

# ZINC CONDOMINIUM

LOTS 15 AND 16, BLOCK 7 "KINGS SECOND ADDITION"  
 LOCATED IN THE NW 1/4 OF SECTION 33, T1N, R1E, W1M  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 SURVEYED JUNE 12, 2009

## DESCRIPTIONS OF FOUND MONUMENTS

- (K) BRASS SCREW WITH 1-1/2" BRASS WASHER INScribed "LS 2560", IN CONCRETE DRIVEWAY SET SOUTH CORNER OF THE NORTH-EAST CORNER OF THE SUBJECT PROPERTY AND FOR THE SOUTH R/W LINE OF NW JOHNSON ST.
- (L) 1" IRON PIPE 0.1" UP, SET IN [8]. LOCATED N60°36'02"E, 0.45' FROM TRUE CORNER N74°43'38"W, 0.91' FROM TRUE CORNER
- (M) 2" IRON PIPE 0.4" UP, LEANING EASTERLY, SURVEYED CENTER, ORIGIN UNKNOWN, LOCATED N74°43'38"W, 0.91' FROM TRUE CORNER
- (S) LEAD WITH SCREW HOLE, IN SIDEWALK, SET IN [8], HELD AS A 4.00' OFFSET TO THE EAST R/W LINE OF NW 24TH AVE AND TO DETERMINE THE SOUTH AND WEST LINES OF THE SUBJECT PROPERTY
- (T) BRASS SCREW IN SIDEWALK, ORIGIN UNKNOWN, LOCATED N82°15'18"W, 0.36' FROM (S)

- (M) ELEMENT DESCRIBED
- FOUND 5/2" IRON BEARS WITH YELLOW PLASTIC CAP INScribed "RAJ LS 2725", SET IN SN 61980
- FOUND 1.18" COPPER DISK INScribed "RAJ LS 2725", SET IN SN 61980
- GENERAL COMMON ELEMENT
- RIGHT-OF-WAY
- SQUARE FEET
- SN SURVEY NUMBER, MULTNOMAH COUNTY SURVEY RECORDS
- 6" HIGH WOOD FENCE
- SURVEYED LINE NOT TO SCALE
- F 0.40/3.71' 0.13% CENTERLINE OF FENCE BY STATION AND OFFSET
- CW 0+00.00' 0.00% CENTERLINE OF WALL (0.60'-WIDE CONCRETE) BY STATION AND OFFSET
- FND 0+83.65' 0.13% FOUNDATION OF BUILDING ON ADJOINING PROPERTY, BY STATION AND OFFSET

## INDEX

SHEET	DESCRIPTION
1	BOUNDARY, FOUNDATION, DETAIL PARKING UNITS
2	FIRST FLOOR AND BASEMENT UNIT BOUNDARIES, SUBFLOOR ELEVATIONS, CEILING JOIST HEIGHTS, LIMITED COMMON ELEMENTS, DETAILS WITH CROSS SECTIONS AND PLAN VIEWS FOR UNITS 107, 108, 109, AND 110
3	SECOND FLOOR UNIT BOUNDARIES, SUBFLOOR ELEVATIONS, CEILING JOIST HEIGHTS, LIMITED COMMON ELEMENTS, DETAILS WITH CROSS SECTIONS AND PLAN VIEWS FOR UNITS 207, 208, AND 209
4	SURVAYOR'S CERTIFICATE, NARRATIVE, APPROVALS, DECLARATION, ACKNOWLEDGMENT, CONDOMINIUM NOTES, CERTIFICATE OF COMPLETION

MULTNOMAH COUNTY  
 DEED RECORD  
 DOCUMENT NO. 2008-015649

MULTNOMAH COUNTY PLAT  
 AND SURVEY RECORDS

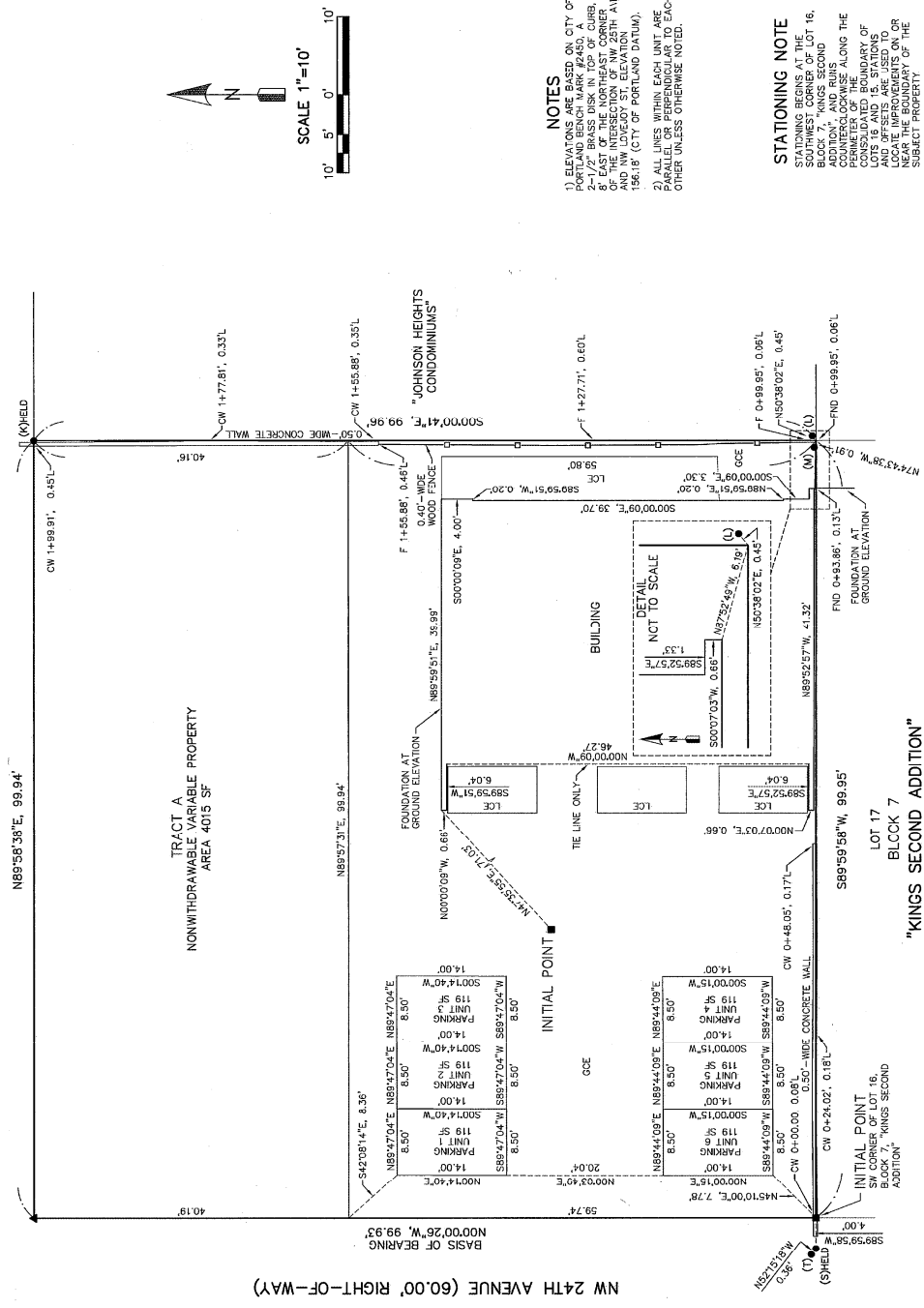
- [1] "KINGS SECOND ADDITION" (1989)
- [2] "KINGS SECOND ADDITION" (1989)
- [3] SN 30,129 (1949)
- [4] SN 11,577 (1957)
- [5] SN 11,577 (1957)
- [6] SN 13,464 (1968)
- [7] SN 13,464 (1968)
- [8] SN 51,789 (1990)
- [9] SN 52,617 (1991)
- [10] SN 54,065 (1994)
- [11] SN 56,866 (1999)
- [12] "JOHNSON HEIGHTS CONDOMINIUMS"
- [13] BOOK 1200, PAGE 35 (2001)
- [14] SN 61,347 (2007)

I, ROBERT ALAN JOHNSON, LS 2725,  
 PROFESSIONAL LAND SURVEYOR,  
 PREPARED USING HEWLETT-PACKARD  
 PRODUCT #48444 ON CONTINENTAL  
 JAG-NIZ WESTERN PLAN  
 ROBERT ALAN JOHNSON, LS 2725

I HEREBY CERTIFY THIS TO BE  
 A TRUE AND EXACT COPY OF  
 THE ORIGINAL PLAT.  
 REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
 OREGON  
 ROBERT ALAN JOHNSON  
 #2725  
 EXPIRES 6/30/11

JOHNSON LAND SURVEYING  
 10185 SW Hoodview Dr, Tigard, OR 97224  
 (503) 639-7919; fax (503) 670-9050  
 jsurvey@verizon.net

## NW JOHNSON STREET (60.00' RIGHT-OF-WAY)



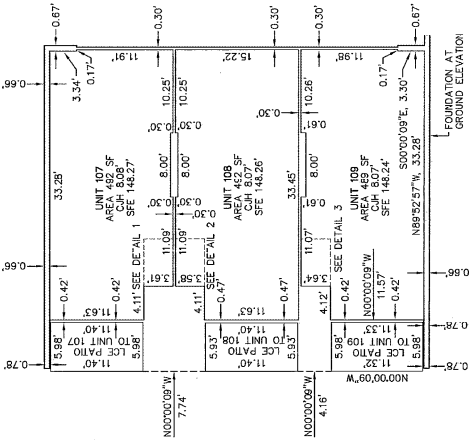
## NW 24TH AVENUE (60.00' RIGHT-OF-WAY)

TRACT A  
 NONWITHDRAWABLE VARIABLE PROPERTY  
 AREA 4015 SF

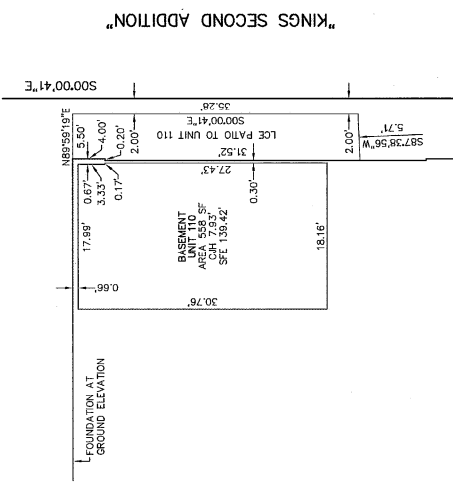
"KINGS SECOND ADDITION"

LOT 17  
 BLOCK 7

FIRST FLOOR UNIT BOUNDARIES, SUBFLOOR ELEVATIONS, CEILING JOIST HEIGHTS, AND LIMITED COMMON ELEMENTS FOR UNITS 107, 108, AND 109

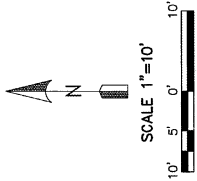


BASEMENT FLOOR UNIT BOUNDARY, SUBFLOOR ELEVATIONS, CEILING JOIST HEIGHTS, AND LIMITED COMMON ELEMENTS FOR UNIT 110

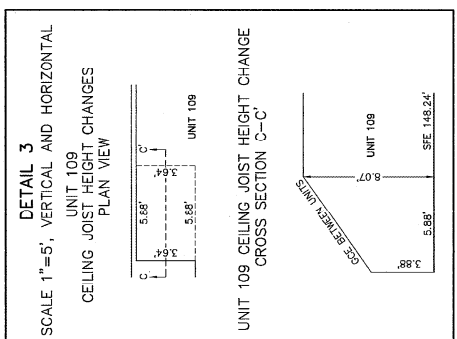
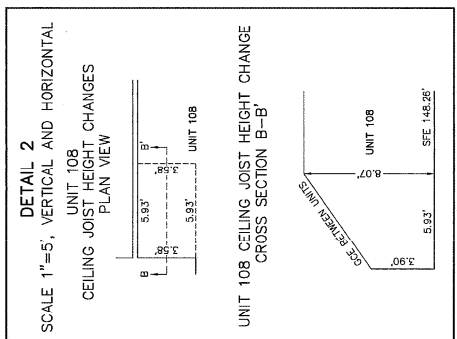
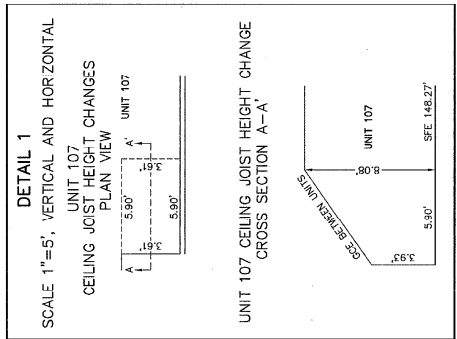


BOOK 1700 PAGE 22  
ZINC CONDOMINIUM

LOTS 15 AND 16, BLOCK 7 "KINGS SECOND ADDITION" LOCATED IN THE NW 1/4 OF SECTION 33, T1N, R1E, W4 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON SURVEYED JUNE 12, 2009



- LEGEND**
- CEILING JOIST HEIGHT
  - GENERAL COMMON ELEMENT
  - LIMITED COMMON ELEMENT
  - LIMITED COMMON ELEMENT
  - SUPERFLOOR ELEVATION
  - BUILDING FOUNDATION
  - UNIT WALL LINE AT FACE OF STRUCTURAL WALL
  - CEILING JOIST HEIGHT CHANGE



- NOTES**
- 1) ELEVATIONS ARE BASED ON CITY OF PORTLAND BEACH MARK #450, A 2-1/2" BRASS DISK IN TOP OF CURB, 10' FROM THE INTERSECTION OF NW 23TH AVE AND NW LOVEJOY ST. ELEVATION 156.18' (CITY OF PORTLAND DATUM).
  - 2) ALL LINES WITHIN EACH UNIT ARE PARALLEL OR PERPENDICULAR TO EACH OTHER UNLESS OTHERWISE NOTED.

I, ROBERT ALAN JOHNSON, LS 2725, REGISTERED PROFESSIONAL LAND SURVEYOR, PREPARED THIS PLAN USING THE FOLLOWING INSTRUMENTS: PRODUCT #C18444 ON CONTINENTAL #1 POLYALD POLYESTER FILM.

*Robert Alan Johnson*  
ROBERT ALAN JOHNSON, LS 2725

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

REGISTERED PROFESSIONAL LAND SURVEYOR  
*Robert Alan Johnson*  
ROBERT ALAN JOHNSON  
JULY 25, 1995  
#2725  
EXPIRES 6/30/11

**JOHNSON LAND SURVEYING**  
10785 SW Hoodview Dr, Tigard, OR 97224  
(503)639-7919; fax:(503)670-9050  
jsurvey@erzcon.net



APPROVALS

APPROVED THIS 26th day of August, 2009  
COUNTY SURVEYOR, MULTNOMAH COUNTY, OREGON

BY: Robert A. Hazden

ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY O.R.S. 100.110 HAVE BEEN PAID AS OF August 26, 2009  
DIRECTOR, DIVISION OF ASSESSMENT AND TAXATION  
MULTNOMAH COUNTY, OREGON

BY: Michelle A. Kavan  
DEPUTY

STATE OF OREGON }  
MULTNOMAH COUNTY } SS

I DO HEREBY CERTIFY THAT THE ATTACHED CONDOMINIUM PLAT WAS RECORDED FOR RECORD AND RECORDED August 26, 2009 AT 11:08 A.M.  
IN BOOK 1300, PAGES 32-35  
COUNTY RECORDING OFFICE

BY: Michelle A. Kavan  
DEPUTY

DOCUMENT NO. 2009-122-064

DECLARATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT RIVER HOLDING LLC, AN OREGON LIMITED LIABILITY COMPANY, THE OWNER OF THE LAND REPRESENTED ON THE ATTACHED MAP AND HEREINAFTER DESCRIBED, HAS APPLIED TO THE COUNTY SURVEYOR, MULTNOMAH COUNTY, OREGON, TO REGISTER THE MAP OF THE "ZINC CONDOMINIUM", DOES HEREBY MAKE, ESTABLISH, AND DECLARE THE MAP OF "ZINC CONDOMINIUM" TO BE A TRUE AND CORRECT PLAT THEREOF, AND DOES HEREBY COMMIT SAID PROPERTY TO THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, FOR THE PURPOSES OF THE OREGON CONDOMINIUM ACT, AND DOES HEREBY STATE THAT THE PROPERTY AND MAP DESCRIBED ON SAID MAP AND ON THE PLAT ARE SUBJECT TO THE PROVISIONS OF O.R.S. 100.005 TO 100.025.

Donald Nutal  
DONALD NUTAL, AUTHORIZED REPRESENTATIVE  
RIVER HOLDING LLC

ACKNOWLEDGMENT

STATE OF OREGON }  
COUNTY OF Multnomah } SS

THIS CERTIFICATE ON the 26th day of August, 2009, BEFORE ME, THE UNDERSIGNED A NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY, APPEARED DONALD NUTAL, WHO BEING FIRST DULY SWORN, DID SAY THAT HE IS THE OWNER OF SAID PROPERTY AND THAT SAID INSTRUMENT WAS SIGNED BY SAID COMPANY, AND THAT SAID INSTRUMENT WAS SIGNED BY SAID COMPANY, AND DOES ACKNOWLEDGE SAID INSTRUMENT TO BE OF HIS OWN FREE ACT AND DEED.

Tracy M. Hazden  
SIGNATURE OF NOTARY  
Tracy M. Hazden  
PRINTED NAME OF NOTARY  
NOTARY PUBLIC - OREGON  
COMMISSION NO. A 4106332  
MY COMMISSION EXPIRES June 19, 2010

NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO PLAT "ZINC CONDOMINIUM" ACCORDING TO THE OREGON REVISED STATUTES SECTION 100. THE SUBJECT PROPERTY IS THE CONSOLIDATED BOUNDARY OF LOTS 15 AND 16, BLOCK 7 "KINGS SECOND ADDITION TO THE CITY OF PORTLAND", MULTNOMAH COUNTY PLAT RECORDS.

THE BOUNDARY IS RESOLVED USING SURVEY NUMBER 6980, MULTNOMAH COUNTY SURVEY 10185 SW HOODVIEW DR. THE SUBJECT PROPERTY IS ESTABLISHED BY HOLDING MONUMENTS AT THE SOUTHWEST AND NORTHWEST CORNERS OF THE ATTACHED PLAT.

SURVEYOR'S CERTIFICATE OF COMPLETION

I CERTIFY THAT THE ACCOMPANYING PLAT FILED AND RECORDED ON THE BOUNDARIES OF THE UNITS OF THE BUILDING OF "ZINC CONDOMINIUM" AND THAT CONSTRUCTION OF THE UNITS AND BUILDING AS DEPICTED ON THE PLAT WERE COMPLETED AS OF JUNE 12, 2009.

Robert Alan Johnson  
ROBERT ALAN JOHNSON, PLS #2725

BOOK 1300 PAGE 35  
ZINC CONDOMINIUM  
LOTS 15 AND 16, BLOCK 7 "KINGS SECOND ADDITION"  
LOCATED IN THE NW 1/4 OF SECTION 33, T1N, R1E, W1M  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
SURVEYED: JUNE 12, 2009

SURVEYOR'S CERTIFICATE

I, ROBERT ALAN JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON, HAVE EXAMINED THE PLAT AND THE MONUMENTS MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ATTACHED MAP OF "ZINC CONDOMINIUM" LOCATED IN THE NW 1/4 OF SECTION 33, T1N, R1E, W1M, IN THE CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, AND HAVE FOUND THE SAME TO BE A TRUE AND CORRECT PLAT OF SAID LANDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, 1.187' CORNER IRBY INSCRIBES "T.M. 15, 2725" FOUND AT THE SOUTHWEST CORNER OF SAID LOT 16, ALSO BEING THE NORTHWEST CORNER OF SAID BLOCK 7, AND ON THE EAST RIGHT-OF-WAY LINE OF NW 24TH AVENUE, THENCE N00°02'28"W ALONG SAID EAST RIGHT-OF-WAY LINE AND THE WEST LINES OF SAID LOTS 15 AND 16, 58.932 FEET TO A 5/8" BRASS BENCH MARK, 2.21' ALONG SAID BENCH MARK, 2.21' ALONG SAID BENCH MARK TO THE SOUTHWEST CORNER OF SAID LOT 15, ALSO BEING THE INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE WITH THE SOUTH RIGHT-OF-WAY LINE OF NW JOHNSON STREET; THENCE N89°58'39"E ALONG SAID SOUTH RIGHT-OF-WAY LINE OF NW JOHNSON STREET, 11.74' TO THE INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE OF NW JOHNSON STREET AND THE WEST LINE OF SAID LOT 15, 11.74' BRASS WASHER INSCRIBED "L.S. 2804" AT THE INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE OF NW JOHNSON STREET AND THE WEST LINE OF SAID LOT 15, BEING THE NORTHWEST CORNER OF "JOHNSON HEIGHTS CONDOMINIUMS", MULTNOMAH COUNTY PLAT RECORDS; THENCE S00°00'47"E ALONG THE EAST LINES OF SAID LOTS 15 AND 16, AND THE WEST LINE OF SAID LOT 15, 11.74' TO THE INTERSECTION OF SAID WEST LINE OF SAID LOT 15 AND THE WEST THEREOF, ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 16 AND NORTHWEST CORNER OF SAID LOT 17, FROM WHICH A 1" IRON PIPE BEARS N00°38'02"E, 0.45 FEET; THENCE S89°59'58"W ALONG SAID PIPE BEARING, 11.74' TO THE NORTH LINE OF SAID LOT 17, 96.94 FEET TO THE INITIAL POINT. THE LAND DESCRIBED ABOVE CONTAINS 9.89 SQUARE FEET, MORE OR LESS.

ROBERT ALAN JOHNSON, PLS #2725  
JOHNSON LAND SURVEYING  
10185 SW HOODVIEW DR.  
PORTLAND, OREGON 97224  
(503) 639-7919

Robert Alan Johnson  
ROBERT ALAN JOHNSON, PLS #2725

CONDOMINIUM NOTES

- 1) ELEVATION BENCH MARK (V.I.) CITY OF PORTLAND, BENCH MARK #2450, 4.21' 22" BRASS DISK IN TOP OF CURB, 8' EAST OF THE NORTHEAST CORNER OF THE INTERSECTION OF NW 25TH AVE AND NW LOWEADY ST, ELEVATION 156.16 (CITY OF PORTLAND DATA).
- 2) THE AREA OF EACH UNIT SHOWN ON SHEETS 2 AND 3 IS THE AREA OF THE INTERIOR FACE OF STRUCTURAL WALLS, HORIZONTAL DIMENSIONS SHOWN FOR EACH UNIT ARE TO INTERIOR FACE OF STRUCTURAL WALLS, VERTICAL DIMENSIONS OF THE UNITS SHOWN ARE FROM SUBFLOOR TO CEILING JOIST. THE INTENT OF DEPICTING THESE DIMENSIONS IS TO SHOW THE INTERIOR FACE OF STRUCTURAL ELEMENTS.
- 3) ANY PORTION OF THE WALLS, FLOORS OR CEILINGS THAT MATERIALLY CONTRIBUTED TO THE SUPPORT AND INTEGRITY OF THE CONDOMINIUM BUILDING IS PART OF THE GENERAL COMMON ELEMENT.
- 4) DUE TO UNEVEN FLOORS AND CEILINGS, SUBFLOOR ELEVATIONS AND CEILING JOIST HEIGHTS ARE AVERAGED ACCORDATE TO THE NEAREST ONE-TENTH OF A FOOT.

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

REGISTERED PROFESSIONAL LAND SURVEYOR  
Robert Alan Johnson  
OREGON  
PLS #2725  
ROBERT ALAN JOHNSON  
EXPIRES 6/30/11

JOHNSON LAND SURVEYING, INC  
10185 SW HOODVIEW DR, Tigard, OR 97224  
(503) 639-7919; fax (503) 670-9050  
jsurvey@verizon.net

I, ROBERT ALAN JOHNSON, LS #2725, HEREBY CERTIFY THAT THIS PLAT WAS RECORDED IN BOOK #48444 ON HWAY WAF POLYESTER FILM.

Robert Alan Johnson  
ROBERT ALAN JOHNSON, LS #2725

AFTER RECORDING, RETURN TO:  
Jonathon L. Goodling  
Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204

Multnomah County Official Records  
C Swick, Deputy Clerk

2009-122565



\$321.00

00550280200901225650610612

08/26/2009 11:58:32 AM

1R-CONDODEC  
\$305.00 \$11.00 \$5.00

Cnt=1 Stn=11 RECCASH2

**DECLARATION OF CONDOMINIUM  
FOR ZINC CONDOMINIUM**

**Declarant: River Holding LLC, an Oregon limited liability company**

PDXDOCS:1792153.9

61

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1      DEFINITIONS .....	1
1.1      "Articles of Incorporation" .....	1
1.2      "Association" .....	1
1.3      "Board" .....	1
1.4      "Bylaws" .....	1
1.5      "Common Elements" .....	1
1.6      "Common Expenses" .....	1
1.7      "Condominium" .....	1
1.8      "Declaration" .....	1
1.9      "Dwelling Unit" .....	1
1.10     "Manager" .....	1
1.11     "Mortgage" .....	2
1.12     "Mortgagee" .....	2
1.13     "Owner" .....	2
1.14     "Owners" .....	2
1.15     "Rules and Regulations" .....	2
1.16     "Parking Unit" .....	2
1.17     "Plat" .....	2
1.18     "Turnover" .....	2
1.19     "Turnover Meeting" .....	2
1.20     "Unit" .....	2
1.21     "Voting Owner" .....	2
1.22     Terms Incorporated by Reference .....	2
ARTICLE 2      SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE .....	2
ARTICLE 3      NAME OF CONDOMINIUM .....	3
ARTICLE 4      UNITS.....	3
4.1      General Description of Building .....	3
4.2      General Description, Location, and Designation of Units.....	3
4.3      Notice.....	3
4.4      Boundaries of Dwelling Units.....	3

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
4.5 Boundaries of Parking Units.....	4
4.6 Transferability of Interests in Parking Units.....	4
ARTICLE 5 GENERAL COMMON ELEMENTS .....	5
ARTICLE 6 LIMITED COMMON ELEMENTS .....	5
6.1 Decks/Patios.....	5
VARIABLE PROPERTY.....	6
7.1 Description of Variable Property .....	6
7.2 Reservation of Rights .....	6
7.3 Description of Improvements .....	6
7.4 Limited Common Elements.....	6
7.5 Maximum Number of Additional Units .....	6
7.6 Reclassification .....	6
7.7 Ownership and Use .....	6
7.8 Responsibility for Variable Property.....	6
7.9 Termination Date.....	6
7.10 Allocations .....	7
7.11 Rights of Association .....	7
ARTICLE 8 ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS.....	7
8.1 Allocation of Undivided Interests .....	7
8.2 Nature of Interests.....	7
ARTICLE 9 COMMON PROFITS AND EXPENSES, VOTING.....	8
9.1 Allocation of Common Profits.....	8
9.2 Allocation of Common Expenses.....	8
9.3 Allocation of Voting Rights.....	8
ARTICLE 10 SERVICE OF PROCESS .....	8
ARTICLE 11 USE OF UNITS.....	9
11.1 Use of the Dwelling Units .....	9
11.2 Use of the Parking Units.....	9
11.3 Additional Restrictions on Use .....	9

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
ARTICLE 12     MAINTENANCE OF COMMON ELEMENTS .....	9
12.1    Responsibility for Maintenance .....	9
12.2    Cost of Maintenance.....	9
12.3    Mortgagee's Rights Upon Failure to Maintain.....	10
ARTICLE 13     EASEMENTS .....	10
13.1    In General .....	10
13.2    Encroachments .....	10
13.3    Granting of Easements by Association.....	10
13.4    Right of Entry.....	11
ARTICLE 14     MORTGAGEES.....	11
14.1    Notice of Action.....	11
14.2    Mortgagee Exempt From Certain Restrictions .....	12
14.3    Subordination of Association Lien to Mortgage/Discharge of Lien Upon Foreclosure.....	12
14.4    Professional Management.....	12
14.5    Consent of Mortgagees to Change Percentage Ownership in Common Elements .....	12
14.6    Consent of Mortgagees Required to Terminate Project .....	13
14.7    Limited Right of Amendment .....	13
14.8    Request for Approval of Mortgagees .....	14
14.9    Proxy Held by Mortgagee in Certain Cases.....	14
14.10   Right to Examine Documents .....	14
14.11   Right to Annual Reports.....	14
14.12   Right to Receive Written Notice of Meetings.....	14
14.13   List of Mortgagees.....	15
ARTICLE 15     ASSOCIATION OF OWNERS .....	15
15.1    Organization.....	15
15.2    Membership, Board of Directors.....	15
15.3    Powers and Duties .....	15
15.4    Adoption of Bylaws.....	15
15.5    Common Element Maintenance by the Association .....	15



**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
ARTICLE 16    DECLARANT'S SPECIAL RIGHTS .....	15
16.1   Sales Office and Model .....	15
16.2   "For Sale" Signs .....	15
16.3   No Capital Assessments Without Consent .....	16
16.4   Declarant's Easements .....	16
16.5   Control.....	16
16.6   Other Declarant Rights .....	16
16.7   Assignment of Declarant's Rights .....	16
16.8   Expiration of Declarant's Special Rights.....	16
ARTICLE 17    DAMAGE OR DESTRUCTION.....	17
17.1   Responsibility of Association .....	17
17.2   Responsibility of Owner.....	17
ARTICLE 18    CONDEMNATION.....	17
18.1   Total Condemnation .....	17
18.2   Partial Condemnation .....	18
ARTICLE 19    DISPUTE RESOLUTION.....	18
19.1   Required Procedure.....	18
19.2   Negotiated Resolution .....	19
19.3   Mediation.....	19
19.4   Small Claims .....	19
19.5   Arbitration.....	19
19.6   Confidentiality .....	19
19.7   Owner Approval.....	20
19.8   Claims Procedure .....	20
ARTICLE 20    AS IS; RELEASES; WAIVERS OF CLAIMS.....	21
20.1   AS IS .....	21
20.2   Personal Property .....	21
20.3   Release and Waiver of all Past, Present, and Future Claims Regarding Condition of Property. ....	21
20.4   Time Limitation on Other Claims. ....	22

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
ARTICLE 21    AMENDMENT .....	23
21.1    How Proposed .....	23
21.2    Approval Required .....	23
21.3    Recordation .....	24
ARTICLE 22    SEVERABILITY .....	24
ARTICLE 23    COVENANTS RUNNING WITH THE LAND .....	24
ARTICLE 24    COSTS AND ATTORNEY FEES .....	24

## DECLARATION OF CONDOMINIUM FOR ZINC CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM FOR ZINC CONDOMINIUM (this "Declaration"), pursuant to the provisions of the Oregon Condominium Act, ORS 100.005 to 100.990 (as amended from time to time, the "Act"), is made and executed this 3 day of August, 2009, by River Holding LLC, an Oregon limited liability company ("Declarant").

A. Declarant owns the land located in the City of Portland, Multnomah County, Oregon, described in the attached Exhibit A (the "Land"), together with all buildings, improvements, or structures on or in the Land (the "Improvements").

B. Declarant wishes to submit the Land and Improvements to the condominium form of ownership and use in the manner provided by the Act.

Declarant hereby declares and provides as follows:

### **ARTICLE 1** **DEFINITIONS**

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

- 1.1 "**Articles of Incorporation**" means the articles of incorporation of the Association.
- 1.2 "**Association**" means the Oregon nonprofit corporation entity responsible for the administration, management, and operation of the Condominium, and described more particularly in Article 15 below.
- 1.3 "**Board**" means the board of directors of the Association.
- 1.4 "**Bylaws**" means the Bylaws of the Association adopted pursuant to Section 15.4 below as the same may be amended from time to time.
- 1.5 "**Common Elements**" means, collectively, the General Common Elements (defined in Article 5 below) and the Limited Common Elements (defined in Article 6 below).
- 1.6 "**Common Expenses**" has the meaning given to this term in Section 15.5 of the Bylaws.
- 1.7 "**Condominium**" has the meaning given to that term in Article 2.
- 1.8 "**Declaration**" means this Declaration as the same may hereafter be amended.
- 1.9 "**Dwelling Unit**" has the meaning given to that term in Section 4.2 below.
- 1.10 "**Manager**" means the person or firm, if any, hired by the Association to be in charge of the administration of and to manage the Condominium.

1.11 "**Mortgage**" means a recorded mortgage, trust deed, or contract of sale that creates a lien against a Dwelling Unit or a Dwelling Unit and a Parking Unit (two or more recorded mortgages, trust deeds, or contracts of sale that create liens against a Unit or Units are referred to as "Mortgages").

1.12 "**Mortgagee**" means the holder, beneficiary, or vendor of a Mortgage (two or more holders, beneficiaries, or vendors of Mortgages are referred to as "Mortgagees").

1.13 "**Owner**" means the owner or owners of a Unit, but does not include a Mortgagee unless the Mortgagee is in possession of a Unit.

1.14 "**Owners**" means, collectively, all of the owners of the Units, but only includes a Mortgagee if the Mortgagee is in possession of one or more Units.

1.15 "**Rules and Regulations**" has the meaning given to that term in Article 13 of the Bylaws.

1.16 "**Parking Unit**" has the meaning given to that term in Section 4.2 below.

1.17 "**Plat**" means the plat of the Condominium recorded simultaneously with the recording of this Declaration, as the same may be hereafter amended.

1.18 "**Turnover**" has the meaning given to that term in Section 16.8.

1.19 "**Turnover Meeting**" has the meaning given to that term in Section 3.1 of the Bylaws.

1.20 "**Unit**" has the meaning given to that term in Section 4.2 below.

1.21 "**Voting Owner**" has the meaning given to that term in Section 9.3 below.

1.22 **Terms Incorporated by Reference.** Except as otherwise provided in this Declaration, each of the terms defined in ORS 100.005 of the Act shall have the meanings set forth in such section.

## ARTICLE 2 SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE

The property submitted to the Act by this Declaration is held by Declarant and conveyed by Declarant in fee simple estate. The real property 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, Improvements, and all easements, rights, and appurtenances located on, belonging to, or used in connection with the Land or the Improvements (the "Condominium").

**ARTICLE 3**  
**NAME OF CONDOMINIUM**

The name by which the Condominium shall be known is "Zinc Condominium."

**ARTICLE 4**  
**UNITS**

**4.1 General Description of Building.** As shown on the Plat, the north portion of the Land is nonwithdrawable variable property. The other portion of the Land contains one building (the "Building"). The Building has two stories and a basement. The Building is constructed of concrete block and wood and has a single-ply roof.

**4.2 General Description, Location, and Designation of Units.** The Condominium consists of seven dwelling units (each, a "Dwelling Unit" and collectively, the "Dwelling Units") and six parking units (each a "Parking Unit" and collectively, the "Parking Units") (collectively, the Dwelling Units and the Parking Units are referred to as the "Units" and the term "Unit" shall mean any one of the Units). Three Dwelling Units are located on each story of the Building and one Dwelling Unit is located in the basement. The vertical and horizontal boundaries and dimensions, designation, and location of each Unit are shown in the Plat, which is made a part of this Declaration as if fully set forth herein. The designation and approximate area of each Dwelling Unit is set forth below:

<b><u>Dwelling Unit</u></b>	<b><u>Area (sq. ft.)</u></b>
107	492
108	492
109	489
110	558
207	525
208	525
209	523

<b><u>Parking Unit</u></b>	<b><u>Area (sq. ft.)</u></b>
Parking Unit 1	119
Parking Unit 2	119
Parking Unit 3	119
Parking Unit 4	119
Parking Unit 5	119
Parking Unit 6	119

**4.3 Notice.** The square footage areas stated in this Declaration and the Plat are based on the boundaries of the Units as described in this Declaration and may vary from the area of Units calculated for other purposes.

**4.4 Boundaries of Dwelling Units.** Each Dwelling Unit shall be bounded by the interior surfaces of its perimeter walls, floors, ceilings, windows and window frames, doors and

door frames, and trim. The Dwelling Units shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, window glass and screens, exterior unit access doors, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described, except those portions of the walls, floors, or ceilings that materially contribute to the structural or shear capacity of the Building. All other portions of the exterior walls, floors, or ceilings shall be a part of the General Common Elements. In addition, each Dwelling Unit shall include the following:

4.4.1 All spaces, nonbearing interior partitions, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the Dwelling Unit; and

4.4.2 All outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, and waste disposal within the boundaries of the Dwelling Unit, but not any part of such lines or ducts themselves.

In interpreting deeds, mortgages, deeds of trust, and other instruments, for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Dwelling Unit or of a Dwelling Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of the Building and regardless of variances between boundaries as shown on the Plat and those of the actual Building.

**4.5 Boundaries of Parking Units.** Each Parking Unit shall consist of the concrete surface of the Parking Unit, a vertical plane extending upwards at a 90° angle from the boundaries of the improved surface of the Parking Unit for a distance of approximately ten feet, and a horizontal plane coextensive with the boundaries of the concrete surface of the Parking Unit, and a horizontal plane coextensive with the boundaries formed by the uppermost edge of each vertical plane, as shown on the Plat. Regardless of the actual location of the painted striping for the Parking Units, the boundaries of the Parking Units shall be as set forth herein and on the Plat.

**4.6 Transferability of Interests in Parking Units.** In no event may any ownership interest a Parking Unit be transferred to anyone other than an Owner of a Dwelling Unit. In no event may a possessory interest in a Parking Unit be transferred to anyone other than an Owner or a tenant of a Dwelling Unit. The possessory interest of a tenant of a Parking Unit must expire simultaneously with the expiration of the tenant's interest in the Dwelling Unit. It is the intent of this Declaration that at all times, each Parking Unit be owned by an Owner of a Dwelling Unit or the Declarant and used by a person dwelling in a Dwelling Unit or the Declarant. Any conveyance, lease, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an ownership or possessory interest in a Parking Unit shall be void unless the transferee also obtains or already has a similar (taking into account both type of interest and duration of such interest) ownership or possessory interest in a Dwelling Unit.

**ARTICLE 5**  
**GENERAL COMMON ELEMENTS**

The general common elements consist of all portions of the Condominium, other than the Variable Property (defined below), not part of a Unit or a Limited Common Element (the "General Common Elements"), including but not limited to the following:

- 5.1 The Land, including all landscaping and cement thereon;
- 5.2 The foundation, columns, girders, beams, supports, bearing walls, exterior walls (except glazing and screening), window frames of all exterior windows, crawl space, and roof of the Building;
- 5.3 The access area adjacent to the parking units;
- 5.4 Installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, and waste disposal, up to the outlets within any Dwelling Unit;
- 5.5 The tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use; and
- 5.6 All other elements of the Building and any other portion of the Condominium necessary or convenient to its 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 of the Condominium (each a "Limited Common Element" and collectively, the "Limited Common Elements"), the use of which shall be restricted to the Dwelling Units to which they pertain:

6.1 **Decks/Patios.** The deck or patio located off a Dwelling Unit is a Limited Common Element appertaining to such Dwelling Unit, each as shown on the Plat and described below:

<b><u>Deck/Patio</u></b>	<b><u>Dwelling Unit</u></b>
LCE Patio to Unit 107	107
LCE Patio to Unit 108	108
LCE Patio to Unit 109	109
LCE Patio to Unit 110	110
LCE Deck to Unit 207	207
LCE Deck to Unit 208	208
LCE Deck to Unit 209	209

**ARTICLE 7**  
**VARIABLE PROPERTY**

7.1 **Description of Variable Property.** There is one tract of variable property within the Condominium and such tract is designated as nonwithdrawable variable property (the "Variable Property"). The location and dimensions of the Variable Property are shown on the Plat and labeled as "Tract A Nonwithdrawable Variable Property." No portion of the Variable Property may be withdrawn from the Condominium.

7.2 **Reservation of Rights.** Declarant reserves the rights provided under ORS 100.150 that permit Declarant to record a supplemental declaration and a supplemental plat, in accordance with ORS 100.115 and 100.120, to reclassify all or a portion of the Variable Property as one or more general common elements, limited common elements, units, or a combination of common elements and units. Other than limitations provided in the Act, there are no limitations on the rights reserved by Declarant under ORS 100.150 and no consent from any Owner shall be required to exercise such reserved rights.

7.3 **Description of Improvements.** The existing improvements on the Variable Property consist of one building that has two stories. No further improvements may be added to the Variable Property, but the existing improvements may be altered.

7.4 **Limited Common Elements.** Declarant reserves the right to create limited common elements within the Variable Property. The types of limited common elements that can be created within the Variable Property are storage spaces, decks, and patios.

7.5 **Maximum Number of Additional Units.** Declarant reserves the right to create up to 12 additional dwelling units within the Variable Property.

7.6 **Reclassification.** Until the Variable Property is reclassified by Declarant, the Variable Property shall be a distinct classification of property and is not a Common Element or a Unit. Additionally, until the Variable Property is reclassified, the Variable Property shall be considered a parcel of real property and shall be subject to separate assessment and taxation by all taxing units as other parcels of real property.

7.7 **Ownership and Use.** Ownership or occupancy of the Variable Property shall not confer any right to use the Common Elements. Ownership or occupancy of the Units shall not confer any right to use the Variable Property.

7.8 **Responsibility for Variable Property.** Declarant shall be responsible for the payment of all assessments, taxes and other expenses of the Variable Property. If Declarant fails to pay any expenses of any of the Variable Property, the Association may elect to pay the expenses and assess the Owners for such expenses as a Common Expense. However, all costs paid by the Association for assessments, taxes, and other expenses of the Variable Property may be charged to the Declarant. In no event shall the Variable Property be subject to assessments for expenses of the Condominium, including the Common Expenses.

7.9 **Termination Date.** The rights reserved under ORS 100.150(1) will terminate on the date that is seven years after the conveyance of the first Unit to a person other than Declarant



(the "Termination Date"). No circumstances will give rise to an earlier termination for such reserved rights. If by the Termination Date all or a portion of the Variable Property has not been reclassified, the property shall automatically be reclassified as of the Termination Date as a General Common Element of the Condominium and any interest in such property held for security purposes shall be automatically extinguished by such classification.

**7.10 Allocations.** The method used to allocate:

7.10.1 Undivided interests in the Common Elements with respect to any additional dwelling units that are created out of the Variable Property shall be determined in accordance with Section 8.1.

7.10.2 Liability for Common Expenses with respect to any additional dwelling units that are created out of the Variable Property shall be determined in accordance with Section 9.2.

7.10.3 Common profits with respect to any additional dwelling units that are created out of the Variable Property shall be determined in accordance with Section 9.1.

7.10.4 Voting rights to the owners of any additional units created out of the Variable Property shall be determined in accordance with Section 9.3.

**7.11 Rights of Association.** Following the Termination Date, the Association may exercise any rights previously held by the Declarant with respect to any of the Variable Property that is automatically reclassified on the Termination Date, provided that the exercise of such right is first approved by more than 50 percent of the Voting Owners. All other actions relating to such reclassified property shall be regulated and governed in like manner as other general common elements of the Condominium. If a supplemental declaration and supplemental plat are required for any action, the plat shall be executed by the chairperson and secretary of the Association and shall comply with the requirements of the Act as to the supplemental declaration and the recording of plats.

## **ARTICLE 8**

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

**8.1 Allocation of Undivided Interests.** The Owner of each Dwelling Unit will own an undivided fee simple interest in the Common Elements equal to 1 divided by the total number of Dwelling Units in the Condominium plus 1. The Owner of each Parking Unit will own an undivided fee simple interest in the Common Elements equal to 1/6 of 1 divided by the total number of Dwelling Units in the Condominium plus 1. As of the date hereof, the Owner of each Dwelling Unit has a 1/8 undivided fee simple interest in the Common Elements. As of the date hereof, the Owner of each Parking Unit has a 1/48 undivided fee simple interest in the Common Elements.

**8.2 Nature of Interests.** Each Unit's interest in the Common Elements, both general and limited, 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 9**  
**COMMON PROFITS AND EXPENSES, VOTING**

**9.1 Allocation of Common Profits.** The common profits derived from the Condominium shall be allocated to the Owner of each Dwelling Unit according to their ownership interests in the Common Elements set forth in Section 8.1. As used in this Declaration, "common profits" means profits arising from the General Common Elements. Except upon the termination of this Declaration or other removal of the Condominium from the provisions of the Act, 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 General Common Elements or for other expenses or reserves of the Association.

**9.2 Allocation of Common Expenses.** The Common Expenses, including reserves for such expenses, shall be allocated to the Owner of each Unit as follows:

9.2.1 All expenses of maintaining, repairing, or replacing any part of a Limited Common Element appertaining exclusively to a Unit, shall be paid by the Owner of such Unit.

9.2.2 All expenses of maintaining, repairing, or replacing any part of the General Common Elements shall be allocated to the Owner of each Unit according to their ownership interests in the Common Elements as set forth in Section 8.1.

9.2.3 Any taxes assessed against the Condominium not included in each Unit's ad valorem real property taxes and assessments shall be allocated among the Units on the basis of the relative valuation of the Units for ad valorem real property taxes.

9.2.4 All expenses of maintaining, repairing, or replacing any part of a Parking Unit shall be paid by the Owner of such Unit. However, any maintaining, repairing, or replacing of more than one Parking Unit shall be allocated to the Owner's of such Parking Units as the Association deems equitable.

**9.3 Allocation of Voting Rights.** Only the Owners of Dwelling Units will be entitled to vote. No votes will be allocated to the Owners of the Parking Units, except for votes allocated to such Owner as a result of such Owner's ownership of a Dwelling Unit. The Owner of each Dwelling Unit will be entitled to one vote (each a "Voting Owner" and collectively, the "Voting Owners"). As of the date hereof, the total votes is seven. The exercise of voting rights shall be controlled by Article 3 of the Bylaws.

**ARTICLE 10**  
**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, which will be filed with the Oregon Real Estate Agency in accordance with ORS 100.250(1).

**ARTICLE 11**  
**USE OF UNITS**

**11.1 Use of the Dwelling Units.** The Dwelling Units may be used for single-family residential purposes on an ownership, rental, or lease basis, provided that the lease of any Dwelling Unit is in writing and conforms to the requirements provided in the Bylaws, and further provided that the Owner gives prior notice of the lease to the Association and that the Association consents to such lease, in its reasonable discretion. The Dwelling Units may be used for social, recreational, and other reasonable activities normally incidental to such use, including use as a "home office" or similar use, subject to certain limitations as specified in the Bylaws.

**11.2 Use of the Parking Units.** The Parking Units may be used only for purposes incidental to the permitted uses of the Dwelling Units on an ownership, rental, or lease basis, provided that the lease of any Parking Unit is in writing and conforms to the requirements provided in the Bylaws, and further provided that the Owner gives prior notice of the lease to the Association and that the Association consents to such lease, in its reasonable discretion. The Parking Units may be used for the parking of operable passenger motor vehicles but may not be used for parking trucks, trailers, or recreational vehicles, or for other purposes except to the extent expressly allowed by the Rules and Regulations adopted by the Association. The Association may direct that any vehicle or other thing improperly parked or kept in or on a Parking Unit be removed, and if it is not removed the Association may cause it to be removed at the risk and cost of the owner thereof. No maintenance or repairs of any kind may be made to automobiles or other personal vehicles on any part of a Parking Unit, provided that the foregoing does not prohibit any person from changing a flat tire.

**11.3 Additional Restrictions on Use.** Additional restrictions, limitations, and rules regarding the use of each Unit are contained in the Bylaws and the Rules and Regulations. Each Owner shall be bound by each of such documents.

**ARTICLE 12**

**MAINTENANCE OF COMMON ELEMENTS**

**12.1 Responsibility for Maintenance.** Except as otherwise provided in this Declaration, the Association shall perform or cause to be performed the necessary work to maintain, repair, or replace any Common Elements, both general and limited, and all Parking Units, and shall carry out such duties as provided in the Bylaws. The maintenance, repair, and replacement of any part of a Dwelling Unit shall be the responsibility of the Owner of the Dwelling Unit.

**12.2 Cost of Maintenance.** All costs and expenses of maintaining, repairing, or replacing a Limited Common Element appertaining to a Unit or Units shall be promptly reimbursed to the Association by the Owner of such Unit or Units as provided in Section 9.2.1. All costs and expenses of maintaining, repairing, or replacing a Parking Unit shall be promptly reimbursed to the Association by the Owner of such Parking Unit or Parking Units as provided in Section 9.2.4. All Common Expenses shall be paid pursuant to the terms of Section 9.2 and the Bylaws.

**12.3 Mortgagee's Rights Upon Failure to Maintain.** If a Mortgagee of any Unit determines that the Association is not providing an adequate maintenance, repair, and replacement program for the Common Elements or the Parking Units, the Mortgagee, at its option, may give a notice to the Association by delivering the notice to the registered agent, setting forth the particular defect that exists in the maintenance, repair, and replacement program. If the specified defects are not corrected within 90 days after receipt of such notice, then the Mortgagee, upon written notice to the registered agent that the Mortgagee 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 Dwelling Unit on which it holds a Mortgage and in which a defect exists as to the maintenance, repair, and replacement program and on all business coming before such meeting. Such proxy rights shall continue until the defects listed on the notice are corrected.

## ARTICLE 13

### EASEMENTS

**13.1 In General.** Each Owner and its tenants, servants, invitees, and authorized occupants or visitors shall have a perpetual right of reasonable access and use to, through, and over the General Common Elements as may be required for ingress and egress to and from the Owner's Unit or Units; for the support of the Owner's Unit or Units; and for the installation, repair, maintenance, and replacement of utilities and other systems serving the Owner's Unit or Units, including, but not limited to, water, natural gas, air-conditioning, cable television, electrical power and wiring, light, or plumbing serving a Unit or Units. The Owner shall use the foregoing rights only as necessary and shall exercise all due care in the exercise of such right and shall be responsible for and indemnify, defend, and hold harmless the other Owners and the Association from any harm or damage resulting from the exercise of the Owner's rights under this Section 13.1. The specific reference to or reservation of any rights of access and use in this Declaration does not limit or negate the general easement for Common Elements created by the Act.

**13.2 Encroachments.** Each Unit has an easement over the other Units and Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, survey 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. 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 the persons who own the Units shall not be altered in any way by the encroachment. This provision does not relieve a Owner of liability in the case of willful misconduct of the 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 13.2 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

**13.3 Granting of Easements by Association.** As provided by ORS 100.405(5), (6), and (8), the Association has the authority to grant, execute, acknowledge, and deliver on behalf of each Owner: leases, easements, rights of way, licenses, and other similar interests

affecting the General Common Elements or Limited Common Elements and consent to the vacation of roadways within and adjacent to any portion of the Condominium. However, any grant of a lease, easement, right of way, license or similar interest affecting the Common Elements requires the prior approval of at least 75 percent of the Voting Owners if the term of such grant is for a term of more than two years, unless such grant is to a public body, as defined in ORS 174.109 or to a utility or a communications company for installation and maintenance of power, gas, electric, water, or other utility and communication lines and services. Additionally, the Association has the authority to consent to the vacation of any roadway within and adjacent to any portion of the Condominium only after obtaining approval of at least 50 percent of the Voting Owners present at a duly constituted meeting of the Owners called for such purpose. Any such instrument shall be executed by the chairman and secretary of the Association. No such interest may be granted with regard to any Limited Common Elements unless each Owner to which the use of the Limited Common Elements is reserved and any Mortgagees of such affected Units consent to and join in the instrument granting the interest.

**13.4 Right of Entry.** The Board, managing agent, Manager, or any other person authorized by the Board, shall have the right to enter any Unit in the case of an emergency originating in or threatening such Unit or any portion of the Condominium, whether or not the Owner is present at the time. Such persons shall also have the right to enter any Unit for the purpose of performing installations, alterations, or repairs to any of the Common Elements and for the purpose of inspection to verify that the Owner is complying with the restrictions and requirements described in this Declaration, the Rules and Regulations, and the Bylaws, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. Additionally, such persons shall also have the right to enter any Unit for the purpose of conducting a periodic inspection of the Owner's Unit for water intrusion into the Unit and/or the appearance of mold or mildew within such Unit, provided that such entry shall occur at a time that is reasonably convenient to the inspector and the Owner (or Owner's tenant), and is conducted in accordance with the terms of any residential lease affecting such Unit and in accordance with applicable landlord-tenant law. Nothing contained within this 13.4 is intended to modify the maintenance and repair obligations of any party as provided in the Bylaws and this Declaration.

## ARTICLE 14

### MORTGAGEES

**14.1 Notice of Action.** Upon written notice to the Association identifying the name and address of the Mortgagee, and the number or address of the Unit subject to the Mortgage, any Mortgagee will be entitled to timely notice of:

14.1.1 Any condemnation loss or any casualty loss that affects a material portion of the Condominium or any Unit on which there is a Mortgage held, insured, or guaranteed by the Mortgagee;

14.1.2 Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a Mortgage held, insured, or guaranteed by the Mortgagee, which remains uncured for a period of 60 days;

14.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

14.1.4 Any proposed action that would require the consent of a specified portion of Mortgagees as set forth in this Article 14.

**14.2 Mortgagee Exempt From Certain Restrictions.** Any Mortgagee that comes into possession of a Unit pursuant to the remedies provided in the Mortgage, or by foreclosure of the Mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged Unit, if any, including, but not limited to, restrictions on the age of Unit occupants and restrictions on the posting of signs pertaining to the sale or rental of the Unit.

**14.3 Subordination of Association Lien to Mortgage/Discharge of Lien Upon Foreclosure.** The lien of the Association shall be subordinate to any first Mortgage. Any first Mortgagee that comes into possession of a Unit pursuant to the remedies provided in the Mortgage, by foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments or charges such Unit that accrue prior to the time the first Mortgagee comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Dwelling Units or all Parking Units, including the mortgaged Unit).

**14.4 Professional Management.** After the Turnover Meeting, upon written request of the Mortgagees holding Mortgages on at least 51 percent of the Dwelling Units, the Association shall employ a professional Manager to manage the affairs of the Association. Any agreement for professional management shall provide that the management contract shall be for a term of no more than three years and must be terminable, with or without cause, on 90 days' written notice. After the Mortgagees' request, the Association may not terminate professional management and assume self-management of the Condominium without the prior written approval of the Mortgagees holding Mortgages on at least 51 percent of the Dwelling Units. Additionally, if professional management has previously been required by any Mortgagee, any such decision to establish self-management shall require prior consent of at least 67 percent of the Voting Owners. In the event a Dwelling Unit does not have a Mortgage, the Owner of such Dwelling Unit shall be considered a Mortgagee of such Dwelling Unit for purposes of this Section 14.4.

**14.5 Consent of Mortgagees to Change Percentage Ownership in Common Elements.** The percentage interest in the Common Elements attributable to any Unit may not be reallocated without prior approval of Mortgagees holding Mortgages on at least 51 percent of the Units affected by the proposed reallocation. Nothing in this Section 14.5 shall be construed to give any Owner, the Association, or the Board any specific authority to alter such percentage ownership, and if any attempt is made to do so, full compliance shall be made with this Declaration, any applicable supplemental condominium declaration, the Bylaws, and the Act.

**14.6 Consent of Mortgagees Required to Terminate Project.** Except with respect to the termination of this Declaration or other removal of the Condominium from the provisions of the Act as a result of destruction, damage, or condemnation, any termination of this Declaration or other removal of the Condominium from the provisions of the Act shall require the approval of Mortgagees holding Mortgages on at least 67 percent of the Dwelling Units. Additionally, any such termination shall be carried out by the Owners pursuant to provisions of the Declaration, any applicable supplemental condominium declaration, the Bylaws, and the Act, and only after vote of the Voting Owners.

**14.7 Limited Right of Amendment.** Except upon the approval of Mortgagees who hold Mortgages at least 51 percent of the Dwelling Units subject to any Mortgage, no amendments may be made to the Declaration or Bylaws that add to or amend (a) in any manner that is materially adverse to the Mortgagees, or (b) any material provision of the Declaration or Bylaws that establish, provide for, govern, or regulate any of the following:

- 14.7.1 Voting;
- 14.7.2 Increases in assessments that raise the previously assessed amount by more than 25 percent;
- 14.7.3 Assessment liens or subordination of liens;
- 14.7.4 Reductions in reserves for maintenance, repair, and replacement of the Common Elements (or Units, if applicable);
- 14.7.5 Insurance or fidelity insurance requirements;
- 14.7.6 Rights to use of the Common Elements;
- 14.7.7 Responsibility for maintenance and repair of the several portions of the Condominium;
- 14.7.8 Redefinition of the boundaries of any Unit;
- 14.7.9 Reallocation of the interests in the General Common Elements or Limited Common Elements or rights to their use;
- 14.7.10 Conversion of any portion of a Unit into Common Elements;
- 14.7.11 Conversion of any portion of the Common Elements into a Unit or Units;
- 14.7.12 Imposition of any restrictions on the leasing of Units;
- 14.7.13 Imposition of any right of first refusal or similar restriction on the right of a Owner to sell, transfer, or otherwise convey his or her Unit;
- 14.7.14 Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than specified herein;

14.7.15 Any provisions that are for the express benefit of Mortgagees; and

14.7.16 Removal of the Property from the provisions of the Act.

The provisions of this Section 14.7 are intended only to be a limitation on the right of the Owners, the Board, and Association to amend the Declaration and Bylaws, and are not intended to give any such parties any specific rights to effect any amendments. Any such amendments to the Declaration or Bylaws shall be made only upon full compliance with the provisions of the Declaration or Bylaws and the Act relating to the procedure and percentage of votes required for such amendment. An addition or amendment to the Declaration or Bylaws shall not require the consent or approval of any Mortgagee, if it is for the sole purpose of correcting technical errors or if it is for clarification only.

**14.8 Request for Approval of Mortgagees.** Any Mortgagee who receives a written request to approve additions or amendments to this Declaration or the Bylaws, or to approve any other proposed to be action by the Board, the Association, or a majority of the Voting Owners, shall be deemed to have given such approval unless a negative response is delivered by the Mortgagee to the Association within 60 days after the request for approval is received by the Mortgagee, provided that the notice to the Mortgagee was delivered by certified or registered mail, with a "return receipt" requested.

**14.9 Proxy Held by Mortgagee in Certain Cases.** A Mortgagee may attend a meeting of the Association and may cast the vote of mortgagor of that Unit for the purpose of voting to paint or otherwise maintain the Common Elements, including the imposition of any special assessment necessary to pay the cost of such painting or repair; provided, however, that such right shall arise only in the event the Mortgagee reasonably believes that the Association has failed to maintain the Common Elements in sufficient manner to prevent excessive wear and tear.

**14.10 Right to Examine Documents.** The Association shall make available to each Owner and to each Mortgagee current copies of this Declaration, the Bylaws, the Rules and Regulations, and any other rules concerning the Condominium, and the books, records, and financial statements of the Association. The Association shall have the right to impose a reasonable charge for any copies requested by an Owner or a Mortgagee.

**14.11 Right to Annual Reports.** Any Mortgagee shall be entitled to have an audited financial statement prepared at the Mortgagee's expense if such a statement is not otherwise available. The Association, its officers and directors, and its Manager (if any) shall cooperate with the Mortgagee and the auditors to facilitate the necessary auditing and review process. The financial statement shall be furnished to the Mortgagee within a reasonable time following request.

**14.12 Right to Receive Written Notice of Meetings.** Upon prior written request by a Mortgagee, the Association shall give the Mortgagee written notice of all meetings of the Association, and the Mortgagee shall be permitted to designate a representative to attend all such meetings.



**14.13 List of Mortgagees.** The Association shall maintain at all times a list of Mortgagees, their names, addresses, the Units and mortgagors affected, and the matters with respect to which the Mortgagees have requested notice, provided that such information has been furnished to the Association by any Owner or the Mortgagees.

## ARTICLE 15

### ASSOCIATION OF OWNERS

**15.1 Organization.** Upon the recording of this Declaration an association of Owners shall be organized to serve as a means through which the Owners may take action with regard to the administration, management, and operation of the Condominium. The name of this association shall be "Association of Unit Owners of Zinc Condominium," and the Association shall be an Oregon nonprofit corporation.

**15.2 Membership, Board of Directors.** Each Owner shall be a member of the Association. The affairs of the Association shall be governed by the Board as provided in the Bylaws.

**15.3 Powers and Duties.** The Association shall have such powers and duties as may be granted to it by the 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, the Bylaws, the Act, or the Oregon Nonprofit Corporation Act.

**15.4 Adoption of Bylaws.** Upon the execution and the recording of this Declaration, Declarant shall adopt the Bylaws attached hereto as Exhibit B.

**15.5 Common Element Maintenance by the Association.** The Association shall maintain the Parking Units and all Common Elements, both general and limited, in a clean and attractive manner. Should the Association fail to do so, Declarant may perform such maintenance at the expense of the Association until the expiration of Declarant's special rights reserved in Article 16.

## ARTICLE 16

### DECLARANT'S SPECIAL RIGHTS

Declarant shall have the following special rights:

**16.1 Sales Office and Model.** Declarant shall have the right to maintain sales offices and/or sales models in one or more of the Units that Declarant owns. Declarant and its agents and prospective purchasers shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

**16.2 "For Sale" Signs.** Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on or about any portion of the Condominium, other than a Unit owned by another.

**16.3 No Capital Assessments Without Consent.** Neither the Association nor the Board shall make any assessments for new construction, acquisition, or otherwise without the prior written consent of Declarant, as long as Declarant owns more than one Dwelling Unit. Nothing contained in this Section 16.3 shall be construed as a limitation on Declarant's obligation to pay assessments for Common Expenses on any Unit owned by Declarant pursuant to requirements of the Act or this Declaration.

**16.4 Declarant's Easements.** Declarant, its agents, and its employees shall have an easement on, over, across, and through the Common Elements for the purpose of making improvements within the Condominium, completing any unfinished Units or other improvements, exhibiting or preparing Units for sale, making repairs required pursuant to any contract of sale, and discharging the Developer's obligations or exercising any of the rights reserved by the Developer in the Declaration and the right to store materials on the Common Elements at reasonable places and for reasonable lengths of time.

**16.5 Control.**

16.5.1 Declarant may elect, appoint, and remove officers and directors of the Association.

16.5.2 Declarant shall have five votes for each single vote Declarant would otherwise have pursuant to the terms of this Declaration or the Bylaws, as limited by Section 21.2.3.

16.5.3 Declarant shall have the right to exercise all powers of the Association, the Board, or the officers of the Association under this Declaration, the Bylaws, and the Act, except that Declarant may not bind the Association to any management agreement, service contract, employment contract, lease of recreational areas or facilities, or contract or lease which is made prior to the Turnover Meeting unless the Association or the Board is granted therein a right of termination thereof which is exercisable without cause or penalty upon not less than 30 days' written notice given to the other party thereto not later than 60 days after the Turnover Meeting.

16.5.4 Declarant shall have the right to consent to or veto amendments to this Declaration, the Bylaws, the Plat, and the Rules and Regulations proposed by the Owners.

**16.6 Other Declarant Rights.** The rights reserved to Declarant in this Article 16 shall in no way limit any other special declarant rights that Declarant may have, whether pursuant to the Act or otherwise. Upon the expiration of any or all special declarant rights, Declarant will have the same rights as any other Owner with respect to such ownership.

**16.7 Assignment of Declarant's Rights.** Declarant shall have the right to assign any and all of its rights, including without limitation Declarant's special rights as set forth in this Article 16, or to share such rights with one or more other persons exclusively, simultaneously, or concurrently.

**16.8 Expiration of Declarant's Special Rights.** Unless otherwise provided, Declarant's special rights reserved in this Article 16 shall expire (the "Turnover") upon the date

that is the earlier of: (a) conveyance by Declarant to persons other than Declarant of at least 75 percent of the units that may be created pursuant to ORS 100.150 as provided in Article 7; or (b) seven years after the date of conveyance of the first Unit to someone other than Declarant.

## ARTICLE 17

### DAMAGE OR DESTRUCTION

**17.1 Responsibility of Association.** The Association shall be responsible for repairing, reconstructing, or rebuilding all damage or destruction of the Common Elements by casualty and, to the extent of the Association's insurance coverage, all such damage or destruction to the Units. Each Owner shall be responsible for the repairing, reconstructing, or rebuilding of his/her Unit to the extent not covered by the Association's insurance. To the extent of the Association's receipt of insurance proceeds, the Association shall rebuild and restore the damaged or destroyed portions of the Common Elements, and, if any insurance proceeds remain, such portions of the Units, so that the Condominium is rebuilt and restored to substantially the same condition which it existed prior to such damage or destruction, unless Owners of at least 100 percent of the Units and 100 percent of all first Mortgagees agree that the Condominium shall not be rebuilt or restored. The Association shall represent the Owners in any proceeding, negotiation, settlement, or agreement relating to the payment of proceeds under any insurance policies held by the Association. Any such proceeds shall be payable to the Association to the extent of its interest therein. If the Condominium is to be rebuilt and restored and the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of rebuilding and restoration, the difference between the amount of such proceeds and such cost may be charged to all Owners as a Common Expense. If the required number of Owners and first Mortgagees agree that the Condominium shall not be rebuilt and restored, the Property shall be considered removed from the provisions of the Act in accordance with ORS 100.605, and any proceeds resulting from such removal shall be distributed in accordance with ORS 100.615.

**17.2 Responsibility of Owner.** If, due to the act or neglect of an Owner, or of a tenant, guest, servant, invitee, or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Association, to the extent not covered by the Association's insurance.

## ARTICLE 18

### CONDEMNATION

**18.1 Total Condemnation.** In the event of condemnation of the whole of the Condominium, the compensation to be paid to Owners shall be negotiated and finalized, including, if required, by representation in any proceeding, by the Association, subject to ratification of such compensation by all of the Voting Owners at a special meeting called for that purpose. Whether or not proceedings are necessary, compensation, less expenses in obtaining the compensation, if any, shall be paid to the Association and then distributed among the Owners of Units in equitable proportions and payable to any Mortgagee to the extent required to obtain a

discharge of Mortgage. Notwithstanding the award for the condemnation of the whole Condominium, each Owner shall have the separate right to negotiate and finalize with the condemning authority, his personal compensation for improvements made to his Unit or Units, his cost of moving, and other similar items personal to each Owner.

**18.2 Partial Condemnation.** In the event of a partial condemnation of the Condominium which includes any portion of a Unit or any portion of the Limited Common Elements, each Owner whose Unit or Units or associated Limited Common Elements, or portion thereof, are condemned shall deal with the condemning authority with regard to compensation therefor, the compensation for such Unit or Units or Limited Common Elements shall be paid to such Owner (or the Mortgagee of that Unit), and such Owner shall be responsible for restoring the balance of its Unit or Units and associated Limited Common Elements. The Association shall negotiate compensation relating to any General Common Elements. The cost, if any, of restoring the balance of the General Common Elements so that they may be used shall be determined by the Association and the Association shall negotiate with the condemning authority with regard to compensation for this expenditure and shall, unless the Condominium is terminated within 30 days after the receipt of such compensation in accordance with the Act, reconstruct the General Common Elements, using the funds received for such reconstruction. Any moneys received by the Association for any such reconstruction shall be held in trust by the Association for the purpose of such reconstruction. If the proceeds of the condemnation award received by the Association are insufficient to fund the full cost of restoration of the General Common Elements, the difference between the amount of such proceeds and such cost may be charged to all Owners as a Common Expense.

## ARTICLE 19

### DISPUTE RESOLUTION

**19.1 Required Procedure.** Except as otherwise provided for below in this Article 19 or the Bylaws, to the fullest extent allowed by law, all claims, controversies, disputes, or causes of action, whether statutory, contractual, tort claims, and/or counterclaims which arise out of or are related to any portion of the Condominium, the ownership, operation, or maintenance of any portion of the Condominium, the Act, this Declaration, the Bylaws, the Articles of Incorporation, or the Rules and Regulations, or which relate to the interpretation or breach of the Act, this Declaration, the Rules and Regulation, the Bylaws, or the Articles of Incorporation (individually a "Claim" and collectively, the "Claims") between or among Declarant, Declarant's successors and assigns, the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") shall, in lieu of litigation, be resolved in accordance with the procedures specified in this Article 19 and for a period of ten years after the Turnover Meeting or for as long as Declarant owns a Unit, whichever is latest. Except as otherwise required by the Act, the following matters are excluded from this dispute resolution clause and do not constitute Claims: (a) judicial or non-judicial foreclosure or any other action or proceeding to enforce assessments, fines, interest or a trust deed, mortgage, Association lien, or land sale contract; (b) a forcible entry and detainer action; (c) provisional remedies such as injunctions or the filing of a lis pendens, or (d) the filing or enforcement of a mechanic's lien. The filing of a notice of pending action (lis pendens) or the application to any court having jurisdiction thereof for the issuance of any provisional process remedy described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or

corresponding federal statutory remedies), including a restraining order, attachment, or appointment of receiver, shall not constitute a waiver of the right to mediate or arbitrate under this Section, nor shall it constitute a breach of the duty to mediate or arbitrate. The proceeds resulting from the exercise of any such remedy shall be held by the Party obtaining such proceeds for disposition as may be determined by an agreement of the Parties pursuant to a mediation or by the arbitration award.

**19.2 Negotiated Resolution.** The Parties agree to seek a fair and prompt negotiated resolution of all Claims and agree to meet at least once to discuss and to seek to resolve such Claims, but if this is not successful, all disputes shall be resolved in small claims court, by mediation or by binding arbitration as set forth in Sections 19.3, 19.4, and 19.4 below, as applicable.

**19.3 Mediation.** Prior to mediation of any Claim, the Parties agree to endeavor to resolve disputes through the process set forth in Section 19.2 above. All Claims that are not resolved by such process shall be subject to mediation as a condition precedent to arbitration. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth in Section 19.4 below, but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties. All mediation shall be in accordance with the rules of procedure of any dispute resolution program available in Multnomah County, Oregon that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended.

**19.4 Small Claims.** All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Circuit Court of Multnomah County, Oregon, shall be brought and determined there, and all Parties waive their right to a jury trial with respect to such Claims.

**19.5 Arbitration.** Prior to arbitration of any Claim, the Parties agree to endeavor to resolve disputes through the processes set forth in Sections 19.2, 19.3, and 19.4 above, as applicable. All Claims that have not been resolved by such processes shall be resolved by binding arbitration in Portland, Oregon. Such arbitration shall be conducted by one neutral arbitrator and pursuant to the then effective arbitration rules of the Arbitration Service of Portland, or another reputable arbitration service selected by Declarant. If Declarant is not a Party to such dispute, the arbitration service shall be selected by the Association. The arbitrator shall be appointed in the manner provided for in such rules and the arbitrator shall have experience in the management and operation of condominiums. All parties shall be entitled to limited discovery as permitted by the arbitrator and in compliance with Oregon law governing the same. Any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

**19.6 Confidentiality.** The Parties shall keep all discussions of disputes, all settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties, other than (a) to such Party's lenders, attorneys, consultants, or accountants, but only if such third party has a need to know such information, or (b) as may be required by law or if compelled to do so by an order of a court of

competent jurisdiction. The Parties agree in the event a Party breaches its confidentiality obligation that the other Party or Parties to the dispute shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance and each Party hereby waives any claim or defense that the other Party has an adequate remedy at law for any such breach and the Parties agree that the aggrieved Party shall not be required to post any bond or other security in connection with any such equitable relief.

**19.7 Owner Approval.** Notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend or commit to expend in excess of \$5,000 for attorney fees and costs for any specific litigation or claim matter or enter into any contingent fee contract on any Claim in excess of \$100,000 unless first approved by 100 percent of the Owners, excluding any Owner, if any, against whom such Claim is contemplated. The foregoing limitation shall not apply to (a) actions for delinquent assessments or other charges under the Declaration or these Bylaws; (b) actions initiated by the Association prior to the Turnover Meeting; (c) actions challenging ad valorem taxation or condemnation proceedings; (d) actions initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; (e) the defense of any claims or other proceedings filed against the Association or the Board or the assertion of any counterclaims in proceedings instituted against the Association or the Board (except for non-mandatory counterclaims); (f) actions to appoint a receiver pursuant to the Bylaws; or (g) actions to summarily abate and remove a structure or condition that violates this Declaration or the Bylaws.

**19.8 Claims Procedure.** An Owner or the Association may not commence a Claim against Declarant or any contractor, subcontractor, or supplier for construction defects unless the Owner or Association, as applicable, has given written notice of the Claim and permitted the Declarant or such contractor, subcontractor, or supplier to view, inspect and respond to the claimed defect, as required by law.

OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR, SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COMMENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PROVIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COMMENCE ARBITRATION OR A COURT ACTION.

## ARTICLE 20

### **AS IS; RELEASES; WAIVERS OF CLAIMS**

**20.1 AS IS.** By accepting conveyance of a Unit, each Owner will acknowledge that the Unit being purchased is part of an existing rental apartment complex and was not newly constructed. Each owner further acknowledges that Declarant has given no warranty of any kind, express or implied, with respect to the Unit, and that Owner is accepting the Unit and both the General Common Elements and Limited Common Elements appertaining thereto in their present condition, AS IS. "AS IS" means that the Unit is taken in its present condition, including any existing defects, damages, flaws, and risks, whether known or unknown, anticipated or unanticipated, latent or patent, presently existing or that may arise in the future, and whether due to Declarant's or any other person's failure to maintain, repair, or replace; negligence; breach of contract; code noncompliance; or failure, lack, or inadequacy of workmanship. All risks of future repair, replacement, or improvement arising out of or relating to the condition of the Unit or the Condominium, whether necessary, reasonable, or desirable, are solely the Owner's. There is no representation or promise otherwise. The estimates of the age, condition, and useful life of the major components of the Units and Common Elements will be set forth in a disclosure statement prepared by an engineering firm retained by Declarant. The estimates in the disclosure statement will not constitute a warranty of any kind. Each Owner should conduct its own inspection of the Unit and Common Elements.

**20.2 Personal Property.** Declarant, as seller, has given no warranty with respect to any appliances, equipment, and other consumer products as defined in the Magnusson-Moss Warranty Act or the Uniform Commercial Code installed in, on, or about the Condominium. With respect to any manufactured products, the Association and each Owner has expressly assumed the risk that such products may be defective. By purchasing a Unit from Declarant, each Owner has warranted that it had adequate opportunity to investigate the condition of the manufactured products installed in his or her Unit, and such Owner has relied solely on this independent investigation in purchasing the Unit.

**20.3 Release and Waiver of all Past, Present, and Future Claims Regarding Condition of Property.** TO THE FULLEST EXTENT ALLOWED BY LAW, EACH PURCHASER OF A UNIT, THE ASSOCIATION AND ALL SUCCESSOR OWNERS AND OCCUPANTS, RELEASE AND WAIVE ANY CLAIM WHENEVER ARISING AGAINST DECLARANT OR ITS MEMBERS, AGENTS, BROKERS, SUCCESSORS, EMPLOYEES, AFFILIATES, CONTRACTORS, REPRESENTATIVES, OFFICERS, DIRECTORS, OR AGAINST THE ASSOCIATION OR ANY BOARD MEMBER THEREOF (COLLECTIVELY, THE "DECLARANT PARTIES"), RELATING TO OR ARISING FROM THE CONDITION OF THE CONDOMINIUM PROPERTY AT ANY TIME. THE WAIVER IS ABSOLUTE AND UNCONDITIONAL, AND THIS RELEASE AND WAIVER APPLIES WHETHER OR NOT THE PURCHASER HAD KNOWLEDGE OF ANY POTENTIAL CAUSE OF ACTION FOR SUCH CLAIMS. THE WAIVER APPLIES TO CLAIMS UNDER ANY LEGAL THEORY OTHER THAN BREACH OF THE EXPRESS WARRANTY GIVEN BY DECLARANT IN A UNIT SALES AGREEMENT. SUCH WAIVED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS RELATING TO OR ARISING IN OR FROM ANY OF THE FOLLOWING: (A) DEFECTS, REPAIRS, REPLACEMENTS OR MODIFICATIONS

TO THE UNIT OR COMMON ELEMENTS; (B) FAILURE TO COMPLY WITH CODE, NONCOMPLIANCE WITH PLANS AND SPECIFICATIONS, DEFECTIVE CONSTRUCTION, NEGLIGENT CONSTRUCTION AND/OR NON-WORKMANLIKE CONSTRUCTION; (C) TORT AND/OR UNLAWFUL TRADE PRACTICES VIOLATIONS, EMOTIONAL DISTRESS, FRAUDULENT, INTENTIONAL, NEGLIGENT OR INNOCENT MISREPRESENTATION, NEGLIGENCE OR GROSS NEGLIGENCE, STRICT LIABILITY, NUISANCE, AND/OR TRESPASS; (D) BREACH OF CONTRACT, BREACH OF EXPRESS WARRANTY AND/OR BREACH OF IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF PROFESSIONAL CONSTRUCTION AND REASONABLE WORKMANLIKE CONSTRUCTION; (E) BREACH OF FIDUCIARY DUTY BY DECLARANT OR ITS AFFILIATES PRIOR TO OR AFTER THE DATE CONTROL OF THE ASSOCIATION IS TURNED OVER TO THE UNIT OWNERS; (F) WATER INTRUSION, WATER INFILTRATION, OR WATER PENETRATION; (G) PRODUCTS OR SUBSTANCES FOUND IN OR USED IN THE UNIT OR COMMON ELEMENTS, INCLUDING, FOR EXAMPLE PURPOSES ONLY, RADON; (H) THE CONDITION OF THE UNIT AND/OR COMMON ELEMENTS; (I) NOISE OR SOUND TRANSMISSION, MOLD, MILDEW, FUNGUS AND/OR ODORS IN THE UNIT OR COMMON ELEMENTS; (J) LOSS OF USE OF THE UNIT AND/OR COMMON ELEMENTS AND/OR THE LOSS OF VALUE THEREOF; AND (K) CONSEQUENTIAL DAMAGES OR EXPENSES FOR ATTORNEY FEES AND/OR RESULTING FROM THE RELOCATION OF OWNER, IF ANY, SUCH AS LODGING, COMMISSIONS, INTEREST RATE FLUCTUATIONS, STORAGE, MOVING, MEALS OR TRAVEL EXPENSE. IT IS ACKNOWLEDGED THAT DECLARANT WOULD HAVE REQUIRED A SIGNIFICANTLY HIGHER PURCHASE PRICE FOR THE UNITS IF THE PURCHASER REFUSED TO PROVIDE THIS RELEASE AND WAIVER. THIS SECTION 20.3 SERVES AS NOTICE OF RECORD THAT THE RELEASE AND WAIVER SHALL BE BINDING UPON SUCH PURCHASERS, ALL SUCCESSOR OWNERS OR OCCUPANTS OF THE UNIT, THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, PROPERTY MANAGERS, BROKERS, HEIRS, SUCCESSORS, ASSIGNS, GUESTS AND INVITEES. CLAIMS OF THE ASSOCIATION ARE DERIVATIVE OF CLAIMS OF UNIT OWNERS AND THE ASSOCIATION SHALL BE BOUND BY THE WAIVER. THE WAIVER ACTS AS A COMPLETE BAR AND DEFENSE AGAINST ANY RELEASED OR WAIVED CLAIM.

**20.4 Time Limitation on Other Claims.** It is the intention of the waiver in Section 20.3 to be full and final. TO THE EXTENT ANY COURT OR ARBITRATOR OF COMPETENT JURISDICTION DETERMINES ANY CLAIM TO SURVIVE SECTION 20.3 FOR ANY REASON, THEN TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, ANY SUCH CLAIMS MUST BE BROUGHT ON OR BEFORE THE EARLIEST OF (A) EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS, (B) NO MORE THAN 180 DAYS AFTER THE DATE A PURCHASER OF A UNIT KNEW OR REASONABLY SHOULD HAVE KNOWN OF FACTS SUFFICIENT TO PUT SUCH PURCHASER ON NOTICE OF THE CLAIM, (C) WITH RESPECT TO A PARTICULAR UNIT AND RELATED LIMITED COMMON ELEMENTS, NO LATER THAN THE FIRST ANNIVERSARY OF THE CLOSING DATE OF THE SALE TO THE FIRST OWNER, OTHER THAN DECLARANT, AND (D) WITH RESPECT TO THE GENERAL COMMON ELEMENTS, THE FIRST ANNIVERSARY OF THE DATE OF THE FIRST CONVEYANCE OF A UNIT TO A UNIT OWNER OTHER THAN DECLARANT, WHETHER SUCH



CLAIMS ARISE FROM STATUTE, CONTRACT, TORT OR OTHERWISE WHETHER FOR DAMAGES OR PERSONAL INJURY NOW EXISTING OR ARISING AFTER THE DATE OF THIS DECLARATION ANY SUCH CLAIMS NOT BROUGHT WITHIN THIS TIME PERIOD WILL BE DEEMED FULLY WAIVED BY OWNER, REGARDLESS OF WHEN OWNER ACTUALLY DISCOVERED THE ALLEGED BASIS FOR THE CLAIM. For purposes of this Section 20.4, a claim is "brought" when (a) for matters within the small claims court jurisdiction, a complaint was filed in the appropriate small claims court and served promptly on Declarant or (b) for matters not within the small claims court jurisdiction, the Declarant has actual receipt of a filed complaint or request for arbitration by Owner. This Section 20.4 shall not be deemed to expand an Owner's right to assert any claims.

## ARTICLE 21

### AMENDMENT

**21.1 How Proposed.** Amendments to this Declaration shall be proposed either by a member of the Board or by a Owner. 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.

**21.2 Approval Required.** Except as may otherwise be provided in this Declaration or by the Act, this Declaration may be amended if such amendment is approved by 75 percent or more of the Voting Owners; provided that:

21.2.1 The unanimous consent of all of the Voting Owners shall be required for amendments of Section 4.6 (transferability of interests in parking units, Article 11 (use of units), Section 13.4 (right of entry), Article 17 (damage or destruction), Article 18 (condemnation);

21.2.2 No amendment may change the size, location, allocation of undivided interests in the Common Elements, method of determining liability for Common Expenses, method of determining the right to common profits, or method of determining voting rights of or with respect to any Unit unless such amendment has been approved by each affected Owner or the Owners of each affected Unit;

21.2.3 Declarant shall not be entitled to exercise its enhanced voting rights pursuant to Section 16.5.2, except that Declarant may use its enhanced voting rights in connection with approving an amendment to the Plat, or an amendment to this Declaration to correct any provision of or exhibit to this Declaration, whether such correction is required due to a surveyor's error, factual error, miscalculation, omission, or to comply with the Act;

21.2.4 Declarant acting alone may amend this Declaration to comply with the requirements of any applicable statute, ordinance, regulation, or guideline of the Federal Housing Administration, the U.S. Department of Veterans Affairs, Rural Development, or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or

the State of Oregon that insures, guarantees or provides financing for condominiums; provided that if the need to amend the Declaration arises after the Turnover Meeting has occurred, then the amendment must be approved by the Association as otherwise set forth herein or otherwise provided in the Bylaws or the Act; and

21.2.5 No amendment to this Declaration may reduce or eliminate the right of any Mortgagee, without the prior written consent of each affected Mortgagee.

21.2.6 For so long as Declarant owns one or more Units, the Bylaws, the Rules and Regulations, and this Declaration may not be modified, added to, amended, or repealed so as to eliminate, change, or impair any rights, privileges, easements, licenses, or exemptions granted therein or herein to Declarant or its designee, or otherwise in a way that adversely affects Declarant or such designee, unless Declarant or its designee has given its written approval in each such instance.

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

## **ARTICLE 22**

### **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 23**

### **COVENANTS RUNNING WITH THE LAND**

The provisions of this Article 23 are intended to touch and concern the Condominium and shall be deemed covenants running with the land. Each and every term of this Article 23 shall, to the fullest extent allowed by law, bind each Owner, including Declarant as to any unconveyed Unit, the Association, and each subsequent owner or transferee of a Unit.

## **ARTICLE 24**

### **COSTS AND ATTORNEY FEES**

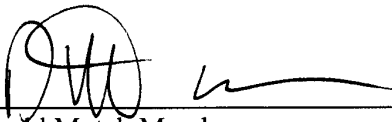
In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms and provisions of this Declaration (as amended or supplemented), the Bylaws (as amended or supplemented), the Rules and Regulations, or the Act, the prevailing party is entitled to recover the cost of the proceedings and such reasonable attorney fees as may be determined by the trial court in any trial or by the appellate court in any

appeal. In addition, the Association is entitled to recover costs and attorney fees incurred by it to collect delinquent assessments or fines, or to enforce the terms of this Declaration, the Articles of Incorporation, the Bylaws, or any rules or regulations promulgated thereunder whether or not any collection or foreclosure action or suit is filed.

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

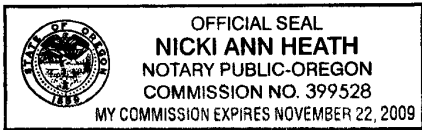
**DECLARANT:**


**River Holding LLC**, an Oregon limited liability company

By:   
Donald Mutal, Member

STATE OF OREGON )  
County of Multnomah ) ss.

The foregoing instrument was acknowledged before me on this 3<sup>rd</sup> day of August, 2009, by Donald Mutal as Member of River Holding LLC, an Oregon limited liability company.



  
Notary Public for Oregon  
My commission expires: 11-22-2009

**ASSESSOR AND TAX COLLECTOR**

The foregoing Declaration is approved this 26th day of August, 2009.

**MULTNOMAH COUNTY ASSESSOR**

By: William Martin  
Name: William MARTIN  
Title: \_\_\_\_\_

The foregoing Declaration is approved this 26th day of August, 2009.

**MULTNOMAH COUNTY TAX COLLECTOR**

By: Cindy Swick  
Name: CINDY SWICK  
Title: Program Manager

**REAL ESTATE COMMISSIONER**

The foregoing Declaration is approved pursuant to ORS 100.110 this 25<sup>th</sup> day of August, 2009, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Declaration is not recorded within two years from this date.

**OREGON REAL ESTATE COMMISSIONER**

By: Laurie Skillman  
Name: LAURIE SKILLMAN  
Title: Land Development mgr

**EXHIBIT A**  
**Legal Description**

LOTS 15 AND 16, BLOCK 7, "KINGS SECOND ADDITION TO THE CITY OF PORTLAND", LOCATED IN THE NW 1/4 of SECTION 33, T1N, R1E, WM, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH, AND STATE OF OREGON, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, A 1.18" COPPER DISK INSCRIBED "RAJ LS 2725" FOUND AT THE SOUTHWEST CORNER OF LOT 16, SAID BLOCK 7, ALSO BEING THE NORTHWEST CORNER OF LOT 17, SAID BLOCK 7, AND THE EAST RIGHT-OF-WAY LINE OF NW 24TH AVENUE; THENCE N00°00'26"W ALONG SAID RIGHT-OF-WAY LINE AND THE WEST LINES OF SAID LOTS 15 AND 16, 99.93 FEET TO A 5/8" IRON REBAR WITH YELLOW PLASTIC CAP INSCRIBED "RAJ LS 2725" AT THE NORTHWEST CORNER OF SAID LOT 15, ALSO BEING THE INTERSECTION OF SAID RIGHT-OF-WAY LINE WITH THE SOUTH RIGHT-OF-WAY LINE OF NW JOHNSON STREET; THENCE N89°58'38"E ALONG SAID SOUTH RIGHT-OF-WAY LINE AND THE NORTH LINE OF SAID LOT 15, 99.94' TO A BRASS SCREW WITH 1-1/4" BRASS WASHER INSCRIBED "LS 2560" AT THE NORTHEAST CORNER OF SAID LOT 15, ALSO BEING THE NORTHEAST CORNER OF "JOHNSON HEIGHTS CONDOMINIUMS", MULTNOMAH COUNTY PLAT RECORDS; THENCE S00°00'41"E ALONG THE EAST LINES OF SAID LOTS 15 AND 16, AND THE WEST LINE OF SAID "JOHNSON HEIGHTS CONDOMINIUMS", 99.96 FEET TO THE SOUTHWEST CORNER THEREOF, ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 16 AND NORTHEAST CORNER OF SAID LOT 17, FROM WHICH A 1" IRON PIPE BEARS N50°38'02"E, 0.45 FEET; THENCE S89°59'58"W ALONG THE SOUTH LINE OF SAID LOT 16 AND THE NORTH LINE OF SAID LOT 17, 99.95 FEET TO THE INITIAL POINT.

THE LAND DESCRIBED ABOVE CONTAINS 9,989 SQUARE FEET, MORE OR LESS.

**EXHIBIT B**  
**Bylaws**

AFTER RECORDING, RETURN TO:  
Jonathon L. Goodling  
Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204

**BYLAWS**  
**OF**  
**ASSOCIATION OF UNIT OWNERS**  
**OF ZINC CONDOMINIUM**



## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE 1 GENERAL PROVISIONS .....	1
1.1 Identity .....	1
1.2 Bylaws Subject to Other Documents .....	1
1.3 Applicability .....	1
ARTICLE 2 ORGANIZATION OF ASSOCIATION .....	1
ARTICLE 3 OWNERS' MEETINGS.....	2
3.1 Turnover Meeting .....	2
3.2 Annual Meetings.....	2
3.3 Special Meetings.....	2
3.4 Location of Meeting.....	2
3.5 Notice of Meeting .....	2
3.6 Quorum and Voting of Owners.....	3
3.7 Proxies.....	3
ARTICLE 4 BOARD.....	4
4.1 Election, Number, and Term Prior to the Turnover Meeting .....	4
4.2 Election, Number, and Term After the Turnover Meeting .....	4
4.3 Powers and Duties.....	4
4.4 Regular Meetings.....	6
4.5 Special Meetings.....	6
4.6 Notice of Special Meetings.....	6
4.7 Quorum of Directors .....	6
4.8 Manner of Directors Acting .....	6
4.9 Vacancies on Board .....	6
4.10 Presumption of Assent.....	6
4.11 Removal of Directors.....	7
4.12 Reimbursement of Directors.....	7
4.13 Directors May Engage Manager .....	7
4.14 Attendance by Owners.....	7
ARTICLE 5 OFFICERS.....	7
5.1 Number .....	7

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
5.2 Election and Term of Office .....	7
5.3 Removal .....	7
5.4 Vacancies .....	7
5.5 Chairperson .....	7
5.6 Secretary .....	8
5.7 Treasurer .....	8
ARTICLE 6 FIDELITY BONDS .....	8
ARTICLE 7 FINANCIAL RECORDS .....	8
ARTICLE 8 CONTRACTS .....	9
ARTICLE 9 LOANS .....	9
ARTICLE 10 CHECKS, DRAFTS, AND VOUCHERS .....	9
ARTICLE 11 DEPOSITS .....	9
ARTICLE 12 TAX RETURNS .....	10
ARTICLE 13 RULES AND REGULATIONS .....	10
ARTICLE 14 BUDGET .....	10
ARTICLE 15 COMMON EXPENSES ASSESSMENTS .....	10
ARTICLE 16 MAINTENANCE PLAN .....	12
ARTICLE 17 RESERVE STUDY .....	12
ARTICLE 18 RESERVE ACCOUNT ASSESSMENTS .....	12
18.1 Reserve Account .....	12
18.2 Reserve Account Assessments .....	12
18.3 Reserve Items .....	13
18.4 General Operating Reserve .....	13
ARTICLE 19 INITIAL ASSESSMENT .....	13
19.1 Contribution to Working Capital .....	13
19.2 Payment of Common Expenses by Declarant or Owner .....	14
19.3 Temporary Reduction of Assessment Amount .....	14
ARTICLE 20 SPECIAL ASSESSMENTS .....	14
20.1 Majority of the Board .....	14
20.2 Owner's Consent .....	15

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
ARTICLE 21 COLLECTION AND PAYMENT OF ASSESSMENTS.....	15
21.1 Payment.....	15
21.2 Late Charges .....	15
21.3 Liens.....	15
21.4 Interest.....	16
ARTICLE 22 INSURANCE.....	16
22.1 Property Insurance .....	16
22.2 Liability Insurance .....	16
22.3 Additional Insureds.....	17
22.4 Additional Provisions.....	17
22.5 Annual Review.....	17
ARTICLE 23 INDEMNIFICATION OF DIRECTORS AND OFFICERS.....	17
ARTICLE 24 REPAIR AND MAINTENANCE .....	18
ARTICLE 25 COLLECTION FROM TENANTS.....	18
ARTICLE 26 COMPLIANCE.....	19
26.1 Subordination.....	19
26.2 Interpretation.....	19
ARTICLE 27 RESTRICTIONS ON USE.....	19
ARTICLE 28 LITIGATION AND PROCEEDINGS .....	20
ARTICLE 29 DISPUTE RESOLUTION.....	21
ARTICLE 30 AMENDMENTS .....	21

**BYLAWS**  
**OF**  
**ASSOCIATION OF UNIT OWNERS**  
**OF ZINC CONDOMINIUM**

**ARTICLE 1**

**GENERAL PROVISIONS**

1.1 **Identity.** Association of Unit Owners of Zinc Condominium, a nonprofit corporation organized under the laws of the State of Oregon, the Articles of Incorporation of which were filed in the Office of the Oregon Corporation Commissioner on the \_\_\_\_ day of \_\_\_\_\_, 2009 (the "Association"), has been organized for the purpose of administering the operation and management of the Condominium, in accordance with the terms of these Bylaws. The Declaration of Condominium for Zinc Condominium (the "Declaration"), was made and executed by River Holding LLC, an Oregon limited liability company ("Declarant"), in accordance with the provisions of ORS Chapter 100 (the "Act"), and is being recorded simultaneously herewith in the records of Multnomah County, Oregon. Except as otherwise provided herein, all capitalized terms herein shall have the meanings set forth in the Declaration, and any terms that is not defined in the Declaration or these Bylaws shall have the meaning given to such term by the Act.

1.2 **Bylaws Subject to Other Documents.** The provisions of these Bylaws are apply to the Condominium and are expressly subject to the terms, provisions, and conditions contained in the Articles of Incorporation and the Declaration.

1.3 **Applicability.** Declarant approves and adopts these Bylaws and annexes the same to the Declaration, which Bylaws and Declaration shall govern the operation and use of the Condominium. These Bylaws shall run with the land and shall be binding on and for the benefit of Declarant and its successors and assigns, acting as the present Association, and its successors and assigns, and on all subsequent Owners and Mortgagees, tenants, occupants, employees, and others who use the Condominium.

**ARTICLE 2**

**ORGANIZATION OF ASSOCIATION**

The initial meeting of the Owners shall be held within 30 days following the recording of these Bylaws. Declarant shall give at least 10 but not more than 50 days' written notice of the initial meeting to all persons who are Owners on the date of mailing of the notice.

## ARTICLE 3

### OWNERS' MEETINGS

3.1 **Turnover Meeting.** No later than 90 days after the Turnover, Declarant shall call a meeting of the Owners (the "Turnover Meeting"). Declarant shall give notice to each Owner at least 10 but not more than 50 days prior to the meeting. The notice shall state the purpose of the meeting and the time and place at which the meeting is to be held. At the Turnover Meeting:

3.1.1 Declarant shall relinquish control of the administration of the Association and the Owners shall assume the control;

3.1.2 If a quorum of Owners is present, the Owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the Board; and

3.1.3 Declarant shall deliver to the Association all relevant business records of the Association and any other information or property required by the Act to be delivered.

If Declarant fails to call the Turnover Meeting within the time specified above, the meeting may be called and notice given by any Owner or the holder of any first Mortgage.

3.2 **Annual Meetings.** The annual meeting of the Owners shall be held each year following the Turnover Meeting on the day and month the Turnover Meeting was held, or the next business day following such date. At each annual meeting, the Voting Owners shall, by ballot, elect one director and transact such other business as may come before the meeting. If an annual meeting of the Owners is not held on the date designated herein for any annual meeting, the Board shall cause the annual meeting to be held as soon thereafter as is convenient, but in no event more than 60 days after the designated date for such meeting, by proper notice to the Owners of the date of the annual meeting.

3.3 **Special Meetings.** Special meetings of the Owners for any purpose or purposes may be called by the Chairperson (defined in Section 5.1 below) or a majority of the directors and shall be called by the Chairperson at the written request of at least 50 percent of the Voting Owners.

3.4 **Location of Meeting.** The Board shall designate the location for all annual and special meetings of the Owners.

3.5 **Notice of Meeting.** Written or printed notice stating the place, date, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered to each Owner not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the discretion of the Chairperson, the Secretary (defined in Section 5.1 below), or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when it is deposited in the United States mail, addressed to the Owner at his or her last known address on the records of the Association, with postage thereon prepaid.

3.6 **Quorum and Voting of Owners.**

3.6.1 At any meeting of the Owners, a quorum shall be present if more than 50 percent of the Voting Owners are present (in person or by proxy); and the concurring vote of more than 50 percent of such Voting Owners present at a meeting at which a quorum is present (a "Majority of the Voting Owners") shall be valid and binding upon the Association, except as otherwise provided by law, these Bylaws, or the Declaration. If less than 50 percent of the Voting Owners are present at a meeting, a majority of the Voting Owners present may adjourn a meeting and reconvene without further notice; provided, however, that a quorum shall not be necessary to proceed with and hold a binding Turnover Meeting; and provided further that the quorum for any meeting that replaces a meeting that was adjourned for lack of a quorum shall be 50 percent of the quorum amount that was required for the meeting that was adjourned for lack of a quorum. The Voting Owners present at a duly organized meeting may continue to transact business until adjournment, even if the Voting Owners then present to do not otherwise constitute a quorum.

3.6.2 If any Voting Owner owns or represents more than one Dwelling Unit, he or she shall have the number of votes corresponding to the number of Dwelling Units that he or she owns or represents. In the event that a Voting Owner pledges his or her vote regarding a special matter to a Mortgagee under a duly recorded Mortgage and notice thereof has been given to the Secretary, only the vote of the Mortgagee will be recognized in regard to the special matter upon which the vote is so pledged.

3.6.3 An administrator, executor, guardian, or trustee may vote in person or by proxy at any meeting of the Owners with respect to any Dwelling Unit owned or held by him or her in such capacity, whether or not the same shall have been transferred to his or her name; provided that he or she shall satisfy the Secretary that he or she is the executor, administrator, guardian, or trustee holding such Dwelling Unit in such capacity.

3.6.4 Whenever any Dwelling Unit is owned by two or more persons jointly, according to the records of the Association, in the absence of protest by a co-owner or the delivery to the Association of a valid court order establishing the authority of a person to exercise the vote allocated to that Dwelling Unit, only one of the co-owners then present will be allowed to exercise the vote allocated to that Dwelling Unit. In the event of protest by a co-owner, the vote for the affected Dwelling Unit shall be divided by the number of co-owners, and each co-owner shall cast an substantially equal fractional vote. In the event a valid court order establishes the authority of a person to exercise the vote or a portion of the vote allocated to a Dwelling Unit, the vote for the affected Dwelling Unit shall be voted in accordance with the court order.

3.7 **Proxies.** At all meetings of the Owners, a Voting Owner may vote by proxy executed in writing by the Voting Owner or by his or her duly authorized attorney-in-fact. Such proxy shall be delivered to the Secretary before or at the time of the meeting, shall be dated, and shall provide that the proxy cannot be revoked without prior written notice to the Association. Such proxy shall expire on the date set forth in the writing, upon sale of a Dwelling Unit by its Owner, or one year after it is signed, whichever is earlier.

## ARTICLE 4

### BOARD

4.1 **Election, Number, and Term Prior to the Turnover Meeting.** Until the Turnover Meeting, the number of directors of the Association shall be three. Until the Turnover Meeting, the directors shall be elected by the Declarant, and the term of each director shall expire on the date that is one year after the director is elected, or on the date of the Turnover Meeting, whichever is earlier. Until the Turnover Meeting, the directors of the Association do not need to be Owners. Until the Turnover Meeting, the rights, duties, and functions of the Board shall be exercised by Declarant.

4.2 **Election, Number, and Term After the Turnover Meeting.** At and after the Turnover Meeting, the number of directors of the Association shall be three. On the date of the Turnover Meeting and continuing thereafter, each director shall be elected by a single ballot, with each Voting Owner permitted to vote for three nominees. On the date of the Turnover Meeting and continuing thereafter, the term of office of each director will be fixed, one for a term of three years, one for a term of two years, and one for a term of one year. The nominee receiving the highest number of votes shall be the three-year director, the nominee receiving the second highest number of votes shall be the two-year director, and the nominee receiving the third highest number of votes shall be the one-year director. At the expiration of the term of office of any director, a successor shall be elected to a term of three years by a Majority of the Voting Owners. Following the Turnover Meeting, each director must be a Owner.

4.3 **Powers and Duties.** The Board shall have all the powers and duties necessary for the administration of the affairs of the Association and Association property, except such powers which may not be delegated to the Board by the Owners pursuant to law or the terms of the Declaration or these Bylaws. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

4.3.1 Operation, care, upkeep, maintenance, repair, and replacement of the Common Elements, Parking Units, and Association property and payment for the expense thereof;

4.3.2 Preparation, adoption, and amendment of the Budget (defined in Article 14 below) and the Maintenance Plan (defined in Article 16 below);

4.3.3 Preparation, review, and update of the Reserve Study;

4.3.4 Assessment and collection of the General Assessments (defined in Section 21.1 below) and any special assessments, all in accordance with the provisions of these Bylaws;

4.3.5 Employment and dismissal of a Manager and such other employees, agents, or independent contractors as are necessary or convenient for the efficient maintenance, upkeep, and repair of the Common Elements, Parking Units, and Association property;

4.3.6 Employment of legal, accounting, or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Common Elements, Parking Units, Association Property, and the Association;

4.3.7 Opening of bank accounts on behalf of the Association and in the name of the Association and designating the signatories therefore;

4.3.8 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;

4.3.9 Preparation, adoption, and enforcement of the Rules and Regulations (defined in Article 13 below);

4.3.10 Maintenance of a current mailing address for the Association;

4.3.11 Maintenance of the information required to enable the Association to comply with ORS 100.480(7);

4.3.12 Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with Units acquired by the Association or its designee;

4.3.13 Making additions and improvements to, or alterations of, the Common Elements or Parking Units and payment of the same out of the Reserve Account, or specifically assessing the several Units for the expense thereof as a Common Expense;

4.3.14 Modifying, removing, or eliminating all or any portion of any landscaping portion of the Common Elements;

4.3.15 Establishing one or more committees that shall report to the Board and may make recommendations to the Board, provided that at least one member of each committee is a director;

4.3.16 Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws, and the Rules and Regulation;

4.3.17 Imposition of reasonable fines on an Owner for violations of the Declaration, these Bylaws, or the Rules and Regulations, provided that the fine is based on a resolution adopted by the Board and a copy of such resolution is delivered to each Dwelling Unit, mailed to the mailing address of each Dwelling Unit, or mailed to the mailing address designated in writing by the Owner of each Dwelling Unit, prior to the imposition of such fine, and further provided that a written notice of the alleged violation and the fine to be imposed is delivered to the Owner and the Owner is given an opportunity to be heard as to the violation; and

4.3.18 The filing of an annual report and any amendment in accordance with ORS 100.250.



4.4 **Regular Meetings.** A regular meeting of the Board shall be held without notice, other than this Section 4.4, immediately after and at the same place as the annual meeting of Owners. The Board may provide by resolution the time and place for the holding of additional regular meetings without notice other than such resolution. The initial organization meeting shall be held immediately following the organization meeting of the Owners described in Article 2.

4.5 **Special Meetings.** Special meetings of the Board may be called by or at the request of the Chairperson or any one director. The person or persons authorized to call a special meeting of the Board may fix the place for holding any special meeting called by them.

4.6 **Notice of Special Meetings.** Notice of any special meeting shall be given at least 72 hours previous thereto by written notice delivered personally or mailed to each director at his or her residence or business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because a meeting was not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting. If at any time a majority of the Dwelling Units are occupied as principal residences, notice of meetings of the Board shall be posted at the Condominium at least three days prior to the meeting.

4.7 **Quorum of Directors.** A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. Each director shall have one vote.

4.8 **Manner of Directors Acting.** The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

4.9 **Vacancies on Board.** Any vacancy occurring on the Board may be filled by the affirmative vote of a majority of the remaining directors even if there exists less than a quorum of directors. A director elected to fill a vacancy shall be elected for the unexpired term of predecessor in office. Any directorship to be filled by reason of an increase in the number of directors or by reason of the removal of one or more directors shall be filled by election at an annual meeting or at a special meeting of the Owners called for that purpose.

4.10 **Presumption of Assent.** A director who is present at a meeting of the Board at which action on any matter is taken shall be presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

4.11 **Removal of Directors.** Any director may be removed with or without cause at a meeting expressly called for that purpose by a vote of a Majority of the Voting Owners entitled to vote on such removal. After the Turnover Meeting, any director who ceases to be a Owner shall cease to be a director.

4.12 **Reimbursement of Directors.** The directors shall not receive compensation but shall be reimbursed for their reasonable expenses related to attendance at meetings of the Board.

4.13 **Directors May Engage Manager.** The Board may retain the services of an individual or firm to act as the Manager and may employ, or instruct such Manager to employ, such other persons as may be necessary from time to time for the maintenance, upkeep, and repair of the Common Elements, Parking Units, and Association property, provided that such persons shall, if required by any applicable law, be licensed with the Oregon Real Estate Agency. All such agreements shall provide for a term of not more than three years and may be terminated, with or without cause, upon 90 days' notice to all parties affected.

4.14 **Attendance by Owners.** All meetings of the Board shall be open to Owners, except that, at the discretion of the Board, certain matters may be discussed in executive session as permitted under ORS 100.420(1).

## ARTICLE 5

### **OFFICERS**

5.1 **Number.** The officers of the Association shall be a chairperson (the "Chairperson"), a secretary (the "Secretary"), and a treasurer (the "Treasurer"), each of whom shall be elected by the Board. No more than two offices may be held by the same person. Officers shall not be required to be Owners.

5.2 **Election and Term of Office.** The officers shall be elected annually by the Board at the first meeting of the Board held after the annual meeting of the Owners. If the election of officers is not held at such meeting, the election shall be held as soon thereafter as is convenient. Each officer shall hold office until his or her successor has been duly elected and qualified, or until his or her death, or until he or she resigns or has been removed in the manner herein provided.

5.3 **Removal.** Any officer elected or agent designated by the Board may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby; but such removal shall be without prejudice to the contract rights, if any, of the persons so removed.

5.4 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise shall be filled by the Board for the unexpired portion of a term.

5.5 **Chairperson.** The Chairperson shall have all the powers and duties of a chairperson under the Act. The Chairperson shall, when present, preside at all meetings of the Owners and the Board and shall perform all duties incident to such office and such other duties as may be prescribed by the Board from time to time. He or she shall be the principal executive

officer of the Association and shall be subject to the control of the Board. He or she shall, in general, supervise and control all the business and affairs of the Association and sign with the Secretary, or any other proper officer of the Association authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments that the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed.

5.6 **Secretary.** The Secretary shall (i) keep the minutes of the meetings of Owners and the Board in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws, or as required by law; (iii) be custodian of the Association records; and (iv) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chairperson or the Board.

5.7 **Treasurer.** The Treasurer shall (i) have charge and custody of and be responsible for all funds of the Association; (ii) receive and give receipts for moneys due and payable to the Association from any source whatsoever; (iii) deposit all moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected by the Board; (iv) approve payment vouchers; (v) prepare or cause to be prepared and filed any required income tax return or forms for the Association; and (vi) in general, perform all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned to him or her by the Chairperson or by the Board, including approving payment vouchers for maintenance and repair of the Common Elements, the Parking Units, or the Association property.

## ARTICLE 6

### **FIDELITY BONDS**

The Association, through the Board, shall require that all officers, directors, employees, and agents of the Association handling or responsible for its funds shall furnish adequate fidelity bonds. The premiums on any such bonds shall be Common Expenses.

## ARTICLE 7

### **FINANCIAL RECORDS**

The Association shall keep all records required to be kept in accordance with ORS 100.480, and shall keep financial records sufficient for proper accounting purposes. Such records shall be located within the State of Oregon. Within 90 days after the end of each fiscal year, the Board shall cause to be prepared an annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year, and shall distribute to each Owner a copy of the annual financial statement. Upon receipt of a written request made in good faith for a proper purpose, the Association shall make available to any Owner and any Mortgagee, for its inspection or duplication during normal business hours or under other reasonable circumstances, current copies together with any amendments thereto of the Declaration, these Bylaws, the recorded Plat, if feasible, the Rules and Regulations, and the books, records, and financial statements of the Association. The Association shall provide,

within 10 business days of receipt of a written request from an Owner, a written statement that provides (i) the amount of assessments due from the Owner and unpaid at the time the request was received, including General Assessments (defined in Section 21.1 below) and special assessments, fines, penalties, accrued interest, and other charges; (ii) the percentage rate at which interest accrues on assessments that are not paid when due; and (iii) the percentage rate used to calculate the charges for a late payment or the amount of a fixed charge for a late payment; provided, however, that the Association is not required to comply with the above provisions 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; and provided further that records kept by or on behalf of the Association may be withheld under the circumstances set forth in ORS 100.480(8)(b). Upon written request of a prospective purchaser, the Association shall make the information that is available to Owners, available for examination and duplication by the prospective purchaser during reasonable hours. The Association may charge a reasonable fee for furnishing any documents, information, or records described in this Article 7.

## **ARTICLE 8**

### **CONTRACTS**

The Board may authorize any officer, director, agent, or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association; and such authority may be general or confined to specific instances.

## **ARTICLE 9**

### **LOANS**

No loan shall be contracted on behalf of the Association, and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board and approved by the affirmative vote of 75 percent of the Voting Owners present at a duly noticed meeting of Owners in which at least a quorum is present. Such authority may be general or confined to specific instances.

## **ARTICLE 10**

### **CHECKS, DRAFTS, AND VOUCHERS**

All checks, drafts, vouchers, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer, officers, agent, or agents of the Association and in such manner as shall from time to time be determined by the resolution of the Board.

## **ARTICLE 11**

### **DEPOSITS**

All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, savings and loan associations, or other

depositories located within the State of Oregon as the Board may select. All assessments shall be deposited in a bank account or bank accounts in the name of the Association. All expenses of the Association shall be paid from the Association's bank account or bank accounts.

## **ARTICLE 12**

### **TAX RETURNS**

The Board annually shall cause the necessary income tax returns to be filed for the Association.

## **ARTICLE 13**

### **RULES AND REGULATIONS**

Until the Turnover, Declarant may adopt, amend, or modify rules and regulations to govern the details of the operation and use of the Units and Common Elements, including any rules desirable to prevent unreasonable interference with the use of the Condominium by the Owners (the "Rules and Regulations"). After the Turnover Meeting, the Board shall have the power to adopt, modify, or amend the Rules and Regulations as they deem desirable. The Rules and Regulations, shall be binding as though they were a part hereof.

## **ARTICLE 14**

### **BUDGET**

The Board at least annually shall prepare and adopt a budget for revenues, expenditures, and reserves for the Association in accordance with ORS 100.412 (the "Budget"). A summary of the Budget shall be distributed to all Owners within 30 days following adoption. If the Board fails to adopt the Budget for any year, the last adopted Budget will continue in effect. The Budget shall be prepared based upon the Maintenance Plan and Reserve Study and shall include the sums required to be allocated to the Reserve Account pursuant to the Reserve Study.

## **ARTICLE 15**

### **COMMON EXPENSES ASSESSMENTS**

15.1 Beginning on the date the first Unit is sold or otherwise transferred to someone other than Declarant (the "First Closing"), and except as otherwise provided in the Declaration or these Bylaws, each Owner shall be obligated to pay assessments imposed by the Association and each Owner shall pay its portion of the Common Expenses Assessment (defined in Section 15.5 below) in accordance with the provisions of Section 9.2 of the Declaration.

15.2 Prior to the date that any Unit is owned by someone other than Declarant, Declarant shall pay all operating and maintenance expenses of the Condominium.

15.3 Each Owner's portion of the Common Expenses Assessment for each calendar year shall be due on the fifth day of each month in twelve substantially equal installments with the first payment due on January 5 of each year.

15.4 The Board, in its sole discretion, or the Manager, at the direction of the Board, may round up the amount of each Owner's installment of its portion of the Common Expenses Assessment to the next whole-dollar amount.

15.5 The term "Common Expenses Assessment" means, for each calendar year, the Association's estimate of the total Common Expenses, determined in accordance with the Budget. The term "Common Expenses" means, for each calendar year:

15.5.1 Expenses of administration of the Condominium;

15.5.2 Expenses of maintenance, repair, or replacement of the Common Elements and Association property, if any;

15.5.3 Any amount by which the Common Expenses Assessment actually collected for the prior calendar year were insufficient to pay all of the Common Expenses for such calendar year;

15.5.4 The costs of utilities for the General Common Elements and other utilities of the Condominium that have a common meter or that are not separately billed to the Owners, such as water and sewer;

15.5.5 The cost of insurance or bonds obtained in accordance with these Bylaws;

15.5.6 The cost of any Manager, if required by Mortgagees pursuant to the term of the Declaration or if desired by the Board;

15.5.7 Legal, accounting, and other professional fees of the Association;

15.5.8 At the discretion of the Board, the expense of basic cable or satellite television service to all Dwelling Units, together with maintenance and repair expenses for such system and service;

15.5.9 The amount of any deductible owed under any insurance policy carried by the Association pursuant to Article 22.

15.5.10 The amount reallocated to the current Owners pursuant to Section 21.3, to the extent not previously accounted for pursuant to Section 15.5.3; and

15.5.11 Any other items that are properly chargeable as an expense of the Association.

15.6 If during any fiscal year of the Association, any portion of the Variable Property is reclassified as additional units, beginning on the date of the reclassification, the Common Expenses Assessment shall be adjusted to take into account the anticipated Common Expenses for the reclassified Variable Property. From the date of reclassification, each Owner shall be

obligated to pay its portion of the adjusted Common Expenses Assessment in accordance with the provisions of Section 9.2 of the Declaration.

## ARTICLE 16

### MAINTENANCE PLAN

Declarant has prepared a maintenance plan (the "Maintenance Plan") as required by the Act and Section 4.3.2 of these Bylaws. The Maintenance Plan shall describe and include a schedule for the maintenance, repair and replacement of all property for which the Association has maintenance, repair, or replacement responsibilities.

## ARTICLE 17

### RESERVE STUDY

The Board shall, in accordance with ORS 100.175(3)(a), annually conduct a reserve study, or review and update an existing reserve study, of the Reserve Items (defined in Section 18.3 below) to determine the amount needed to fund the major maintenance, repair, and replacement of the Reserve Items (the "Reserve Study"). The Reserve Study shall include: (a) identification of all Reserve Items, (b) the estimated remaining useful life of each Reserve Item as of the date of the Reserve Study, (c) an estimated cost of maintenance and repair of each Reserve Item for the remainder of its useful and the replacement cost of each Reserve Item at the end of its useful life, and (d) a 30-year plan describing the amount and timing of contributions required to be made to the Reserve Account (defined in Section 18.1 below) to fund the estimated maintenance, repair, and replacement schedule set forth in the Reserve Study, adjusted for estimated inflation and anticipated interest to be earned on the funds held in the Reserve Account.

## ARTICLE 18

### RESERVE ACCOUNT ASSESSMENTS

18.1 **Reserve Account.** Pursuant to the provisions of the Act, Declarant has established a reserve account in the name of the Association (the "Reserve Account"). The Reserve Account shall be funded by the Owners through the payment of the Reserve Fund Assessments (defined in Section 18.2 below). Each Owner shall pay its portion of the Reserve Fund Assessments in accordance with the provisions of Section 9.2 of the Declaration. Except as otherwise allowed by the Act, the Reserve Account shall be used only for the purpose of collecting the Reserve Fund Assessments and for payment of obligations for maintenance, repair, or replacement of Reserve Items. The funds in the Reserve Account shall be kept separate from other funds of the Association. In no event shall the funds in the Reserve Account be used for the payment of obligations that reasonably could be funded as part of the Common Expenses.

18.2 **Reserve Account Assessments.** Beginning on the date of the First Closing, and except as otherwise provided in the Declaration or these Bylaws, each Owner shall be obligated to pay his or her portion of the Reserve Fund Assessments (defined below). However, after the date of the First Closing, with respect to any Unit still owned by Declarant, the portion of the

Reserve Fund Assessments attributable to such Unit shall not be due until such Unit is sold or otherwise transferred to another. Each Owner's portion of the Reserve Fund Assessments shall be due at the same time as that Owner's portion of the Common Expenses Assessment is due. The Board, in its sole discretion, or the Manager, at the direction of the Board, may round up each Owner's portion of the amount of the Reserve Fund Assessments to the next whole-dollar amount or to the next quarter-dollar amount. The term "Reserve Fund Assessments" means the amount of money required to be collected in the current year, as estimated in the Reserve Study, to fund the estimated maintenance, repair, and replacement schedule set forth in the Reserve Study. However, each year hereafter, upon receipt of the Reserve Study, the Board shall determine whether the Reserve Account Assessments for the current and future years should be adjusted and whether it is appropriate to include additional items as "Reserve Items." In the event that the Board determines an adjustment to the amount of the Reserve Account Assessments is appropriate, the Reserve Fund Assessments may only be adjusted in accordance with the provisions of ORS 100.175(10). A Owner's portion of the Reserve Fund Assessments may be increased as necessary, if such Owner benefits from an expenditure from the Reserve Account so that the Reserve Account can be maintained in an amount sufficient to meet the needs for which the account was established.

18.3 **Reserve Items.** The following shall constitute "Reserve Items":

18.3.1 Those items of the Common Elements and the Parking Units which all or part of will normally require major maintenance, repair, or replacement in more than one year and less than 30 years, including, without limitation, structural elements and mechanical equipment;

18.3.2 The painting of all exterior painted surfaces of the Common Elements; and

18.3.3 Maintenance, repair, or replacement of other items as may be required under the Declaration or these Bylaws.

18.4 **General Operating Reserve.** The Board shall create and maintain a general operating reserve account (the "General Operating Reserve Account") by allocation and payment thereto from the amount collected by the Association as the Common Expenses Assessment of amounts determined by the Board to be needed for the General Operating Reserve Account. The General Operating Reserve Account shall be used to pay Common Expenses that exceed budgeted amounts. The Initial Working Capital Contribution (defined in Section 19.1) shall be deposited into the General Operating Reserve Account. However, in no event may the Association use any Initial Working Capital Contribution for any purpose, including, but not limited to the use to make up any Budget deficits, prior to Turnover. Additionally, in no event shall the Association use any Initial Working Capital Contribution to defray any of the expenses, reserve contributions, or construction costs of Declarant.

## ARTICLE 19

### **INITIAL ASSESSMENT**

19.1 **Contribution to Working Capital.** At the sale or other transfer of a Unit to a person other than Declarant (a "Purchaser"), each Purchaser shall contribute to the Association a



sum equal to one-sixth (1/6th) of its portion of the then-current annual Common Expenses Assessment and Reserve Fund Assessments (the "Initial Working Capital Contribution"). The Initial Working Capital Contribution shall be a one-time contribution to the Association and the Association shall deposit the Initial Working Capital Contribution into the General Operating Reserve Account. Within 60 days after the date of the First Closing, Declarant shall make the Initial Working Capital Contribution for each Unit that it has not been conveyed to a Purchaser. After the Initial Working Capital Contribution has been collected with respect to a Unit, no further sums shall be due to the Association on a subsequent transfer of the Unit. In the event that Declarant pays the Initial Working Capital Contribution for any Unit, the person who purchases that Unit from Declarant shall reimburse Declarant at the time of sale or other transfer for the Initial Working Capital Contribution made with respect to that Unit. The Initial Working Capital Contribution is in addition to the Owner's obligation to pay its portion of the Common Expenses Assessment and Reserve Fund Assessments and is not a prepayment of any of these assessments by the Purchaser or Declarant, as the case may be.

19.2 **Payment of Common Expenses by Declarant or Owner.** If Declarant or any other Owner pays all or a portion of the Common Expenses, that person's portion of the Common Expenses Assessment shall be reduced by the amount paid by such person. However, in no event shall such person's portion of the Reserve Fund Assessments be reduced.

19.3 **Temporary Reduction of Assessment Amount.** Prior to the Turnover, if the Common Expenses are temporarily less than projected because some or most of the Dwelling Units are not yet sold or occupied, Declarant shall have the authority to reduce temporarily the amount of the Common Expenses Assessment to reflect the lower Common Expenses. In such event and with respect to any Initial Working Capital Contribution that is not yet due for a particular Unit, the Initial Working Capital Contribution for each such Unit shall be based on the projected amount of such Common Expenses Assessment on the date that the Dwelling Units are substantially or fully occupied, rather than on the reduced amount.

## ARTICLE 20

### **SPECIAL ASSESSMENTS**

20.1 **Majority of the Board.** By the vote of a majority of the directors, the Board shall have the power to levy special assessments against an Owner or all Owners for the following purposes:

20.1.1 To correct a deficit in the operating budget;

20.1.2 To collect amounts due to the Association from an Owner for breach of the Owner's obligations under the Declaration, these Bylaws, the Act, or the Rules and Regulations;

20.1.3 To make repairs or renovations to the Common Elements if sufficient funds are not available from the General Operating Reserve Account or the Reserve Account; or

20.1.4 To make capital acquisitions, additions, or improvements to Common Elements costing less than \$2,500.

20.2 **Owner's Consent.** The Board must obtain consent of at least 75 percent of the Voting Owners present at a meeting of the Owner's in which a quorum is present before the Board may levy special assessments against an Owner or all Owners for the purpose of making capital acquisitions, additions, or improvements to the Common Elements costing \$2,500 or more.

## ARTICLE 21

### COLLECTION AND PAYMENT OF ASSESSMENTS

21.1 **Payment.** Each Owner's portion of the Common Expenses Assessment and the Reserve Fund Assessments (collectively, the "General Assessments") shall be paid in advance, without demand, and on the fifth calendar day of each month. The Treasurer of the Associations shall collect the assessments and, upon request, each Owner shall be entitled to receive from the Treasurer at the time of payment of the assessments an itemized statement of the anticipated Common Expenses. The itemized statement of anticipated Common Expenses shall be prepared in the manner determined by the Board.

21.2 **Late Charges.** The Board may impose a late charge not to exceed 5 percent of the amount of any assessment that is not paid within 10 days after it is due. The imposition of a late charge shall be without prejudice to any other remedy available to the Association.

21.3 **Liens.** The Association shall have the authority and the duty to levy and enforce the collection of the General Assessments and any special assessments. Whenever the Association levies any assessment against a Unit, the Association, upon complying with this Section 21.3, shall have a lien upon such Unit and the undivided interest in the Common Elements appertaining to such Unit for: (i) the reasonable value of such Common Expenses allocable to such Unit; (ii) any unpaid assessments; (iii) interest (described in Section 21.4); (iv) late charges (described in Section 21.2); (v) costs or other amounts levied under the Declaration or these Bylaws; and (vi) attorney fees. The lien shall be prior to all other liens or encumbrances upon the Unit, except for tax and public improvement assessment liens, and a first Mortgage. Recording of the Declaration constitutes record notice and perfection of the lien for assessments.

Each assessment shall be a separate and personal debt and obligation of the Owner of the Unit at the time the assessment fell due and shall be collectible as such. Such personal obligation shall not pass to successors in title unless assumed by them or required by law. The Board may cause to be filed in the deed records of Multnomah County a notice of lien claim pursuant to ORS 100.450(2)-(3) with respect to any assessment that has not been paid within 30 days after the date that the Association notified the Owner that an assessment was not paid when due, but must do so before instituting any suit to foreclose the lien. The Association shall be entitled to recover, in any suit to foreclose or action to recover a money judgment for unpaid assessments, interest on the delinquent assessments at the rate of 12 percent per annum and costs, including reasonable attorney fees in such suit or action, or any appeal therefrom. If the Association files a notice of lien claim in the deed records of Multnomah County, the Owner of the Unit shall reimburse the Association for the cost of preparing and filing the notice.

A lien for assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer pursuant to a foreclosure of a first Mortgage, or a deed in lieu of foreclosure of a first Mortgage (to the extent permitted by ORS 100.465 shall extinguish a lien securing unpaid assessments through the date of foreclosure or recording of the deed in lieu of foreclosure), provided that written notice has been given to the Association in accordance with the provisions of ORS 100.465(1) and the deed is recorded not later than 30 days after the date such notice is mailed. A lien for any delinquent assessments extinguished pursuant to this Section 21.3 shall be reallocated to the current Owners as a Common Expenses Assessment as provided in Section 15.5.10. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, an assessment made thereafter.

In case of foreclosure, the Owner of the foreclosed Unit shall be required to pay a reasonable rental for the Unit; and the plaintiff in the foreclosure suit shall be entitled to the appointment of a receiver to collect the rental, without regard to the value of the security. An action to recover a money judgment, together with reasonable attorney fees for unpaid assessments, may be maintained without foreclosing or waiving the lien securing the claim for common proceeds.

21.4 **Interest.** All assessments that are not paid when due shall bear interest at the rate of 12 percent per annum, which interest shall commence on the due date for the payment of such assessment.

## ARTICLE 22

### **INSURANCE**

22.1 **Property Insurance.** The Association shall obtain and maintain at all times property insurance, including, but not limited to, fire, extended coverage, vandalism, and malicious mischief, and all other perils customarily covered for similar types of projects, insuring the Common Elements and the Units, including fixtures, equipment, interior improvements, and other property that a holder of a first Mortgage would ordinarily require to be insured. The insurance shall be in an amount equal to 100 percent of replacement cost of the property insured. In no event shall the Association be responsible for procuring fire or extended coverage insurance for furniture, fixtures, equipment, or contents located in the Units.

22.2 **Liability Insurance.** The Association shall obtain and maintain at all times liability insurance in the amount of at least \$1,000,000 for each occurrence covering the legal liability of the Association, the Owners individually, and the Manager, including, but not limited to, the Board, the public, and the Owners and their invitees or tenants, incident to ownership, supervision, control, or use of the Condominium. There may be excluded from the policy required under this Section 22.2, coverage of a Owner, other than coverage as a member of the Association or Board, for liability arising out of acts or omissions of that Owner and liability incident to the ownership or use of the part of the Condominium as to which that Owner has the exclusive use or occupancy. Liability insurance required under this Section 22.2 shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement providing that the rights of a named insured under the policy shall not prejudice any action against another named insured.

22.3 **Additional Insureds.** The foregoing provisions and requirements relating to property or liability insurance notwithstanding, 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 (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Each Owner appoints any Insurance Trustee or substitute Insurance Trustee designated by the Association as an 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 purpose. The Association or any Insurance Trustee shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their first Mortgagee, as their interests may appear.

22.4 **Additional Provisions.** The Board shall make every effort to secure insurance policies that provide for the following:

22.4.1 A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners, and their respective servants, agents, and guests;

22.4.2 A provision that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

22.4.3 A provision that the policy cannot be canceled, invalidated, or suspended on account of the conduct of any officer or employee of the Association or the Manager without prior demand in writing that the Board or Manager cure the defect; and

22.4.4 A provision that any "no other insurance" clause in the policy exclude individual Owners' policies and not otherwise prevent such individual policies from providing coverage for damage to Units or Common Elements.

22.5 **Annual Review.** At least annually, the Board shall review the adequacy of the insurance coverage of the Association.

## ARTICLE 23

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Subject to the provisions of this Article 23, each director and officer of the Association now or hereafter in office, and his or her heirs, executors, and administrators, shall be indemnified by the Association against all costs, expenses, amounts, or liability, including attorney fees, that are reasonably incurred by or imposed upon him or her in connection with or resulting from any action, suit, proceeding, or claim to which he or she may be made a party, or in which he or she may be or become involved by reason of his or her acts or omissions or alleged acts or omissions as a director or officer, or any settlement thereof, whether or not he or she continues to be a director or officer at the time of incurring such costs, expenses, or amounts. Such indemnification shall not apply, however, with respect to any matter as to which a director or officer is finally adjudged in an action, suit, or proceeding to have been individually guilty of

willful misfeasance or malfeasance in the performance of his or her duties as a director or officer. Further, the indemnification provided herein shall, with respect to any settlement of any suit, action, proceeding, or claim, include reimbursement of any amounts paid and expenses reasonably incurred by a director or officer in settling such suit, action, proceeding, or claim when, in the judgment of the Board, a settlement or reimbursement appears to be in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of any and all other rights as to which any such director or officer may be entitled under any agreement, vote of Owners, or otherwise.

## **ARTICLE 24**

### **REPAIR AND MAINTENANCE**

24.1 Each Owner shall promptly perform all maintenance and repair work that is needed within his or her own Unit to prevent any negative effect on the Common Elements of the Condominium or a part thereof belonging to other Owners, and every Owner shall be responsible for the damages and liabilities that his or her failure to maintain and repair may cause, including, but not limited to, damage caused by plugged toilets and bath drains, overloaded electrical outlets, and clothes washer and dishwasher overflow.

24.2 All repairs of internal installations of a Dwelling Unit, such as water, lights, gas, power, sewage, telephones, air-conditioners, heaters, sanitary installations, doors, windows, lamps, and all other accessories and appliances belonging to the Dwelling Unit area, shall be at the sole expense of the Owner of such Dwelling Unit.

24.3 An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Common Elements that was damaged through such Owner's fault, or the fault of Owner's tenants, guests, servants, invitees, or authorized occupants or visitors and that is not otherwise covered by insurance policies carried by the Owner or the Association for the Owner's or the Association's benefit. In such circumstances, the insurance obtained by the Owner shall be deemed to be the primary coverage.

## **ARTICLE 25**

### **COLLECTION FROM TENANTS**

All leases or rental agreements for Units shall be in writing and specifically subject to the requirements of the Declaration, these Bylaws, and the Rules and Regulations. If the Owner shall at any time rent or lease his or her Unit and shall default for a period of 30 days or more in the payment of any assessments against such Unit, or any installment thereof, the Board may, at its option, so long as such default continues, demand and receive from any tenant occupying the Unit, the rent due or becoming due from such tenant, up to an amount sufficient to pay all assessments due from the Owner, including interest, penalties and other costs allowed under the Declaration or these Bylaws, if any, and any such payment of such rent to the Association by the tenant shall, to the extent of the amount paid to the Association, discharge such tenant of its obligations due to the Owner under the lease. But any such demand or acceptance of rent by the Association from any tenant shall not be deemed to be a consent to or approval of any lease or a release or discharge of any of the obligations of the Owner under the

Declaration or these Bylaws. In the event the Association makes demand upon the tenant as aforesaid, the tenant shall not have the right to question the right of the Association to make such demand, but shall be obligated to make said payments to the Association, with the effect as aforesaid; provided, however, the Association may not exercise this right if a receiver has been appointed to take charge of the Unit pending a Mortgage foreclosure or if a Mortgagee is in possession pending a Mortgage foreclosure.

## ARTICLE 26

### COMPLIANCE

26.1 **Subordination.** These Bylaws are subordinate and subject to the provisions of the Declaration and all amendments thereto and the Act; and in case of any conflict, the Declaration and the Act shall control.

26.2 **Interpretation.** In the event any provision of these Bylaws is held to be invalid, such invalidity shall not render invalid any other provision hereof that can be given effect. Nothing in these Bylaws shall be deemed or construed to authorize the Association or the Board to conduct or engage in any act or business for profit on behalf of any or all of the Owners.

## ARTICLE 27

### RESTRICTIONS ON USE

The Owners shall and shall require their employees, occupants, tenants, servants, invitees, and authorized visitors to comply with the following restrictions:

27.1 No part of a Unit shall be used for other than residential purposes and related uses, provided that, subject to compliance with local ordinances and other restrictions of record, an Owner may use a Unit as a "home office" so long as clients, customers, and employees do not regularly visit the "home office."

27.2 At no time shall use of the General Common Elements be obstructed, nor shall anything be stored in the General Common Elements, without the prior written consent of the Association.

27.3 Without the prior written consent of the Association, nothing shall be done or kept in any Unit or in the Common Elements that (a) will increase the rate of insurance described in Article 22, (b) change the terms on which the insurance described in Article 22 will be provided, (c) is in violation of any law or regulation of any governmental authority, or (d) unreasonably interferes with the use of any Unit or the Common Elements by any other Owner or occupants.

27.4 No waste shall be committed in, on, or about the Common Elements.

27.5 Without the prior written consent of the Association, no Owner shall cause or permit anything (including, without limitation, a sign, awning, canopy, shutter, or radio or television antenna) to hang, be displayed, or otherwise be affixed to or placed on the outside walls or doors of the Dwelling Units or in, on, or about the Parking Units.

27.6 No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, that may be or may become an annoyance or nuisance to the other Owners or occupants.

27.7 Nothing shall be done in any Unit or in, on, or to the Common Elements that would impair the structural integrity of the Improvements or any part thereof or that would structurally change the Improvements or any part thereof except as is otherwise provided herein or in the Declaration.

27.8 No Unit, or portion thereof, may be leased or rented unless the lease or rental agreement (a) is in writing, (b) complies with the requirements of the Declaration and any other requirements of the Association, and (c) prior to its commencement, is approved in writing by the Association. The Association, in its sole discretion, may refuse to approve the lease or rental of a Unit if the lease or rental of such Unit will cause more than 40 % of the Units to be leased or rented. In no event may more than 50 % of the Units be leased or rented at one time.

27.9 Not violate any of the Rules or Regulations.

27.10 In no event may satellite television antennas or dishes, or window-mounted air conditioners be installed in, on, or about any Unit without prior written approval by the Association, which approval may be withheld in the Association's sole discretion.

27.11 If, at any time, there is a Unit below a Unit, the floors in the upper Unit must have rugs or carpet covering at least 50 percent of the hardwood floors in such upper Unit. The purpose of such rugs or carpet is to dampen the noise transferred from the upper Unit to the lower Unit.

27.12 No barbeques, other than propane or natural gas barbeques, shall be permitted anywhere at the Condominium.

27.13 No pet weighing in excess of 50 pounds shall be permitted in a Unit without the prior approval of the Association.

27.14 The fireplaces in the Units are not in working condition and at no time may a fireplace be used or a fire be lit in a fireplace located in any Unit without prior written approval of the Association.

27.15 At no time may the glass in any window in a Unit be tinted or colored without the prior written approval of the Association.

## ARTICLE 28

### LITIGATION AND PROCEEDINGS

To the extent required by the Act, the Board shall notify the Owners prior to instituting litigation or administrative proceedings, and shall comply with the dispute-resolution procedures set forth in ORS 100.405(11). With regard to any pending litigation involving the Association, the Board shall periodically report to the 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.

## **ARTICLE 29**

### **DISPUTE RESOLUTION**

In the event of any dispute regarding these Bylaws or the Condominium, the dispute must be settled in accordance with Article 19 of the Declaration.

## **ARTICLE 30**

### **AMENDMENTS**

30.1 Declarant acting alone may amend these Bylaws to comply with the requirements of any applicable statute, ordinance, regulation, or guideline of the Federal Housing Administration, the U.S. Department of Veterans Affairs, Rural Development, or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission, or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for condominiums; provided that if the need to amend these Bylaws arises after the Turnover Meeting has occurred, then the amendment must be approved by the Association as otherwise set forth herein or otherwise provided in the Declaration or the Act.

30.2 Amendments to these Bylaws may be proposed to the Owners by resolution of the Board or by an Owner. If proposed by the Board, any proposed amendment shall be delivered in writing, either personally or by mail, to each Owner not less than seven nor more than 50 days before the date of the meeting at which the proposed amendment will be voted upon. If mailed, such notice or request shall be deemed to be delivered when deposited in the United States mail addressed to the Owner at his or her last known address on the records of the Association, with postage thereon prepaid. If proposed by an Owner, any proposed amendment shall be attached to any request of the Owner for amendment submitted. No amendment of the Bylaws proposed in either of such ways shall be effective unless approved by at least 50 percent of the Voting Owners, either in writing or at a duly constituted meeting, and until a copy of the Bylaws, as amended, or the amendment thereto, has been certified by the Chairperson and Secretary, approved by the Real Estate Commissioner if required under the Act, and recorded with the recording officer of Multnomah County, Oregon.

30.3 No amendment to these Bylaws may reduce or eliminate the right of any Mortgagee, without the prior written consent of each affected Mortgagee.

30.4 For so long as Declarant owns one or more Units, these Bylaws, the Rules and Regulations, and the Declaration may not be modified, added to, amended, or repealed so as to eliminate, change, or impair any rights, privileges, easements, licenses, or exemptions granted therein or herein to Declarant or its designee, or otherwise in a way that adversely affects



Declarant or such designee, unless Declarant or its designee has given its written approval in each such instance.

The undersigned hereby adopts the foregoing on behalf of the Association as the Bylaws of the Association, this \_\_\_ day of \_\_\_\_\_, 2009.


**DECLARANT:**

**River Holding LLC**, an Oregon limited liability company

By:   
Donald Mutal, Member

STATE OF OREGON )  
COUNTY OF Multnomah ) SS

This instrument was acknowledged before me on Aug. 3, 2009, by Donald Mutal as Member of River Holding LLC.

  
Notary Public for Oregon  
My commission expires: 11-22-2009



AFTER RECORDING, RETURN TO:  
Jonathon L. Goodling  
Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204

Multnomah County Official Records  
C Swick, Deputy Clerk

2009-138845



\$111.00

00566604200901388450160165

10/01/2009 11:02:05 AM

1R-CONDODEC

Cnt=1 Stn=10 RECCASH1

\$80.00 \$11.00 \$15.00 \$5.00

**SUPPLEMENTAL DECLARATION OF CONDOMINIUM  
FOR ZINC CONDOMINIUM**

**Declarant: River Holding LLC, an Oregon limited liability company**

PDXDOCS:1858711.2

16

**TABLE OF CONTENTS**

		<b>Page</b>
ARTICLE 1	DEFINITIONS.....	1
1.1	"Common Elements" .....	1
1.2	"Dwelling Units" .....	1
1.3	"Supplemental Plat" .....	2
1.4	Terms Incorporated by Reference.....	2
ARTICLE 2	SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE.....	2
ARTICLE 3	NAME OF CONDOMINIUM.....	2
ARTICLE 4	RECLASSIFICATION OF VARIABLE PROPERTY .....	2
4.2	General Description, Location, and Designation of Units.....	2
4.3	Notice.....	3
4.4	Boundaries of Dwelling Units .....	3
ARTICLE 5	GENERAL COMMON ELEMENTS.....	4
ARTICLE 6	LIMITED COMMON ELEMENTS.....	4
6.1	Storage Spaces. ....	4
6.2	Decks/Patios.....	5
ARTICLE 7	ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS.....	5
7.1	Allocation of Undivided Interests.....	5
7.2	Nature of Interests.....	6
ARTICLE 8	COMMON PROFITS AND EXPENSES, VOTING .....	6
8.1	Allocation of Common Profits.....	6
8.2	Allocation of Common Expenses .....	6
8.3	Allocation of Voting Rights.....	6
ARTICLE 9	SERVICE OF PROCESS .....	6
ARTICLE 10	ASSOCIATION OF OWNERS.....	6
	6	
ARTICLE 11	PROVISIONS OF PHASE ONE DECLARATION APPLY TO RECLASSIFIED PROPERTY .....	7
ARTICLE 12	AS IS; RELEASES; WAIVERS OF CLAIMS .....	7
12.1	AS IS.....	7
12.2	Personal Property .....	7

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
12.3 Release and Waiver of all Past, Present, and Future Claims Regarding Condition of Property. ....	7
12.4 Time Limitation on Other Claims.....	9
ARTICLE 13 SEVERABILITY.....	9
ARTICLE 14 COVENANTS RUNNING WITH THE LAND.....	9

## SUPPLEMENTAL DECLARATION OF CONDOMINIUM FOR ZINC CONDOMINIUM

THIS SUPPLEMENTAL DECLARATION OF CONDOMINIUM FOR ZINC CONDOMINIUM (this "Supplemental Declaration"), pursuant to the provisions of the Oregon Condominium Act, ORS 100.005 to 100.990 (as amended from time to time, the "Act"), is made and executed of September 9, 2009, by River Holding LLC, an Oregon limited liability company ("Declarant").

A. By Declaration dated August 3, 2009, and recorded August 26, 2009, as Document No. 2009-122565 in the real property records of Multnomah County, Oregon (the "Phase One Declaration"), and plat recorded on August 26, 2009, as Book 1300, Page 32 in the plat and survey records of Multnomah County, Oregon (the "Phase One Plat"), Declarant submitted the property described on the attached Exhibit A (the "Property") to the provisions of the Oregon Condominium Act and created a condominium known as Zinc Condominium.

B. The Phase One Declaration permits reclassification of certain portions of the Property identified in the Phase One Declaration and Phase One Plat as nonwithdrawable variable property (the "Variable Property").

D. Declarant intends to reclassify the Variable Property as Dwelling Units (defined in the Phase One Declaration), Limited Common Elements (defined in the Phase One Declaration), and General Common Elements (defined in the Phase One Declaration), all as set forth in this Supplemental Declaration.

Declarant hereby declares and provides as follows:

### ARTICLE 1

#### DEFINITIONS

Unless otherwise defined in this Supplemental Declaration, the capitalized terms used herein have the definitions given to them in the Phase One Declaration. The following terms have the following meanings:

**1.1** "Common Elements" as such term is used in the Phase One Declaration and the Supplemental Declaration, means, collectively, the General Common Elements (defined in Article 5 of the Phase One Declaration and Article 5 of this Supplemental Declaration) and the Limited Common Elements (defined in Article 6 of the Phase One Declaration and Article 6 of this Supplemental Declaration).

**1.2** "Dwelling Units" as such term is used in the Phase One Declaration and this Supplemental Declaration, means, collectively, the Dwelling Units listed in Section 4.2 of the Phase One Declaration and the Dwelling Units listed in Section 4.2 of this Supplemental Declaration.

1.3 **"Supplemental Plat"** means the supplemental plat of the Condominium recorded simultaneously with the recording of this Supplemental Declaration, as the same may be hereafter amended.

1.4 **Terms Incorporated by Reference.** Except as otherwise provided in this Supplemental Declaration or the Phase One Declaration, each of the terms defined in ORS 100.005 of the Act shall have the meanings set forth in such section.

## ARTICLE 2

### **SUBMISSION OF PROPERTY TO CONDOMINIUM STATUTE**

The Property submitted to the Act by the Phase One Declaration and the Phase One Plat was held by Declarant in fee simple estate. The Variable Property is held by Declarant in fee simple estate.

## ARTICLE 3

### **NAME OF CONDOMINIUM**

The name by which the Condominium is known is "Zinc Condominium."

## ARTICLE 4

### **RECLASSIFICATION OF VARIABLE PROPERTY**

4.1 **Reclassification of Variable Property.** This Supplemental Declaration reclassifies all of the Variable Property (the "Reclassified Property"). On the date this Supplemental Declaration is recorded, the Reclassified Property will be reclassified as Units, General Common Elements, and Limited Common Elements as more particularly described herein and shown on the Supplemental Plat.

4.2 **General Description, Location, and Designation of Units.** The Condominium consists of 19 Dwelling Units and six Parking Units. Phase one of the Condominium has been completed and consists of seven Dwelling Units and six Parking Units and each is described in the Phase One Declaration. The phase one Dwelling Units are identified on the Phase One Plat as Unit 107, Unit 108, Unit 109, Unit 110, Unit 207, Unit 208, and Unit 209. The Parking Units are identified on the Phase One Plat as Parking Unit 1, Parking Unit 2, Parking Unit 3, Parking Unit 4, Parking Unit 5, and Parking Unit 6. Phase two of the Condominium is the subject of this Supplemental Declaration, is the final phase of the Condominium, and consists of 12 Dwelling Units in the building shown on the Supplemental Plat (the "Building"). The Building has two stories and a basement and is constructed of concrete block and wood and has a single-ply roof. Six Dwelling Units are located on each story of the Building. There are no Dwelling Units located in the basement of the Building. The vertical and horizontal boundaries and dimensions, designation, and location of each phase two Dwelling Unit are shown in the Supplemental Plat, which is made a part of this Supplemental Declaration as if fully set forth herein. The designation and approximate area of each phase two Dwelling Unit is set forth below:

<u>Dwelling Unit</u>	<u>Area (sq. ft.)</u>
101	492
102	493
103	494
104	493
105	492
106	494
201	525
202	525
203	526
204	528
205	526
206	528

**4.3 Notice.** The square footage areas stated in this Supplemental Declaration and the Supplemental Plat are based on the boundaries of the phase two Dwelling Units as described in this Supplemental Declaration and may vary from the area of phase two Dwelling Units calculated for other purposes.

**4.4 Boundaries of Dwelling Units.** Each phase two Dwelling Unit shall be bounded by the interior surfaces of its perimeter walls, floors, ceilings, windows and window frames, doors and door frames, and trim. The phase two Dwelling Units shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, window glass and screens, exterior unit access doors, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described, except those portions of the walls, floors, or ceilings that materially contribute to the structural or shear capacity of the Building. All other portions of the exterior walls, floors, or ceilings shall be a part of the General Common Elements. In addition, each phase two Dwelling Unit shall include the following:

4.4.1 All spaces, nonbearing interior partitions, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the Dwelling Unit; and

4.4.2 All outlets of utility service lines, including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, and waste disposal within the boundaries of the Dwelling Unit, but not any part of such lines or ducts themselves.

In interpreting deeds, mortgages, deeds of trust, and other instruments, for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the phase two Dwelling Unit or of a phase two Dwelling Unit reconstructed in substantial accordance with the original plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising, or lateral movement of the Building and regardless of variances between boundaries as shown on the Supplemental Plat and those of the actual Building.

**ARTICLE 5**

**GENERAL COMMON ELEMENTS**

The "General Common Elements" of the Condominium (for both phase one and phase two) consist of all portions of the Condominium not part of a Unit or a Limited Common Element, including but not limited to the following:

5.1 The portion of the Property that constitutes the land, including all landscaping and cement thereon;

5.2 The foundation, columns, girders, beams, supports, bearing walls, exterior walls (except glazing and screening), window frames of all exterior windows, crawl space, and roof of each building;

5.3 The access area adjacent to the Parking Units;

5.4 Installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, and waste disposal, up to the outlets within any Dwelling Unit;

5.5 The tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use; and

5.6 All other elements of any building and any other portion of the Condominium necessary or convenient to its existence, maintenance, and safety, or normally in common use, except as may be expressly designated in the Phase One Declaration or this Supplemental Declaration as part of a Unit or a Limited Common Element.

**ARTICLE 6**

**LIMITED COMMON ELEMENTS**

In addition to the limited common elements designated in the Phase One Declaration and the Phase One Plat, the following shall constitute limited common elements of the Condominium (collectively, the limited common elements for both phase one and phase two are referred to as "Limited Common Elements" and each is a "Limited Common Element"), the use of which shall be restricted to the Dwelling Units to which they pertain:

6.1 **Storage Spaces.** The storage spaces located in the basement of the Building are Limited Common Elements appertaining to the following Dwelling Units:

<b><u>Storage Space</u></b>	<b><u>Dwelling Unit</u></b>
LCE SS A	101
LCE SS B	102
LCE SS C	103
LCE SS D	104
LCE SS E	105



LCE SS F	106
LCE SS G	107
LCE SS H	108
LCE SS I	109
LCE SS J	201
LCE SS K	202
LCE SS L	203
LCE SS M	204
LCE SS N	205
LCE SS O	206
LCE SS P	207
LCE SS Q	208
LCE SS R	209

**6.2 Decks/Patios.** The deck or patio located off a phase two Dwelling Unit is a Limited Common Element appertaining to such Dwelling Unit, each as shown on the Supplemental Plat and described below:

<u>Deck/Patio</u>	<u>Dwelling Unit</u>
LCE Patio to Unit 101	101
LCE Patio to Unit 102	102
LCE Patio to Unit 103	103
LCE Patio to Unit 104	104
LCE Patio to Unit 105	105
LCE Patio to Unit 106	106
LCE Deck to Unit 201	201
LCE Deck to Unit 202	202
LCE Deck to Unit 203	203
LCE Deck to Unit 204	204
LCE Deck to Unit 205	205
LCE Deck to Unit 206	206

## ARTICLE 7

### ALLOCATION OF UNDIVIDED INTERESTS IN COMMON ELEMENTS

**7.1 Allocation of Undivided Interests.** The Owner of each Dwelling Unit will own an undivided fee simple interest in the Common Elements equal to 1 divided by the sum of the total number of Dwelling Units in the Condominium plus 1. The Owner of each Parking Unit will own an undivided fee simple interest in the Common Elements equal to 1/6 of the quotient arrived at by dividing 1 by the sum of the total number of Dwelling Units in the Condominium plus 1. Upon the reclassification of the Reclassified Property, the Owner of each Dwelling Unit will own an undivided fee simple interest in the Common Elements equal to 1/20. Upon the reclassification of the Reclassified Property, the Owner of each Parking Unit will own an undivided fee simple interest in the Common Elements equal to 1/120.

**7.2 Nature of Interests.** Each Unit's interest in the Common Elements, both general and limited, 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.** The common profits derived from the Condominium shall be allocated to the Owner of each Dwelling Unit according to their ownership interests in the Common Elements set forth in Section 7.1 of this Supplemental Declaration. As used in this Supplemental Declaration and the Phase One Declaration, "common profits" means profits arising from the General Common Elements. Except upon the termination of the Supplemental Declaration and the Phase One Declaration or other removal of the Condominium from the provisions of the Act, 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 General Common Elements or for other expenses or reserves of the Association.

**8.2 Allocation of Common Expenses.** The Common Expenses, including reserves for such expenses, shall be allocated to the Owner of each Unit as provided in Section 9.2 of the Phase One Declaration.

**8.3 Allocation of Voting Rights.** The voting rights will be allocated and exercised in accordance with Section 9.3 of the Phase One Declaration. As of the date hereof, the total votes is 19.

## 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, which was filed with the Oregon Real Estate Agency in accordance with ORS 100.250(1).

## ARTICLE 10

### ASSOCIATION OF OWNERS

The Association was organized on July 8, 2009. The bylaws for the Association are attached to the Phase One Declaration as Exhibit B.

## ARTICLE 11

### **PROVISIONS OF PHASE ONE DECLARATION APPLY TO RECLASSIFIED PROPERTY**

The provisions of Article 11 (Use of Units), Article 12 (Maintenance of Common Elements), Article 13 (Easements), Article 14 (Mortgagees), Article 15 (Association), Article 16 (Declarant's Special Rights), Article 17 (Damage or Destruction), Article 18 (Condemnation), Article 19 (Dispute Resolution), Article 20 (Amendment), Article 24 (Costs and Attorney Fees) of the Phase One Declaration continue to apply to the Reclassified Property and are incorporated in this Supplemental Declaration as if fully set forth herein.

## ARTICLE 12

### **AS IS; RELEASES; WAIVERS OF CLAIMS**

**12.1 AS IS.** By accepting conveyance of a Unit, each Owner will acknowledge that the Unit being purchased is part of an existing rental apartment complex and was not newly constructed. Each owner further acknowledges that Declarant has given no warranty of any kind, express or implied, with respect to the Unit, and that Owner is accepting the Unit and both the General Common Elements and Limited Common Elements appertaining thereto in their present condition, AS IS. "AS IS" means that the Unit is taken in its present condition, including any existing defects, damages, flaws, and risks, whether known or unknown, anticipated or unanticipated, latent or patent, presently existing or that may arise in the future, and whether due to Declarant's or any other person's failure to maintain, repair, or replace; negligence; breach of contract; code noncompliance; or failure, lack, or inadequacy of workmanship. All risks of future repair, replacement, or improvement arising out of or relating to the condition of the Unit or the Condominium, whether necessary, reasonable, or desirable, are solely the Owner's. There is no representation or promise otherwise. The estimates of the age, condition, and useful life of the major components of the Units and Common Elements will be set forth in a disclosure statement prepared by an engineering firm retained by Declarant. The estimates in the disclosure statement will not constitute a warranty of any kind. Each Owner should conduct its own inspection of the Unit and Common Elements.

**12.2 Personal Property.** Declarant, as seller, has given no warranty with respect to any appliances, equipment, and other consumer products as defined in the Magnusson-Moss Warranty Act or the Uniform Commercial Code installed in, on, or about the Condominium. With respect to any manufactured products, the Association and each Owner has expressly assumed the risk that such products may be defective. By purchasing a Unit from Declarant, each Owner has warranted that it had adequate opportunity to investigate the condition of the manufactured products installed in his or her Unit, and such Owner has relied solely on this independent investigation in purchasing the Unit.

**12.3 Release and Waiver of all Past, Present, and Future Claims Regarding Condition of Property.** TO THE FULLEST EXTENT ALLOWED BY LAW, EACH PURCHASER OF A UNIT, THE ASSOCIATION AND ALL SUCCESSOR OWNERS AND

OCCUPANTS, RELEASE AND WAIVE ANY CLAIM WHENEVER ARISING AGAINST DECLARANT OR ITS MEMBERS, AGENTS, BROKERS, SUCCESSORS, EMPLOYEES, AFFILIATES, CONTRACTORS, REPRESENTATIVES, OFFICERS, DIRECTORS, OR AGAINST THE ASSOCIATION OR ANY BOARD MEMBER THEREOF (COLLECTIVELY, THE "DECLARANT PARTIES"), RELATING TO OR ARISING FROM THE CONDITION OF THE CONDOMINIUM PROPERTY AT ANY TIME. THE WAIVER IS ABSOLUTE AND UNCONDITIONAL, AND THIS RELEASE AND WAIVER APPLIES WHETHER OR NOT THE PURCHASER HAD KNOWLEDGE OF ANY POTENTIAL CAUSE OF ACTION FOR SUCH CLAIMS. THE WAIVER APPLIES TO CLAIMS UNDER ANY LEGAL THEORY OTHER THAN BREACH OF THE EXPRESS WARRANTY GIVEN BY DECLARANT IN A UNIT SALES AGREEMENT. SUCH WAIVED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS RELATING TO OR ARISING IN OR FROM ANY OF THE FOLLOWING: (A) DEFECTS, REPAIRS, REPLACEMENTS OR MODIFICATIONS TO THE UNIT OR COMMON ELEMENTS; (B) FAILURE TO COMPLY WITH CODE, NONCOMPLIANCE WITH PLANS AND SPECIFICATIONS, DEFECTIVE CONSTRUCTION, NEGLIGENT CONSTRUCTION AND/OR NON-WORKMANLIKE CONSTRUCTION; (C) TORT AND/OR UNLAWFUL TRADE PRACTICES VIOLATIONS, EMOTIONAL DISTRESS, FRAUDULENT, INTENTIONAL, NEGLIGENT OR INNOCENT MISREPRESENTATION, NEGLIGENCE OR GROSS NEGLIGENCE, STRICT LIABILITY, NUISANCE, AND/OR TRESPASS; (D) BREACH OF CONTRACT, BREACH OF EXPRESS WARRANTY AND/OR BREACH OF IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF PROFESSIONAL CONSTRUCTION AND REASONABLE WORKMANLIKE CONSTRUCTION; (E) BREACH OF FIDUCIARY DUTY BY DECLARANT OR ITS AFFILIATES PRIOR TO OR AFTER THE DATE CONTROL OF THE ASSOCIATION IS TURNED OVER TO THE UNIT OWNERS; (F) WATER INTRUSION, WATER INFILTRATION, OR WATER PENETRATION; (G) PRODUCTS OR SUBSTANCES FOUND IN OR USED IN THE UNIT OR COMMON ELEMENTS, INCLUDING, FOR EXAMPLE PURPOSES ONLY, RADON; (H) THE CONDITION OF THE UNIT AND/OR COMMON ELEMENTS; (I) NOISE OR SOUND TRANSMISSION, MOLD, MILDEW, FUNGUS AND/OR ODORS IN THE UNIT OR COMMON ELEMENTS; (J) LOSS OF USE OF THE UNIT AND/OR COMMON ELEMENTS AND/OR THE LOSS OF VALUE THEREOF; AND (K) CONSEQUENTIAL DAMAGES OR EXPENSES FOR ATTORNEY FEES AND/OR RESULTING FROM THE RELOCATION OF OWNER, IF ANY, SUCH AS LODGING, COMMISSIONS, INTEREST RATE FLUCTUATIONS, STORAGE, MOVING, MEALS OR TRAVEL EXPENSE. IT IS ACKNOWLEDGED THAT DECLARANT WOULD HAVE REQUIRED A SIGNIFICANTLY HIGHER PURCHASE PRICE FOR THE UNITS IF THE PURCHASER REFUSED TO PROVIDE THIS RELEASE AND WAIVER. THIS SECTION 12.3 SERVES AS NOTICE OF RECORD THAT THE RELEASE AND WAIVER SHALL BE BINDING UPON SUCH PURCHASERS, ALL SUCCESSOR OWNERS OR OCCUPANTS OF THE UNIT, THE ASSOCIATION, AND THEIR RESPECTIVE EMPLOYEES, CONTRACTORS, PROPERTY MANAGERS, BROKERS, HEIRS, SUCCESSORS, ASSIGNS, GUESTS AND INVITEES. CLAIMS OF THE ASSOCIATION ARE DERIVATIVE OF CLAIMS OF UNIT OWNERS AND THE ASSOCIATION SHALL BE BOUND BY THE WAIVER. THE WAIVER ACTS AS A COMPLETE BAR AND DEFENSE AGAINST ANY RELEASED OR WAIVED CLAIM.

**12.4 Time Limitation on Other Claims.** IT IS THE INTENTION OF THE WAIVER IN THIS SECTION 12.3 TO BE FULL AND FINAL. TO THE EXTENT ANY COURT OR ARBITRATOR OF COMPETENT JURISDICTION DETERMINES ANY CLAIM TO SURVIVE THIS SECTION 12.3, FOR ANY REASON, THEN TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, ANY SUCH CLAIMS MUST BE BROUGHT ON OR BEFORE THE EARLIEST OF (A) EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS, (B) NO MORE THAN 180 DAYS AFTER THE DATE A PURCHASER OF A UNIT KNEW OR REASONABLY SHOULD HAVE KNOWN OF FACTS SUFFICIENT TO PUT SUCH PURCHASER ON NOTICE OF THE CLAIM, (C) WITH RESPECT TO A PARTICULAR UNIT AND RELATED LIMITED COMMON ELEMENTS, NO LATER THAN THE FIRST ANNIVERSARY OF THE CLOSING DATE OF THE SALE TO THE FIRST OWNER, OTHER THAN DECLARANT, AND (D) WITH RESPECT TO THE GENERAL COMMON ELEMENTS, THE FIRST ANNIVERSARY OF THE DATE OF THE FIRST CONVEYANCE OF A UNIT TO A UNIT OWNER OTHER THAN DECLARANT, WHETHER SUCH CLAIMS ARISE FROM STATUTE, CONTRACT, TORT OR OTHERWISE WHETHER FOR DAMAGES OR PERSONAL INJURY NOW EXISTING OR ARISING AFTER THE DATE OF THIS SUPPLEMENTAL DECLARATION ANY SUCH CLAIMS NOT BROUGHT WITHIN THIS TIME PERIOD WILL BE DEEMED FULLY WAIVED BY OWNER, REGARDLESS OF WHEN OWNER ACTUALLY DISCOVERED THE ALLEGED BASIS FOR THE CLAIM. For purposes of this Section 12.4, a claim is "brought" when (a) for matters within the small claims court jurisdiction, a complaint was filed in the appropriate small claims court and served promptly on Declarant or (b) for matters not within the small claims court jurisdiction, the Declarant has actual receipt of a filed complaint or request for arbitration by Owner. This Section 12.4 shall not be deemed to expand an Owner's right to assert any claims.

### **ARTICLE 13**

#### **SEVERABILITY**

Each provision of this Supplemental Declaration 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 Supplemental Declaration, the Phase One Declaration, or the Bylaws.

### **ARTICLE 14**

#### **COVENANTS RUNNING WITH THE LAND**

The provisions of this Supplemental Declaration are intended to touch and concern the Condominium and shall be deemed covenants running with the land. Each and every term of this Supplemental Declaration shall, to the fullest extent allowed by law, bind each Owner, including Declarant as to any unconveyed Unit, the Association, and each subsequent owner or transferee of a Unit.

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

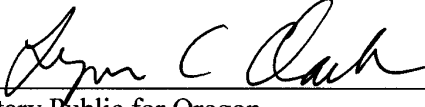
**DECLARANT:**

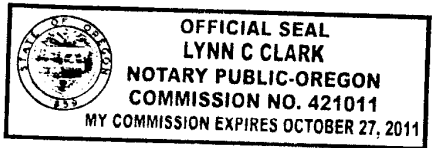
**River Holding LLC**, an Oregon limited liability company

By:   
Donald Mutal, Member

STATE OF OREGON )  
 ) ss.  
County of MULTNOMATH )

The foregoing instrument was acknowledged before me on this 9<sup>th</sup> day of September, 2009, by Donald Mutal as Member of River Holding LLC, an Oregon limited liability company.

  
Notary Public for Oregon  
My commission expires: 10-27-2011



**ASSESSOR AND TAX COLLECTOR**

The foregoing Supplemental Declaration is approved this 1<sup>st</sup> day of OCTOBER, 2009.

**MULTNOMAH COUNTY ASSESSOR**

By: [Signature]  
Name: BARRY R BENSON  
Title: SR GIS CARTOGRAPHER

The foregoing Supplemental Declaration is approved this 1<sup>st</sup> day of October, 2009.


**MULTNOMAH COUNTY TAX COLLECTOR**

By: \_\_\_\_\_  
Name: Michelle Hanna  
Title: Deputy

**REAL ESTATE COMMISSIONER**

The foregoing Supplemental Declaration is approved pursuant to ORS 100.110 this 30<sup>th</sup> day of September, 2009, and in accordance with ORS 100.110(7), this approval shall automatically expire if this Supplemental Declaration is not recorded within two years from this date.

**OREGON REAL ESTATE COMMISSIONER**

By:   
Name: LAURIE SKILLMAN  
Title: LAND DEVELOPMENT MGR



**EXHIBIT A**  
**Legal Description**

**NONWITHDRAWABLE VARIABLE PROPERTY TRACT A, "ZINC  
CONDOMINIUM", MULTNOMAH COUNTY PLAT RECORDS, LOCATED IN THE  
NW 1/4 OF SECTION 33, T1N, R1E, WM, IN THE CITY OF PORTLAND, COUNTY OF  
MULTNOMAH AND STATE OF OREGON.**