of the structure at the ground level tenant space is 9.59'. The ground level tenant space is between 15'- and 18'-deep.

**Findings:** *These regulations reinforce the continuity of the pedestrian-oriented environment, limit the visual impact of parking facilities, and foster development with transit-supportive levels of activity along main streets and the streetcar alignment. The standards also help to maintain a healthy urban district with architectural elements and active ground-floor uses that provide visual interest and interrelate with the pedestrian environment.*

NW Thurman Street was recently designated a "Main Street" in the Northwest District Plan. This designation, through the Zoning Code, encourages active ground level uses. The Plan calls for, "a mix of uses, but with an emphasis on residential uses", at NW Thurman Street. This block of NW Thurman Street is largely residential with a mixture of single family and multi-family housing evident in a variety of housing types. Overall, the proposed ground level meets desired pedestrian-focused characteristics for this street with the inclusion of a pedestrian ramp, two main entrances facing the street, and a small commercial space. Furthermore, as described above, the design succeeds in screening parking from the public realm. Including a ground level tenant space supports the transit activity on NW Thurman and its Main Street designation. However, it is appropriately proportioned for this block of Thurman – it is small and intimate, unlike the more intensely retail-focused streets such as NW 21<sup>st</sup> and 23<sup>rd</sup>. In addition, the building differentiates between the building façade at the sidewalk level and the residential floors above – a lower height at the building base is more appropriately proportioned for this design concept and allows visual emphasis at the bulk of the wall plane and the main entrance, while still providing active uses and views into the building along the public sidewalk.

For these reasons, the resulting development is consistent with the purpose statement and better meets design guidelines P1, E1, E3, D2, D4, D6 and D8.

*The criteria are met.*

#### STATEWIDE PLANNING GOALS

The Northwest Plan District [NRPD] is currently on appeal to LUBA. Under ORS 197.625(3)(a) prior to acknowledgment, the amendment is effective at the time specified by the local ordinance and is applicable to all land use decisions. Under Subsection (3)(b), approval of land use decisions subject to an unacknowledged amendment must include findings in compliance with the Statewide Planning Goals applicable to the amendment. This section therefore includes a listing of the Statewide Planning Goals that are applicable to the design review for the proposal and demonstrates compliance with all applicable goals.

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**Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. This submittal of a Type II Design Review for the proposal has provided opportunity for public involvement. In accordance with the City's Type II procedure, when the application was determined complete [8-3-04], City Staff mailed a public notice shortly thereafter [8-6-04] and allowed a 3-week public comment period. During the decision process, City Staff consulted with the owner, applicant, other citizens, city agencies, and other public and private organizations to solicit information relevant to the request. This report is a decision made by City Staff, will be mailed in accordance with the Type II procedures, and is available for public review. This decision may be appealed within 2 weeks of the mailing date. If appealed, an appeal hearing will occur before the Design Commission for a final City decision. Any appeal of that decision, in accordance with Title 33 requirements, can be made to Land Use Board of Appeals (LUBA). Based on this Type II procedure codified at PCC 33.730, the process for review of the Type II Design Review application is consistent with Statewide Planning Goal 1.

**Goal 2, Formal Land Use Planning**, requires the development of a process and policy framework which acts as a basis for all land use decisions and assures that decisions and actions are based on an understanding of the facts relevant to the decision. The previously existing Community Design Guidelines are acknowledged in this process. The proposal responds to the acknowledged provisions of the Community Design Guidelines and, if approved, will demonstrate consistency with all of these provisions. If approved, the proposal will also demonstrate compliance with the revised Community Design Guidelines, which do not negate any pre-existing guidelines but instead provide additional design review criteria. Accordingly, the processing of the proposal will comply with Goal 2 through the application of the acknowledged design review chapters, PCC 33.420 and PCC 33.825.

**Goal 7, Areas Subject to Natural Disasters and Hazards**, requires the protection of life and property from natural disasters and hazards. Fire and Life Safety and Structural codes in the City of Portland will ensure the project's compliance with Goal 7.

**Goals 9 and 10, Economic Development and Housing**, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity and the provision of housing opportunities. The proposal is fully supportive of Goals 9 and 10. The project provides housing opportunities along a thriving, newly designated Main Street. Its mixed-use, high-density nature is supportive of the transit-oriented focus of this street and surrounding neighborhood.

**Goal 11, Public Facilities and Services**, requires planning and development of timely, orderly and efficient public service facilities that serve as a framework for urban and rural development. The NWPD examined the existing public services and zoned properties accordingly. Under this proposal, all bureaus have reviewed the system needs for the new building and determined what additional infrastructure is needed to accommodate the development potential. Through this review, the proposal complies with Goal 11.

**Goal 12, Transportation**, requires a provision of a safe, convenient, and economic transportation system. The proposal is located on an improved transit street. Portland Transportation reviewed the project, including the associated parking, against traffic patterns and system facilities and deemed the project compliant. Bicycle facilities will be included per Code requirements.

**Goal 13, Energy Conservation**, requires development of a land use pattern that maximizes the conservation and energy based on sound economic principles. Expanding housing and commercial opportunities within one of Portland's densest neighborhoods that has good access to transit reduces the use of fossil fuels and helps conserve energy.

**Goal 14, Urbanization**, requires provision of an orderly and efficient transition of rural lands to urban use. The site is already dedicated to urban use and is not characterized as rural land. Nevertheless, the location of the site within the NWPD serves the desire for

10-22-04

additional mixed-use development within the regional Urban Growth Boundary, thereby reducing long term regional pressures for conversion of rural lands to urban uses.

**Goal 3, Goal 4, Goal 5, Goal 6, Goal 8, Goals 15-19**, are not applicable. The above findings demonstrate that the proposal is consistent with the Statewide Planning Goals as required under ORS 197.625(3)(a).

**DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

**CONCLUSIONS**

The design review process exists to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The findings above describe how the project meets all approval criteria. The applicants are commended on the design improvements made during the design review process.

**ADMINISTRATIVE DECISION**

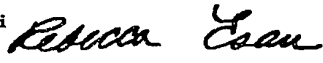
Approval of design review to construct a new 5-story building with a small commercial space and parking [15 spaces] on the first level and 16 condominium units on levels 2-5. The exterior building materials include IPE horizontal and vertical 1 X 4 siding, IPE vertical 2 X siding, deep set metal clad wood windows with IPE extensions, concrete, and vine screens. The main entry ramp and stairs are accessed from NW Thurman at the west end of the site. The parking entry is accessed from NW Thurman, closer to the east lot line.

Approval of the four requested modifications.

Approvals per the approved plans, Exhibits C-1 through C-20, signed and dated September 20, 2004, subject to the following condition:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.20. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 04-033639 DZM. No field changes allowed."

Staff Planner: Kara Fioravanti



Decision rendered by: \_\_\_\_\_ on September 20, 2004  
By authority of the Director of the Bureau of Development Services

Decision mailed: September 21, 2004

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on intake July 8, 2004, and was determined to be complete on August 6, 2004.

10-22-04

**FORM O&M: OPERATIONS & MAINTENANCE PLAN  
REQUIRED IN ACCORDANCE WITH CITY CODE CHAPTER 17.38**

Project Building Application No. PLC

Owner's Name WTK DEVELOPMENT, LLC 1-6-05

Phone No. (area code required) (503) 543-8521

Mailing Address (RETURN ADDRESS FOR RECORDER)

52200 EAST HONEYMAN RD, PO BOX 1105, SCAPPOOSE, OR 97056

Site Address

2530NW THURMAN, PORTLAND, OR 97210

Site Legal Description PROPERTY ID # R111156

MAP # 2926, CMA Zone, E1/2 LOT 14 BLOCK 319, LOT 15 BLOCK 319, BALCHS ADDITION

Recorded in MULTNOMAH COUNTY, OREGON

C. Swick, Deputy Clerk

E05 6

ATLJH

Total : 46.00

2005-002975 01/06/2005 10:39:50am

BY SIGNING BELOW, filer accepts and agrees to the terms and conditions contained in this operations & maintenance plan and in any document executed by filer and recorded with it.

Geoff Wenker MEMBER, WTK DEVELOPMENT, LLC  
Filer Geoff Wenker

NOTARIZATION: GIVEN under my hand and official seal

this 16 day of July, 2004.

Notary Public in and for the State of Oregon: Oregon

My Appointment Expires on: 1-7-07



**O&M PLAN REQUIRED INFORMATION:**

1) Site Plan. Include a site plan showing the facility location (in relation to building structures or other permanent monuments on the site), sources of runoff entering the facility, and where stormwater will be discharged to after leaving the facility.

The stormwater management facility located on this site plan is a required condition of building permit approval for the identified property. The owner of the identified property is required to operate and maintain this facility in accordance with the O&M plan on file with the City of Portland, Bureau of Environmental Services. The requirement to operate and maintain this facility in accordance with the on-file O&M plan is binding on all current and future owners of the property. The O&M plan may be modified under written consent of new owners with written approval by and re-filing with the Bureau of Environmental Services. The O&M plan for this facility is available at the Bureau of Environmental Services, located at 1120 SW 5<sup>th</sup> Avenue, Room 1000, Portland, Oregon, between the hours of 8 a.m. and 5 p.m., Monday through Friday. Call (503) 823-7740 for assistance.

Site Plan (insert here or include separate sheet):

SEE ATTACHED SITE  
UTILITY PLAN - SHEET 5 OF 7

2) Description of the financial method used to cover future operations and maintenance. Check One:

Homeowner Association     Property Owner Account     Other (describe)

3) Party (ies) responsible for maintenance (only if other than owner). HOME OWNERS ASSOCIATION

Daytime Phone No. (area code required) ( ) - - - - - Emergency/After-Hours Contact Phone No. ( ) - - - - -

Maintenance Contact & Address

4) Maintenance practices and schedule for the stormwater facility is included in the facility-specific O&M plan filed with the Bureau of Environmental Services, City of Portland. The operation and maintenance practices are based on the publication date of the City of Portland's Stormwater Management Manual.

Preparation Date \_\_\_\_/\_\_\_\_/\_\_\_\_    Revision Date \_\_\_\_/\_\_\_\_/\_\_\_\_    Estimated Date of Installation (month/year) \_\_\_\_/\_\_\_\_

Prepared By \_\_\_\_\_

6

1-6-05

## Infiltration and Flow-Through Planter Boxes

### Operations & Maintenance Plan

**Planter Boxes** are designed to allow runoff to filter through layers of topsoil (thus capturing pollutants) and then either infiltrate into the native soils (infiltration planter) or be collected in a pipe to be discharged off-site (flow-through planter). The planter is sized to accept runoff and temporarily store the water in a reservoir on top of the soil. The flow-through planter is designed with an impervious bottom or is placed on an impervious surface. Pollutant reduction is achieved as the water filters through the soil; flow control is obtained by storing the water in a reservoir above the soil. Water should drain through the planter within 3-4 hours after a storm event. All facility components and vegetation shall be inspected for proper operations and structural stability. These inspections shall occur, at a minimum, quarterly for the first 2 years from the date of installation, 2 times per year thereafter, and within 48 hours after each major storm event. The facility owner must keep a log, recording all inspection dates, observations, and maintenance activities. The following items shall be inspected and maintained as stated:

**Downspout** from rooftop or sheet flow from paving allows unimpeded stormwater flow to the planter.

- Debris shall be removed routinely (e.g., no less than every 6 months) and upon discovery.
- Damaged pipe shall be repaired upon discovery.
- Rock splash pads shall be replenished to prevent erosion.

**Splash Blocks** prevent splashing against adjacent structures and convey water without disrupting media.

- Any deficiencies in structure such as cracking, rotting, and failure shall be repaired.

**Planter Reservoir** receives and detains storm water prior to infiltration. Water should drain from reservoir within 3-4 hours of storm event.

- Sources of clogging shall be identified and corrected.
- Topsoil may need to be amended with sand or replaced all together.

**Filter Media** consisting of sand, gravel, and topsoil shall allow stormwater to percolate uniformly through the planter. The planter shall be excavated and cleaned, and gravel or soil shall be replaced to correct low infiltration rates.

- Holes that are not consistent with the design and allow water to flow directly through the planter to the ground shall be plugged.
- Sediment accumulation shall be hand removed with minimum damage to vegetation using proper erosion control measures. Sediment shall be removed if it is more than 4 inches thick or so thick as to damage or kill vegetation.
- Litter and debris shall be removed routinely (e.g., no less than quarterly) and upon discovery.

**Planter Box** shall contain filter media and vegetation.

- Structural deficiencies in the planter box including rot, cracks, and failure shall be repaired.

**Overflow Pipe** safely conveys flow exceeding reservoir capacity to an approved stormwater receiving system.

- Overflow pipe shall be cleared of sediment and debris when 50% of the conveyance capacity is plugged.
- Damaged pipe shall be repaired or replaced upon discovery.

**Vegetation** shall be healthy and dense enough to provide filtering while protecting underlying soils from erosion.

- Mulch shall be replenished at least annually.
- Vegetation, large shrubs or trees that limit access or interfere with planter operation shall be pruned or removed.
- Fallen leaves and debris from deciduous plant foliage shall be raked and removed.
- Nuisance or prohibited vegetation from the Portland Plant List shall be removed when discovered. Invasive vegetation contributing up to 25% of vegetation of all species shall be removed and replaced.
- Dead vegetation shall be removed to maintain less than 10% of area coverage or when planter function is impaired. Vegetation shall be replaced within a specific timeframe, e.g., 3 months, or immediately if required to maintain cover density and control erosion where soils are exposed.

**Spill Prevention** measures shall be exercised when handling substances that contaminate stormwater. Releases of pollutants shall be corrected as soon as identified.

**Training and/or written guidance information** for operating and maintaining stormwater planters shall be provided to all property owners and tenants. A copy of the O&M Plan shall be provided to all property owners and tenants.

**Access** to the stormwater planter shall be safe and efficient. Egress and ingress routes shall be maintained to design standards. Roadways shall be maintained to accommodate size and weight of vehicles, if applicable.

- Obstacles preventing maintenance personnel and/or equipment access to the stormwater planter shall be removed.
- Gravel or ground cover shall be added if erosion occurs, e.g., due to vehicular or pedestrian traffic.

1-6-05

**Infiltration and Flow-Through Planter Boxes**

**Operations & Maintenance Plan**

**Insects & Rodents** shall not be harbored in the stormwater planter.

Pest control measures shall be taken when insects/rodents are found to be present.

If sprays are considered, then a mosquito larvicide, such as Bacillus thurendensis or Altoside formulations can be applied only if absolutely necessary, and only by a licensed individual or contractor.

Holes in the ground located in and around the stormwater planter shall be filled and compacted.

1-6-05

## Sand Filters

### Operations & Maintenance Plan

**Sand filters** consist of a layer of sand in a structural box used to trap pollutants. The water filters through the sand and then flows into the surrounding soils or an underdrain system that conveys the filtered stormwater to a discharge point. All facility components, vegetation, and source controls shall be inspected for proper operations and structural stability. These inspections shall occur, at a minimum, quarterly for the first 2 years from the date of installation, and 2 times per year thereafter, and within 48 hours after each major storm event. The facility owner must keep a log, recording all inspection dates, observations, and maintenance activities. The following items shall be inspected and maintained as stated:

**Filter Inlet** shall allow water to uniformly enter the sand filter as calm flow, in a manner that prevents erosion.

- Inlet shall be cleared of sediment and debris when 40% of the conveyance capacity is plugged.
- Source of erosion damage shall be identified and controlled when native soil is exposed or erosion channels are forming.
- Sediment accumulation shall be hand-removed with minimum damage to vegetation using proper erosion control measures. Sediment shall be removed if it is more than 4 inches thick or so thick as to damage or kill vegetation.
- Rock splash pads shall be replenished to prevent erosion.

**Reservoir** receives and detains storm water prior to infiltration. If water does not drain within 2-3 hours of storm event, sources of clogging shall be identified and correction action taken.

- Debris in quantities more than 1 cu ft or sufficient to inhibit operation shall be removed routinely (e.g., no less than quarterly), or upon discovery.
- Structural deficiencies in the sand filter box including rot, cracks, and failure shall be repaired upon discovery.

**Filter Media** shall allow to stormwater to percolate uniformly through the sand filter. If water remains 36-48 hours after storm, sources of possible clogging shall be identified and corrected.

- Sand filter shall be raked and if necessary, the sand/gravel shall be excavated, and cleaned or replaced.
- Sources of restricted sediment or debris (such as discarded lawn clippings) shall be identified and prevented.
- Debris in quantities sufficient to inhibit operation shall be removed routinely (e.g., no less than quarterly), or upon discovery.
- Holes that are not consistent with the design structure and allow water to flow directly through the sand filter to the ground shall be filled.

**Underdrain Piping** (where applicable) shall provide drainage from the sand filter, and **Cleanouts** (where applicable) located on laterals and manifolds shall be free of obstruction, and accessible from the surface.

- Underdrain piping shall be cleared of sediment and debris when conveyance capacity is plugged. Cleanouts may have been constructed for this purpose.
- Obstructions shall be removed from cleanouts without disturbing the filter media.

**Overflow or Emergency Spillway** conveys flow exceeding reservoir capacity to an approved stormwater receiving system.

- Overflow spillway shall be cleared of sediment and debris when 50% of the conveyance capacity is plugged.
- Source of erosion damage shall be identified and controlled when native soil is exposed or erosion channels are forming.
- Rocks or other armament shall be replaced when only one layer of rock exists above native soil.

**Vegetation** shall be healthy and dense enough to provide filtering while protecting underlying soils from erosion.

- Vegetation, large shrubs or trees that limit access or interfere with sand filter operation shall be pruned.
- Fallen leaves and debris from deciduous plant foliage shall be raked and removed.
- Nuisance or prohibited vegetation from the Portland Plant List (such as blackberries or English Ivy) shall be removed when discovered. Invasive vegetation contributing up to 25% of vegetation of all species shall be removed and replaced.
- Dead vegetation shall be removed to maintain less than 10% of area coverage or when sand filter function is impaired. Vegetation shall be replaced within 3 months, or immediately if required to maintain cover density and control erosion where soils are exposed.

**Spill Prevention** measures shall be exercised when handling substances that contaminate stormwater.

Releases of pollutants shall be corrected as soon as identified.

**Training and/or written guidance information** for operating and maintaining sand filters shall be provided to all property owners and tenants. A copy of the O&M Plan shall be provided to all property owners and tenants.

**Access** to the sand filter shall be safe and efficient. Egress and ingress routes shall be maintained to design standards. Roadways shall be maintained to accommodate size and weight of vehicles, if applicable.

- Obstacles preventing maintenance personnel and/or equipment access to the facility shall be removed.
- Gravel or ground cover shall be added if erosion occurs, e.g., due to vehicular or pedestrian traffic.

1-6-05

**Sand Filters**

**Operations & Maintenance Plan**

**Insects & Rodents** shall not be harbored in the sand filter. Pest control measures shall be taken when insects/rodents are found to be present.

- If sprays are considered, then a mosquito larvicide, such as Bacillus thurendensis or Altoside formulations can be applied only if absolutely necessary, and only by a licensed individual or contractor.
- Holes in the ground located in and around the sand filter shall be filled.

1-6-05



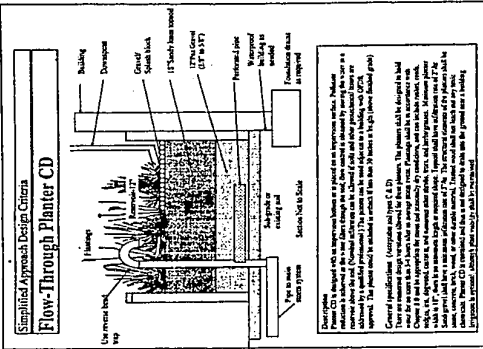
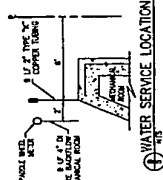
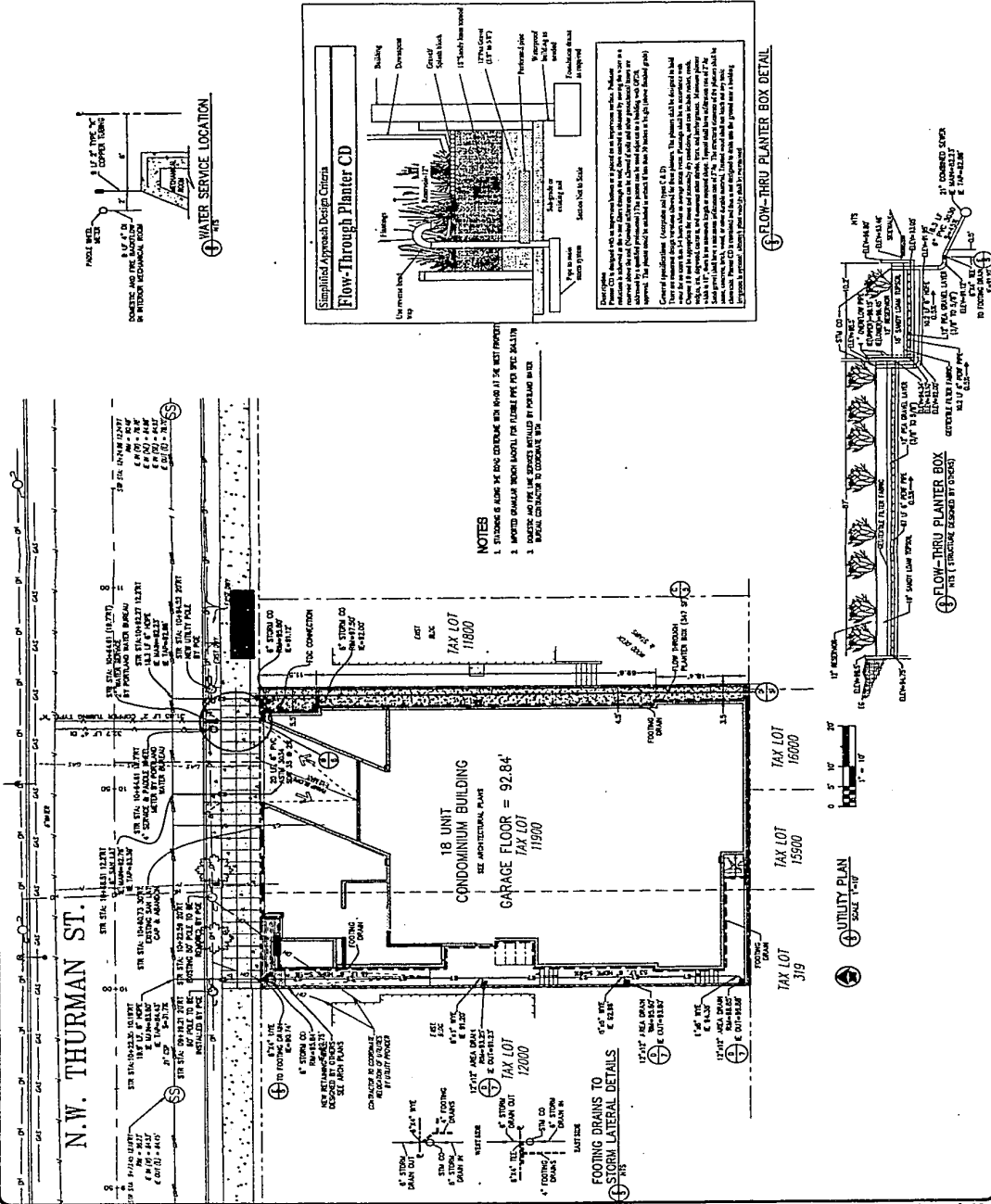
W.B. WILLS  
 REGISTERED PROFESSIONAL ENGINEER  
 LICENSE NO. 10000000000000000000  
 PORTLAND, OREGON

CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 W & K DEVELOPMENT, LLC  
**THURMAN STREET CONDOMINIUMS**  
 UTILITIES PLAN

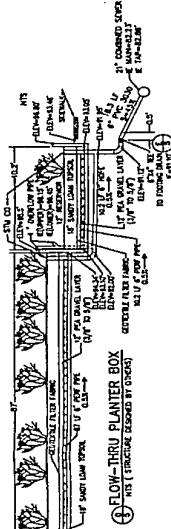


W & K DEVELOPMENT, LLC  
 1000 NE 15TH AVE, SUITE 200  
 PORTLAND, OR 97232  
 503-253-1234

DESIGNED BY: [ ]
CHECKED BY: [ ]
DATE: [ ]
PROJECT NO.: [ ]
SHEET 5 OF 7



- NOTES**
1. FINISHES & SLOPE OF THIS CONCRETE SHALL BE AS SHOWN ON THE BEST PRACTICE SHEET.
  2. IMPACT CHANGES SHALL BE APPROVED BY THE CITY OF PORTLAND.
  3. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF PORTLAND SPECIFICATIONS.



1-6-05

# RECORDING SHEET COUNTY RECORDER'S COPY

## LAND USE REVIEW APPLICANT

Your LU decision may be recorded on or after: April 6, 2005  
You must record your decision on or after this date, as required by the Portland Zoning Code.

**If you would like to record by mail, please send:**

- The two recording documents and attached decision.
- A check payable to: Multnomah County Recorder in the amount of: \$ 66.00  
(*\$16 for recording sheet, \$5 per page of decision, each side if 2-sided*)
- A self-addressed, stamped envelope.

**Mail to:** Multnomah County Recorder, PO Box 5007, Portland OR 97208

## FOR MULTNOMAH COUNTY RECORDER USE ONLY

Please stamp the Applicant's copy of the recording sheet and give to the applicant.

Please stamp the County Recorder's copy of the recording sheet and return with attached decision to:

City of Portland, BDS  
299/4500/BDS LUR

### MULTNOMAH COUNTY RECORDER STAMP HERE

Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk

A77 11 ATKLM  
Total : 66.00

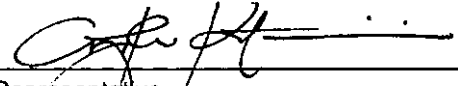
2005-060560 04/07/2005 12:17:22pm

I hereby certify Land Use Review Document, No. LU 05-106871 DZM AD  
to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody.

Rebecca Esau, Principal Planner  
City of Portland  
Bureau of Development Services  
1900 SW Fourth Ave, #4500  
Portland, OR 97201

4/1/05

Date

  
Representative

**THIS DOCUMENT IS FOR THE COUNTY RECORDER**



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

1900 SW Fourth Ave. Suite 5000  
Portland, Oregon 97201  
Telephone: 503-823-7300  
TDD: 503-823-6868  
FAX: 503-823-5630  
[www.bds.ci.portland.or.us](http://www.bds.ci.portland.or.us)

**Date:** March 22, 2005  
**To:** Interested Person  
**From:** Kara Fioravanti, Land Use Services, 503-823-5892

**NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 05-106871 DZM, AD**

*[REVISIONS TO LU 04-033639 DZM]*

*MODIFICATION REQUEST: SHORT-TERM BIKE PARKING LOCATION*

*ADJUSTMENT REQUEST: NUMBER OF REQUIRED LOADING STALLS*

**GENERAL INFORMATION**

**Applicant:** Mihalina Najdek, Listed Owner  
2538 NW Thurman Street/ Portland, OR 97210-2524  
  
W&K Development LLC, Stated Owner  
PO Box 1105/ Scappoose, OR 97056

**Representative:** John Holmes, Architect  
Holst Architecture  
110 SE 8<sup>th</sup> Avenue/ Portland, OR 97214

**Site Address:** 2538 NW THURMAN STREET

**Legal Description:** E ½ OF LOT 14 BLOCK 319, LOT 15 BLOCK 319, BALCHS ADD  
**Tax Account No.:** R051001320  
**State ID No.:** 1N1E29DD 11900  
**Quarter Section:** 2826

**Neighborhood:** Northwest District, contact John Bradley at 503-227-7484.  
**Business District:** Nob Hill, contact Peggy Anderson at 503-417-8960.  
**District Coalition:** Neighbors West/Northwest, contact David Allred at 503-823-4288.

**Plan District:** Northwest Plan District  
**Zoning:** Cmd, Mixed Commercial/Residential with a Design Overlay Zone  
**Case Types:** DZM, Design Review with Modifications to Zoning Code standards  
AD, Adjustment to Zoning Code standards  
**Procedure:** Type II, an administrative decision with appeal to the Design Commission and Hearings Officer.

**Proposal:**

The applicant seeks approval for a Modification and an Adjustment to Zoning Code [Title 33] development standards. These requests relate to development that was recently approved through design review, LU 04-033639 DZM.

**Requested Modification to Zoning Code development standards:**

- 33.266.220.A Short-term bicycle parking.** Required short-term bicycle parking must be along all facades with a main entrance, and within 50 feet of at least one main entrance on each façade that has a main entrance, as measured along the most direct pedestrian access route. The proposal meets the required number of required short-term bicycle parking stalls [4]. However, the proposal includes the short-term bike parking adjacent to only the entrance at the end of the ramp – the short-term bike parking is not proposed at the street-facing façade, where there are two other entries.

**Requested Adjustment to Zoning Code development standards:**

- 33.266.310.C. 2.b. Loading Standards. Number of loading spaces.** One loading space is required for buildings with 20,000 or more square feet, up to 50,000 square feet of floor area. The proposed building includes

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- Chapter 33.420 Design Review
- Chapter 33.825 Design Review
- Community Design Guidelines
- 33.825.040 Modifications That Will Better Meet Design Review Requirements
- 33.805.040 Adjustments
- Statewide Planning Goals

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. This application was submitted on February 3, 2005 and determined to be complete on February 11, 2005.

<b>ANALYSIS</b>
-----------------

**Site and Vicinity:** The area recently underwent an extensive planning process. [The Plan, adopted by Council, is on appeal.] Through that process, among other things, an urban design concept was formulated and NW Thurman Street was designated a "Main Street". The zoning designation for this site was changed from CN1 [Neighborhood Commercial 1] to CMd [Mixed Commercial/Residential with design overlay]. NW Thurman Street is unique and varied in its development. The NW District Plan states, "NW Thurman Street includes a predominance of residential structures not typical of other main streets, including Victorian workers cottages in the Queen Anne style and modern rowhouses with architecture derivative of traditional styles." Commercial use is evident along NW Thurman Street. However, this stretch of NW Thurman, between 25<sup>th</sup> and 26<sup>th</sup> is more residential than commercial.

The 7,500 square foot lot is located on NW Thurman Street where NW Thurman Street is a designated neighborhood collector street, a transit access street, a city bike and walkway and is within the Northwest Pedestrian District. To the west, the property is bordered by a single-dwelling residence and, to the east, by a four-unit row house development. The subject site used to be developed with a two-story single-dwelling residence that is raised a few feet from the sidewalk. A two-car garage is at the back of the lot, accessed from NW Thurman Street. These structures were recently demolished. Across the street is also a variety of housing types: from 1-story single-family residences to 3.5-story condominium buildings. NW Thurman Street has experienced a great deal of development in the recent past and is continuing its transformation into a neighborhood main street with various commercial spaces and a unique mix of housing types.

**Zoning:** The Mixed Commercial/Residential (CM) Zone promotes development that combines commercial and housing uses on a single site. This zone allows increased development on busier streets without fostering a strip commercial appearance. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in the City. The emphasis of the nonresidential uses is primarily on locally oriented retail, service, and office uses. Other uses are allowed to provide a variety of uses that may locate in existing buildings. Development is intended to consist primarily of businesses on the ground floor with housing on upper stories. Development is intended to be pedestrian-oriented with buildings close to and oriented to the sidewalk, especially at corners.

The Design Overlay Zone (d) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, and development of design guidelines for each district.

**Land Use History:** City records indicate that prior land use reviews include the following:

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **02/15/2005**. The following Bureaus have responded:

Bureau of Environmental Services, Exh. E.1

The following conditions of approval and informational comments are based on the land use review information provided to the Bureau of Environmental Services (BES). The comments section of this document is intended for informational purposes only.

**Physical Characteristics:**

1. There is a 21" CSP Combination sewer in NW Thurman St that may serve the needs of this property.

**Conditions of Approval:**

BES has no recommendations that are required to be included as conditions of Land Use Review approval.

**Comments:**

1. The plans for this facility have already been reviewed and approved by BES under the building plan review process under application # 04-033321-CO. The approval of the requested modifications under this LUR does not alter BES requirements as outlined by the building plan review. Storm water mitigation and disposal as shown on the previously reviewed and approved application #04-033321-CO is still required in its entirety. If this adjustment affects the facilities required for storm water mitigation, a revision to application # 04-033321-CO will be required.

Bureau of Transportation Engineering, Exh. E.2

Portland Transportation/ Development Review reviewed the above case for its conformance with Title 33 Approval Criteria, Title 17, and for potential impacts upon transportation services. The applicant seeks design review approval for Modifications to Zoning Code development standards.

The Office of Transportation does not recommend approval of the modification to 33.266.310.F Loading Standards. The applicant is proposing that loading vehicles back into the parking structure to a loading space that would prohibit ingress/egress to over half of the proposed parking during the unloading/loading operation.

The Office of Transportation would support the removal of this loading requirement and suggest that the parking permits be obtained for the use of on-street parking. Most of the building is proposed as residential use and loading/unloading operations will be infrequent.

Many moving vehicles would not clear the vertical height opening anyway and would utilize the street for loading activities. A formal understanding that parking permits be obtained for loading/unloading would better serve the development as well as reduce impacts to the existing transportation system.

Portland Transportation/Development Review does not support the requested modification to Loading standards of forward motion. Transportation supports a requirement that parking permits be obtained to use on-street parking for the loading/unloading activities. These parking permits would allow trucks to park in approved spaces and prevent double parked vehicles in the travel lanes of the street.

Fire Bureau, Exh. E.3 [No objections or requirements at this time.]

BDS, Life Safety, Exh. E.4 [No comments.]

**Neighborhood Review:** A "Notice of Proposal in Your Neighborhood" was mailed on **02/15/2005**. Two written responses have been received from notified property owners in response to the proposal. Both did not support the proposal outlined in the 2/15/05 Proposal. Concerns raised included the following: reduced height would not allow regular sized delivery trucks, double-parking resulting in safety hazards for those traveling on NW Thurman, safety hazards associated with backing-in or backing-out onto a busy street, bike-parking that would be out of sight and result in people parking bikes on the sidewalk and interfering with pedestrians, and, finally a project that results in too many modifications to the Zoning Code requirements – affecting the safety and livability of the neighborhood and its residents. The findings below address concerns relating to the approval criteria. Portland Transportation, Exhibit E.2, did not support the originally requested Modifications to loading standards and suggested an Adjustment to waive loading with conditions.

## **ZONING CODE APPROVAL CRITERIA**

### **1) CHAPTER 33.825 DESIGN REVIEW MODIFICATION REQUEST (33.825.040)**

#### **33.825.040 Modifications That Will Better Meet Design Review Requirements:**

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

#### **Community Design Guidelines**

The Community Design Guidelines consist of a set of guidelines for design and historic design cases in community planning areas outside of the Central City. These guidelines address the unique and special characteristics of the community plan area and the historic and conservation districts. The Community Design Guidelines focus on three general categories: **(P) Portland Personality**, which establishes Portland's urban design framework; **(E) Pedestrian Emphasis**, which states that Portland is a city for people as well as cars and other movement systems; and **(D) Project Design**, which assures that each development is sensitive to both Portland's urban design framework and the users of the city.

**Requested Modification to Zoning Code development standards:**

**33.266.220.A Short-term bicycle parking.** Required short-term bicycle parking must be along all facades with a main entrance, and within 50 feet of at least one main entrance on each façade that has a main entrance, as measured along the most direct pedestrian access route. The proposal meets the required number of required short-term bicycle parking stalls [4]. However, the proposal includes the short-term bike parking adjacent to only the entrance at the end of the ramp – the short-term bike parking is not proposed at the street-facing façade, where there are two other entries.

*Purpose of the standard: Short-term bicycle parking encourages shoppers, customers, messengers and other visitors to use bicycles by providing a convenient and readily accessible place to park bicycles. Short-term bicycle parking should serve the main entrance of a building and should be visible to pedestrians and bicyclists.*

**Findings:** The proposed location of short-term bike parking is located within approximately 10' of the ADA accessible main entrance on the West side of the building, and within approximately 55' of the 2 street-facing main entrances on the North side of the building.

The proposed location puts the short-term bike parking in a well-lit, convenient, and easily accessible area. Because section 33.220.C.6.b. requires that a sign locating the short-term bike parking location be placed at the street-facing entrances, the proposed location puts the short-term bike parking in an easy-to-find spot. For these reasons, the proposal is consistent with the purpose statement.

Given the tight restraints of the site and the limited area for storefront windows, by not placing the bike parking near the street frontage entrance a better pedestrian experience is provided because pedestrians will experience the generous nature of the street-facing entries and the interest of the retail storefront windows. As such, Guidelines E3 and D2 are better met.

The approval criteria are met.

## **2) CHAPTER 33.805 ADJUSTMENTS ADJUSTMENT REQUEST (33.805.040)**

### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### **Requested Adjustment to Zoning Code development standards:**

**33.266.310.C. 2.b. Loading Standards. Number of loading spaces.** One loading space is required for buildings with 20,000 or more square feet, up to 50,000 square feet of floor area. The proposed building includes

### **33.805.040 Approval Criteria**

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

*Purpose of the standard: A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading area will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.*

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The loading/unloading needs for this building are not anticipated to be high-volume for the following reasons: the retail space is minimal in size [under 500 SF] and a small number of for-sale units results in infrequent loading/unloading needs. Portland Transportation agrees with these facts. Additionally, Portland Transportation supported an Adjustment to waive the required one loading space [rather than allow the originally requested loading Modifications] in direct response to neighbor concerns about safety of backing-out into Thurman Street. For these reasons, the proposal equally meets the purpose of the regulation to be modified.

The desired character of the CM zone, found in PCC 33.130.030 E, is as follows: *The Mixed Commercial/ Residential (CM) zone promotes development that combines commercial and housing uses on a single site. This zone allows increased development on busier streets without fostering a strip commercial appearance. This development type will support transit use, provide a buffer between busy streets and residential neighborhoods, and provide new housing opportunities in the City. The emphasis of the nonresidential uses is primarily on locally oriented retail, service, and office uses. Other uses are allowed to provide a variety of uses that may locate in existing buildings. Development is intended to consist primarily of businesses on the ground floor with housing on upper stories. Development is intended to be pedestrian-oriented with buildings close to and oriented to the sidewalk, especially at corners.* NW Thurman Street is classified as *Transit Access Street* in the Transportation Street Plan and a *Main Street* in the NW District Plan.

Allowing the project to maximize ground level use as “pedestrian-oriented”, rather than disrupt the ground level area by meeting the loading standards [which would result in a large parking area to accommodate the required stall size and large maneuvering area to accommodate the required forward-motion standard], results in a proposal that is consistent with the desired character of a transit street and the CM zone.

- C. If more than one Adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** One Adjustment is requested. This criterion does not apply.

- D. City-designated scenic resources and historic resources are preserved; and

**Findings:** There are no City-designated scenic resources, nor City-designated historic resources nearby. This criterion does not apply.

- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** To mitigate potential double-parking in the travel lanes of the street, Portland Transportation is requiring that parking permits be obtained to use on-street parking for the loading/unloading activities in this building. This criterion is met.



- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** This site is not in an environmental zone. This criterion does not apply.

### 3) STATEWIDE PLANNING GOALS

The Northwest Plan District (NWPD) is currently on appeal to LUBA. Under ORS 197.625(3)(a) prior to acknowledgement, the amendment is effective at the time specified by the local ordinance and is applicable to all land use decisions. Under Subsection (3)(b), approval of land use decisions subject to an unacknowledged amendment must include findings in compliance with the Statewide Planning Goals applicable to the amendment. This section therefore includes a listing of the Statewide Planning Goals and demonstrates compliance.

- 1. Citizen Involvement.** Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process.” It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local Governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.
- 2. Land Use Planning.** Goal 2 outlines the basic procedures of Oregon’s statewide planning program. It ways that land use decisions are to be made in accordance with a comprehensive plan, and that suitable “implementation ordinances” to put the plan’s policies into effect must be adopted. It requires that plans be based on “factual information”; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed.

**Findings for Goals 1 and 2:** The City of Portland’s land use planning process allows for and seeks the involvement of its citizens in all types of land use processes, whether legislative or quasi-judicial. The Type II Design Review and Adjustment processes most closely follow these goals at the City and community level. Citizen involvement is carried out through mailed public notices, the ability to conduct neighborhood association meetings, and an exchange of comments and opportunities for appeal. Projects that address concerns of citizens and community are therefore achieved through the review process. Because the designated zoning and Design District overlay on the site were specifically adopted to comply with the Comprehensive Plan, this process implements Portland’s Comprehensive Plan. *These criteria are met.*

- 3. Agricultural Lands.** Goal 3 defines “agricultural lands.” It then requires counties to inventory such lands and to “preserve and maintain” them through farm zoning.
- 4. Forest Lands.** This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will “conserve forest lands for forest uses.”

**Findings for Goals 3 and 4:** The site is not agricultural or forested land. *These goals are not applicable.*

- 5. Open Spaces, Scenic and Historic Areas and Natural Resources.** Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands.

**Findings:** No open space, scenic, historic, nor natural resources are identified on the site. *This criterion is met.*

- 6. Air, Water, and Land Resources Quality.** This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

**Findings:** The site is in a highly urbanized area of Northwest Portland with a large amount of impervious area. Although this project will create runoff during storms, the site must meet the requirements of the BES storm water management manual. *This criterion is met.*

7. **Areas Subject to Natural Disasters and Hazards.** Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.
8. **Recreational Needs.** This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them.

**Findings for Goals 7 and 8:** The site is not mapped to occur within an area subject to natural disasters or hazards; nor is the site designated or zoned as a site which could provide recreational opportunities. *These criteria are therefore not applicable.*

9. **Economy of the State.** Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.
10. **Housing.** This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing.

**Findings for Goals 9 and 10:** The project provides housing opportunities along a thriving, newly designated Main Street. Its mixed-use, high-density nature is supportive of the transit-oriented focus of this street and surrounding neighborhood. The desirability of a close-in, quality neighborhood creates a successful environment for the mix of retail and residential uses. *These criteria are met.*

11. **Public Facilities and Services.** Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.
12. **Transportation.** The goal aims to provide a "safe, convenient, and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."

**Findings for Goals 11 and 12:** The NWPD examined the existing public services and zoned properties accordingly. Under this proposal, all bureaus have reviewed the system needs and determined additional infrastructure needs to accommodate the development. This proposal is located on an improved transit street. Portland Transportation reviewed the project, including associated parking, against traffic patterns and system facilities and deemed the project compliant. *These criteria are met.*

13. **Energy.** Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."

**Findings:** Expanding housing and commercial opportunities within one of Portland's densest neighborhoods that has good access to transit reduces the use of fossil fuels and helps conserve energy. The close-in location for the commercial use will encourage walking and bicycling rather than use of the automobile. *This criterion is met.*

14. **Urbanization.** This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "Urban growth boundary" to "identify and separate urbanizable land from rural land."

**Findings:** The City of Portland has established an Urban Growth Boundary; the site is not near the periphery of the boundary. The site is already dedicated to urban use and is not characterized as rural land. Nevertheless, the location of the site within the NWPD serves the desire for additional mixed-use development within the regional Urban Growth

Boundary, thereby reducing long term regional pressures for conversion of rural lands to urban uses. *This criterion is therefore met.*

- 15. Willamette Greenway.** Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.
- 16. Estuarine Resources.** This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."
- 17. Coastal Shorelands.** The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed.
- 18. Beaches and Dunes.** Goal 18 sets planning standards for development on various types of dunes.
- 19. Ocean Resources.** Goal 19 aims to "conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf."

**Findings for Goals 15, 16, 17, 18, and 19:** The site is not located at or near the Willamette River, any estuaries, or any coastal or marine habitat or resources. *These goals are therefore not applicable.*

**DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

**CONCLUSIONS**

The approval criteria are met.

**ADMINISTRATIVE DECISION**

Approval of a Modification and an Adjustment to Zoning Code [Title 33] development standards. These requests relate to development that was recently approved through design review, LU 04-033639 DZM.

**Approved Modification to Zoning Code development standards:**

**33.266.220.A Short-term bicycle parking.** Required short-term bicycle parking must be along all facades with a main entrance, and within 50 feet of at least one main entrance on each façade that has a main entrance, as measured along the most direct pedestrian access route. The proposal meets the required number of required short-term bicycle parking stalls [4]. However, the proposal includes the short-term bike parking adjacent to only the entrance at the end of the ramp - the short-term bike parking is not proposed at the street-facing façade, where there are two other entries.


**Approved Adjustment to Zoning Code development standards:**

**33.266.310.C. 2.b. Loading Standards. Number of loading spaces.** One loading space is required for buildings with 20,000 or more square feet, up to 50,000 square feet of floor area. The proposed building includes

Approvals per the approved plan, Exhibit C-1, signed and dated March 15, 2005, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 05-106871 DZM, AD. No field changes allowed." The Conditions of Approval listed below must also be depicted on those sheets.
- B. A sign locating the short-term bike parking location must be placed at the street-facing entrances, in compliance with 33.220.C.6.b.
- C. Parking permits must be obtained to use on-street parking for the loading/unloading activities in this building, in compliance with Portland Transportation Response Exhibit E.2.

Staff Planner: Kara Fioravanti

Decision rendered by:  on March 15, 2005  
By authority of the Director of the Bureau of Development Services

Decision mailed: March 22, 2005

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on February 3, 2005, and was determined to be complete on February 11, 2005.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 3, 2005.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** This approval may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.