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Landye Bennett Blumstein LLP
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1300 SW Fifth Avenue
Portland, Oregon 97201

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CONDOMINIUM DECLARATION FOR MATTHEW FRANK CONDOMINIUM

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Each Unit has been assigned an assessment index. The assessment indices are as follows: One Bedroom Units – 0.80, two bedroom Units – 1.20, three bedroom Units – 1.60. The allocation to each Unit in Stage 1 of an undivided interest in the common elements was determined by dividing the sum of the assessment indices of all Units into the assessment index of each respective Unit (and arbitrarily subtracting from or adding to the percentage of ownership of certain of the Units .0001 percent so that the total percentage ownership of all Units equals exactly 100.0000 percent).

The numerical designation, square footage area and percentage of ownership in common elements of each Unit in Stage 1 are shown on Exhibit "B."

3.4 Development Plan; Flexible Condominium; Variable Property. The Condominium is a flexible condominium as defined in the Oregon Condominium Act.

3.4.1 Special Declarant Rights. The Declarant is reserving all of the rights provided under ORS 100.150(1). There are no limitations on the rights reserved by the Declarant under ORS 100.150(1).

3.4.2 Variable Property. There is one (1) variable property tract in the Condominium. It is designated and depicted on the Plat as Tract A. All of Tract A is nonwithdrawable variable property.

3.4.3 Termination Date. The date after which any right reserved by the Declarant under ORS 100.150(1) will terminate is seven (7) years from the date this Declaration is recorded.

3.4.4 Maximum Number of Units. The maximum number of Units which may be created is one hundred twenty (120).

3.4.5 Percentage Ownership in the Common Elements. As additional Units are created by one or more supplemental condominium declarations, each Unit's percentage ownership in the common elements will be recalculated in the method specified in Section 3.3 above.

3.4.6 Liability for Common Expenses. As additional Units are created by one or more supplemental declarations, each Unit's liability for general and limited common expenses shall be recalculated in the method described in Section 3.3. above.

3.4.7 Reservation of Rights. The Declarant hereby reserves the right to construct Units on the variable property, the floor plans of which differ from those of Units created by this Declaration which have larger or smaller floor areas. However, the exterior style of the buildings shall be compatible with those of the four (4) buildings in which the initial twenty-four (24) Units are located and all Units and buildings will be substantially completed before they are reclassified as Units.

3.4.8 **Automatic Reclassification of Variable Property**. The Plat depicts Tract A as nonwithdrawable variable property. If or to the extent Tract A has not been reclassified by the termination date, the remaining portions thereof shall automatically be reclassified as general common elements.

3.4.9 **Voting Rights**. As additional Units are created by one or more supplemental declarations, the method used to allocate voting rights to the newly created Units shall be the same as stated in Section 7 in the Declaration, i.e., each owner or co-owner shall be entitled to one (1) vote per Unit.

3.4.10 **Limited Common Elements**. The Declarant reserves the right to create limited common elements on the variable property. The types that may be created include rear yards, patios and driveways appurtenant to the Unit to which it adjoins as shown on the Plat.

3.4.11 **Association Rights Under ORS 100.155(2)**. The Association shall have the rights set forth in ORS 100.155(2).

4. **General Common Elements.**

4.1 **Definition**. The general common elements consist of all portions of the Condominium that are not part of a Unit or a limited common element, including, without limitation, the following:

4.1.1 The land;

4.1.2 The foundations, columns, girders, beams, supports, shear and bearing walls, main walls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building (s);

4.1.3 The yards and gardens;

4.1.4 Installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerators, up to the outlets within any Units;

4.1.5 All apparatus and installations existing for common use; and

4.1.6 All other elements of any building that are necessary or convenient to its existence, maintenance and safety or that are normally in common use.

4.2 **Maintenance, Repair and Replacement of General Common Elements; Liability for Common Expense**. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the general common elements shall be a common expense, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner or his invitee, guest, tenant or servant shall be repaired by the Association at such owner's sole cost and expense. Although repair, maintenance and replacement of exterior doors and door frames (including patio and garage doors), windows and window frames shall be the responsibility of individual owners, exterior painting shall be the responsibility of the Association. Common expenses shall be assessed and apportioned among the owners as set forth in Section 10.6 of this Declaration.

4.3 Income From General Common Elements. All income derived from any coin-operated vending machines and/or any other income derived from the general common elements shall be income of the Association. In its discretion, the Board of Directors may use such income to help meet the expense of maintaining the common elements or for such other purpose as may benefit the Association and the Unit owners in a substantially equal manner.

5. Limited Common Elements. The following shall constitute limited common elements, the use of which shall be restricted to the Units to which they pertain:

5.1 Definitions. Each of the patios and/or decks is a limited common element appertaining to the Unit which it adjoins as shown on the Plat.

5.2 Maintenance, Repair and Replacement of Limited Common Elements. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the limited common elements shall be a common expense, which shall be assessed and apportioned pursuant to Section 10.6 of this Declaration, and the performance of such work shall be the responsibility of the Association, except that any damage caused by the negligence or intentional act of an owner or his invitee, guest or servant shall be repaired by the Association at such owner's sole cost and expense. Common expenses shall be apportioned among and assessed against the owners as set forth in Section 10.6 below. Provided, however, each owner shall pay the expense to maintain any door or garage door within or adjoining the limited common elements assigned to such owner's Unit, except that exterior painting shall be performed at the expense of the Association.

6. Parking. There are no parking areas in the Condominium, except for the garages which are a part of Units. Occupants and all guests of occupants of Units without garages must park in the public street. Each of the townhouse style Units includes a single car garage within the boundaries of the Units. The flat, single story Units are handicapped adaptable, but do not have a garage within the boundaries of the Units. Occupants of these Units must park on the public streets.

7. Voting. The owner or co-owners of each Unit shall be entitled to one (1) vote per Unit. "Majority" or "Majority of Unit Owners" shall mean the owners of more than fifty percent (50%) of the voting rights allocated to the Units by the Declaration. The calling and conducting of meetings of the Association and the exercise of voting rights shall be controlled by Articles 2 and 3 of the Bylaws.

8. Use Of Property.

8.1 General. Each Unit shall be used for residential purposes only. The common elements shall be used for furnishing of services and facilities to Unit owners. Every Unit owner shall have an easement to enjoy and use the general common elements in the manner for which they were intended. Additional restrictions and regulations shall be set forth in the Bylaws and rules or regulations adopted pursuant to the provisions of the Bylaws.

8.2 **<u>Rules and Regulations Promulgated by the Association</u>**. The Board of Directors shall have the authority from time to time to promulgate such rules and regulations as the Board may deem to be in the best interest of the Association. No person shall use the common elements, the Units, or any part thereof in any manner contrary to or inconsistent with such rules and regulations. Without limiting the generality of the foregoing, the Board of Directors shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the common elements to the members of the Association and their respective families, guests, invitees and servants. Such use may be conditioned upon, among other things: (a) the payment by the Unit owner of assessments for common expenses and such other assessments or fees as may be established by the Association for the purpose of defraying the costs associated with the use of such common elements and the administration and operation of the Condominium property; and (b) the observance by the Unit owner and his guests, tenants, invitees and servants, of the provisions of the Declaration, the Bylaws and the Association's rules and regulations. The Board of Directors shall have the authority to fine such owners who are not in compliance with the rules and regulations. The amount and the procedure to impose such fines shall be established by Board resolution.

8.3 **<u>Right of Ingress and Egress</u>**. Each Unit owner shall have a perpetual right of ingress and egress to and from the Owner's Unit. This right shall pass to all successors in interest to the Unit when the Unit is transferred voluntarily, involuntarily, or by operation of law. Any attempt to transfer voluntarily or involuntarily any common element ownership interest separately from the transfer of the Unit to which such interest pertains shall be void.

9. **<u>Contracts and Leases</u>.** All contracts or leases that are entered into before the turnover meeting (including any management contract) shall be terminable without penalty by the Association or the Board of Directors upon not less than thirty (30) days' written notice to the other party by the Association given not later than sixty (60) days after the turnover meeting. Provided, however, that any such contracting or leasing party may request the Association to affirm the continuation of any such agreement for the balance of its stated term. Affirmation by the Association after transfer of control shall extinguish all termination rights of the Association under this Section 9.

10. **<u>Bylaws; Association; Management</u>.**

10.1 **<u>Adoption of Bylaws</u>**. On behalf of the Association, the Declarant hereby adopts the Bylaws attached hereto as Exhibit "C" to govern the administration of the Condominium. The Bylaws shall be effective upon the execution and recording of this Declaration.

10.2 **<u>Association; Membership</u>**. The name of the Association shall be Matthew Frank Condominium Association. The Association shall operate under the name Matthew Frank Condominium Association, or a name as close to that name as is permitted by the Oregon Secretary of State. Each owner of a Unit in the Condominium shall be a member of the Association, and membership therein shall be limited to Unit owners only. The Association, which shall be organized upon the recording of the Declaration and the Bylaws, shall serve as a means through which the Unit owners may take action with regard to the administration, management and operation of the Condominium. The Association shall be an Oregon nonprofit corporation.

10.3 **Management; Board of Directors**. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws. The Board of Directors shall elect officers consisting of a chairperson, secretary and treasurer and such other officers as the Board of Directors deems prudent or convenient. Pursuant to the provisions of the Bylaws and the Oregon Condominium Act, the Board of Directors may adopt administrative rules and regulations governing details of the operation, maintenance and use of the Condominium property. The Board of Directors may contract with a professional manager or management firm to manage some or all of the affairs of the Association.

10.4 **Interim Board and Officers**. The Declarant has reserved control over the administration of the Association by reserving the right in the Bylaws to appoint an interim Board of Directors to manage the Condominium until the turnover meeting. The turnover meeting shall be held within ninety (90) days after the earlier of the following dates: the date on which seven (7) years has elapsed since the date of the first conveyance of a Unit to a person other than the Declarant or the date on which seventy-five percent (75%) of the total number of Units which the Declarant may annex to the Condominium have been conveyed to persons other than the Declarant. The one (1) to three (3) member(s) of the interim board shall also serve as the interim officers.

10.5 **Powers and Duties of the Association**. The Association and the Board of Directors shall have the powers and duties granted to them by this Declaration, any applicable Supplemental Condominium Declaration, the Articles of Incorporation, the Bylaws, and ORS 100.405(4) and all other provisions of the Oregon Condominium Act.

10.6 **Covenant to Pay Assessments; Liability for Common Expense**. Each owner hereby covenants to pay to the Association annual assessments for common expenses as more fully provided in the Bylaws. No owner may avoid liability for assessments by abandonment of his Unit or non-use of the common elements. Except as otherwise provided in this Declaration or the Bylaws, each Unit and the owner thereof shall be liable for the common expense and funding of the replacement reserves, both of which shall be apportioned among the Units based upon each Unit's percentage of ownership in the common elements allocated to such Unit. Certain services provided through the Association, such as basic cable television service, may be billed on a per Unit basis rather than on the basis of percentage ownership. No offset against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties. Assessments shall be levied against all Units not later than the first day of the month next following the date when the first Unit is conveyed to a person other than the Declarant.

10.7 **Delegation**. Nothing in this Declaration shall be construed to prohibit the Association or the Board of Directors from delegating to persons, firms or corporations of its choice the performance of such duties as may be imposed upon the Association or the Board of Directors by this Declaration, any Supplemental Declaration, the Articles of Incorporation, the Bylaws, Association rules or regulations, or applicable law.

11. **Service Of Process.** The designated agent to receive service of process in cases set forth in ORS 100.550(1) shall be named in the Condominium Information Report, which shall be filed with the Oregon Real Estate Agency in accordance with ORS 100.250(1).

12. **Mortgagees.** In the event of a conflict between this Section 12 and other provisions of this Declaration or any Supplemental Condominium Declaration, the provisions of this Section 12 shall prevail. The terms "Mortgage" and "Mortgagee" are defined in Section 1 of this Declaration.

12.1 **Notice of Action**. Upon the written request of a Mortgage holder, insurer, or guarantor to the Association, identifying the name and address of such person and the number or address of the Unit on which a Mortgage has been placed, such Mortgagee, insurer or guarantor shall be entitled to timely notice of the following:

12.1.1 Any condemnation loss or casualty loss that affects either a material portion of the Condominium or any Unit securing its Mortgage;

12.1.2 Any sixty (60) day delinquency in the payment of assessments or charges owed by an owner of any Unit on which it holds a Mortgage;

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

12.1.4 Any proposed action that would require the consent of a specified percentage of eligible Mortgage holders.

12.2 **Mortgagee Exempt From Certain Restrictions**. Any Mortgagee that comes into possession of the Unit pursuant to the remedies provided in the Mortgage, by foreclosure of the Mortgage, or by 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, 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. Provided, however, that Mortgagees shall not be exempt from the restriction that Units cannot be rented for periods of fewer than thirty (30) days.

12.3 **Subordination of Association Lien to Mortgage; Discharge of Lien Upon Foreclosure**. Except as otherwise provided by law, the lien of the Association shall be subordinate to any first Mortgage. Subject to the procedural requirements of the Oregon Condominium Act, any first Mortgagee that comes into possession of the Unit pursuant to the remedies provided in the Mortgage, by foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, and any purchaser at the foreclosure sale of a first Mortgage, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue before such 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 Units, including the mortgaged Unit).

12.4 Professional Management. Upon the written request of holders of first Mortgages that represent at least fifty-one percent (51%) of the votes of mortgaged Units in the Condominium, the Board of Directors shall employ a professional manager to manage the affairs of the Association. Without the prior written approval of the holders of first Mortgages that represent at least fifty-one percent (51%) of the votes of mortgaged Units in the Condominium, the Association may not terminate professional management and assume self-management of the Condominium. Additionally, if professional management has previously been required by any Mortgage holder, any such decision to establish self-management shall require prior consent of the owners of Units to which sixty-seven percent (67%) of the votes in the Association are allocated. Any agreement for professional management shall provide that the management contract may be terminated for cause on thirty (30) days' written notice.

12.5 Consent of Mortgagees to Change Percentage Ownership in Common Elements. The Unit owners may not reallocate the percentage of interest in the common elements attributable to any Unit without the prior written approval of holders of first Mortgages that represent at least fifty-one percent (51%) of the votes of mortgaged Units with respect to which the percentage of ownership is proposed to be altered. Nothing in this Section 12.5 shall be construed to give the owners, the Association, or the Board of Directors, any specific authority to alter such percentage of ownership and, if any attempt is made to do so, full compliance shall be made with the Declaration, the Association's Articles of Incorporation, Bylaws and the Oregon Condominium Act.

12.6 Consent of Mortgagees Required to Terminate Project. Except with respect to termination of the Condominium as a result of destruction, damage or condemnation, any termination of the Condominium shall require the written approval of holders of first Mortgages that represent at least sixty-seven percent (67%) of the votes of mortgaged Units in the Condominium. Provided, however, such consent will be deemed given if a Mortgagee does not object in writing within thirty (30) days after notice of the proposed termination. Additionally, any such terminations shall be carried out by the owners pursuant to provisions of the Declaration, the Association's Articles of Incorporation, the Bylaws and the Oregon Condominium Act and shall be carried out only after vote of the owners, as provided in such provisions.

12.7 Limited Right of Amendment. Except upon the written approval of holders of first Mortgages that represent at least fifty-one percent (51%) of the votes of Mortgaged Units in the Condominium, no amendment that adds to or amends any material provision that establishes, provides for, governs or regulates any of the following may be made to the Declaration or the Bylaws:

12.7.1 voting rights;

12.7.2 increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of common elements;

12.7.3 reductions in reserves for maintenance, repair, and replacement of common elements;

12.7.4 responsibility for maintenance and repairs;

12.7.5 except as provided in this Declaration, reallocation of interests in the general or limited common elements, or rights to their use;

12.7.6 redefinition of any Unit boundaries;

12.7.7 convertibility of Units into common elements or vice versa;

12.7.8 except as provided in this Declaration, expansion or contraction of the Condominium project, or the addition, annexation, or withdrawal of property to or from the Condominium project;

12.7.9 hazard or fidelity insurance requirements;

12.7.10 imposition of any restrictions on the leasing of Units;

12.7.11 imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

12.7.12 restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the documents; or

12.7.13 any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

The provisions of this Section are intended to limit only the right of the Unit owners, the Board of Directors and the Association to amend the Declaration and the Bylaws, and are not intended to give any such parties any specific rights to effect any amendments. Any amendments to the Declaration or the Bylaws shall be made only upon full compliance with the provisions of the Declaration, the Bylaws and the Oregon Condominium Act relating to the procedure and percentage of votes required for such amendment. An addition or amendment to the Declaration or the Bylaws shall not be considered to be material so as to require the consent or approval of Mortgagees, if its purpose is to correct technical errors or to clarify unclear language.

12.8 Request for Approval of Mortgagees. Any Mortgagee that receives a written request to approve additions or amendments to the Declaration or the Bylaws, or any other action to be taken by the Board of Directors, the Association or Unit owners shall be considered to have given such approval unless such Mortgagee delivers or posts a negative response within thirty (30) days after receipt of such request.

12.9 Proxy Held by Mortgagee in Certain Cases. If a Mortgagee reasonably believes that the Association has failed to maintain the common elements so as to prevent excessive wear and tear, such Mortgagee may attend a meeting of the Association and may cast the vote of the Mortgagor of the Unit on which such Mortgagee holds a Mortgage if the proposal under consideration concerns painting or otherwise maintaining the common elements, including imposing special assessments necessary to pay for such maintenance. Provided, however, such right shall arise only in the event the Mortgagee reasonably believes the Association has failed to maintain the common elements in sufficient manner to prevent excessive wear and tear.

12.10 **Right to Examine Documents**. The Association shall make available to Unit owners, lenders and Mortgagees current copies of the Declaration, the Bylaws, the Articles of Incorporation, 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 owners, lenders or Mortgagees.

12.11 **Right to Receive Annual Reports**. The holder of any Mortgage on a Unit in the Condominium shall be entitled to have an audited financial statement prepared at their expense if such statement is not otherwise available. The Association and its officers, directors and manager (if any), shall cooperate with such Mortgage holders and their auditors to facilitate the necessary auditing and review process. Such financial statement shall be furnished within a reasonable time following request.

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

12.13 **List of Mortgagees**. The Association shall maintain at all times a list of Mortgagees who have given the Association notice on any matter described in Section 12 of this Declaration, which list shall include their names, addresses, the Units and mortgagors affected, and the matters with respect to which such Mortgagees have requested notice, provided that such information has been furnished to the Association by the owners or their Mortgagees.

13. **Amendments to Declaration.** Except where a larger percentage of approval is required by law, this Declaration may be amended from time to time by approval of Unit owners holding seventy-five percent (75%) or more of the voting rights as otherwise set forth in this Declaration. Provided, however, that this Declaration shall not be amended to reduce or eliminate the rights of any Mortgagee without all such Mortgagees' prior written consent.

13.1 **Declarant's Approval Required**. The Declarant's prior written consent shall be required for any amendment to the Declaration until the expiration of the period of developer control as provided by ORS 100.200 and Section 3.3 of the Bylaws. Provided, however, that even thereafter, no amendment may limit or reduce any of the Declarant's special rights, whether reserved herein or otherwise provided by law. Except with respect to permitted Supplemental Condominium Declarations annexing additional property to the Condominium, no amendment may change the size, location, percentage of interest in the common elements, method of determining liability for common expenses, right to common profits or voting power of any Unit(s) unless such amendment has been approved by the owners and the Mortgagees of the affected Unit(s).

13.2 **Recordation/County Assessor and Commissioner Approval Required**. An amendment to the Declaration shall be effective upon recordation in the Deed Records of Multnomah County, Oregon, certified to by the chairperson and secretary of the Association and approved by the County Assessor and the Real Estate Commissioner. Approval by the Commissioner shall not be required for an amendment to a declaration transferring the right of use of a limited common element pursuant to ORS 100.515(5).

13.3 **Supplemental Declarations**. At the Declarant's sole option, the Declarant may execute and record one or more Supplemental Condominium Declarations, the provisions of which are consistent with Section 3.4 above, without the consent or approval of the Board of Directors, the Association, the Unit owners, or any Mortgagee(s).

14. **Subdivision.** No Unit may be subdivided into divisions of any nature.

15. **Relocation of Boundaries.** The owner or owners of any two (2) adjoining Condominium Units may apply to the Board of Directors of the Association for permission to change the sizes of their Units by adjusting the common boundary between the two (2) Condominium Units or to consolidate the two (2) Condominium Units into one (1) Unit by deleting the common boundary. Any such application shall identify the Condominium Units involved, state any reallocations of the affected Unit's interest in common elements, or of Unit owners' voting rights, liability for common expense, and right to receive common profits. The Board of Directors shall approve such an application unless it determines that the proposed reallocations are unreasonable or that the proposed relocation or deletion would impair the structural integrity or mechanical systems of the condominium or would reduce the support of any portion of the Condominium. If approved, a proposed change would become effective upon recording in the appropriate records of Multnomah County, Oregon, of an amendment to this Declaration and of a floor plan, both setting forth the proposed change, executed by the owners and Mortgagees of the affected Condominium Units and certified to by the chairperson and secretary of the Association, together with any governmental approvals required by law. All costs in connection with such amendments shall be paid by the applicants.

16. **Authority to Grant Easements, Rights-Of-Way, Licenses and Other Similar Interests/Encroachments.**

16.1 **General**. The Association and/or the Board of Directors shall have the authority to execute, acknowledge, deliver and record easements, rights-of-way, licenses and other similar interests affecting the general common elements and to consent to vacation of roadways within or adjacent to the Condominium as provided by ORS 100.405(6). An instrument granting any such interest or vacating any such roadway shall be executed by the chairperson and secretary of the Association, shall be acknowledged in the manner provided for acknowledgment of such instruments by such officers, and shall state that such grant was approved by the minimum required vote of the owners or Board of Directors required by ORS 100.405(6).

16.2 **Utility Easements; Dedications.** Anything in this Declaration to the contrary notwithstanding, the Declarant shall have the right to execute, deliver and record on behalf of the Association and the Unit owners such documents as may be required to grant easements, rights-of-way and licenses over the common elements for the installation, maintenance and repair of public utilities serving the Condominium or adjacent property. The Declarant shall also have the right to execute, deliver and record on behalf of the Association and the Unit owners such deeds and other documents as may be required to convey, dedicate, or grant such easements, rights-of-way or licenses over common elements, as may be required by any government or governmental agency in order to complete development of the Condominium. To effect the intent of this Section 16.2, each Unit owner, by acceptance of a deed or contract to a Unit, whether or not it shall be expressed in such deed or contract, for himself and his successors in interest, irrevocably appoints Nick Stearns of Portland, Oregon, or his nominee, as his lawful attorney-in-fact for the purpose of executing any and all documents required or permitted to be executed hereunder. The power of attorney and the rights under this Section shall expire at such time as the Declarant no longer owns a Unit or three (3) years from the date this Declaration or any Supplemental Declaration is recorded, whichever is earlier.

16.3 **Encroachments**. There shall be an easement for any encroachment of the common elements on any Unit or an encroachment of any Unit on the common elements or another Unit arising from the original construction, reconstruction, authorized repair, shifting, settling or other movement of any portion of the condominium improvements. Such easements shall exist indefinitely and may be terminated only by the voluntary act of the party who benefits from the easement(s).

16.4 **Blanket Easement Benefiting Individual Owners**. Each owner in the condominium shall have an easement through and over the general common elements for the purposes of constructing a concrete pad and locating a heat pump or similar equipment to provide heating ventilation and air-conditioning services to the Unit. Such installation may only penetrate common elements immediately adjacent to the Unit and shall be located under the deck or immediately next to the building in which the Unit is located. The owner shall be responsible for maintenance, repair and replacement and the ultimate removal of the installed system and the pad. If the owner fails to maintain the system in a reasonable manner, the Association may do so to remove the system and charge the expense to the owner as a reimbursement assessment. If the Unit is located in an area other than under the deck, it shall be appropriately screened with landscaping material. The actual location of the pad and system shall in each case be subject to prior approval of the Board of Directors which approval shall not be unreasonably withheld.

17. **Declarant's Special Rights.** The Declarant shall have the following special rights:

17.1 **Sales Office and Model**. The Declarant shall have the right to maintain sales and/or rental offices and/or sales or rental models in one or more of the Units that the Declarant owns. The Declarant, its agents and prospective purchasers shall have the right to park automobiles on the common elements and to use and occupy the sales and/or rental office and models during reasonable hours any day of the week.

17.2 **"For Sale" and "For Rent" Signs**. The Declarant may maintain a reasonable number of "For Sale" and/or "For Rent" signs at reasonable locations on the Condominium property.

17.3 **No Capital Assessments Without Consent**. Neither the Association nor the Board of Directors shall make any assessments for new construction, capital improvements, acquisition or otherwise without the prior written consent of the Declarant, as long as the period for annexing Units has not expired or as long as the Declarant owns the greater of two (2) Units or five percent (5%) of the total number of Units in the Condominium. Nothing contained in this Section 17.3 shall be construed to limit the Declarant's obligation to pay assessments for common expenses on Units owned by the Declarant pursuant to requirements of the Oregon Condominium Act.

17.4 <u>Common Element Maintenance by the Association</u>. The Association shall maintain all common elements in a clean and attractive condition. If the Association fails to do so, the Declarant may perform such maintenance at the expense of the Association.

17.5 <u>Declarant's Easements</u>. The Declarant and its agents and employees shall have an easement on and over the common elements for the completion of any portion of the Condominium, including the furnishing and decoration of any Unit, sales office or model, and the right to store materials on the common elements at reasonable places and for reasonable lengths of time.

17.6 <u>Declarant's Other Special Rights</u>. The rights reserved to the Declarant in this Section 17 shall in no way limit any other special rights that the Declarant, as a declarant, may have, whether pursuant to the Oregon Condominium Act or otherwise. Upon the expiration of any or all such special rights, the Declarant shall have the same rights as any other owner in the Condominium with respect to such ownership.

17.7 <u>Assignment of Declarant's Rights</u>. The 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 Section 17, or to share such rights with one (1) or more other persons exclusively, simultaneously, or consecutively.

17.8 <u>Expiration of Declarant's Special Rights</u>. Unless otherwise provided, the Declarant's special rights, as reserved in this Section 17, shall expire upon the conveyance by the Declarant of the last Unit owned by the Declarant or seven (7) years after the first conveyance of a Unit in the Condominium, whichever is earlier.

18. <u>Cross Easements</u>. The following cross easements are hereby declared over the common elements of the Condominium for the benefit of Tract A and the Declarant:

18.1 <u>Access</u>. The Declarant, for itself and its successors and assigns hereby reserves an easement over all roadways and driveways now existing or in the future constructed on the general common elements and to construct and maintain new roadways and driveways on such real property if none exist sufficient to serve as a means of ingress and egress to Tract A all for the benefit of Tract A, or any portion thereof. Such easement shall run with the land and shall continue, until the entirety of Tract A is reclassified.

18.2 <u>Access Easement Unrestricted</u>. The easements reserved in Section 18.1 may be used by Declarant, its successors and assigns as a means of ingress and egress to Tract A for any purposes, including, without limitation, access for construction and service vehicles and access by residents to Condominium Units constructed on all or part of Tract A in the future.

18.3 Utility Easements. Easements for utility services of all kinds now customarily available or which may become available in the future are reserved over all portions of the common elements, excepting those portions covered by the Condominium buildings for the benefit of the Tract A.

18.4 Repair of Damaged Property. Notwithstanding any other expense apportionment set forth in this Section 18, any party damaging any utility installation or roadway/driveway improvement within an easement area shall be responsible for the cost to repair such damage.

18.5 Assignments. The Declarant may assign in whole or in part the reserved easements described in this Section 18 when the Declarant transfers title to such real property or any part thereof.

18.6 Easements Run With the Land. All of the easements reserved in this Section 18 shall run with the land and shall continue until all portions of Tract A have been reclassified.

18.7 No Amendment Without Declarant's Consent. As provided in Section 13.1, the easements reserved in this Section 18 shall not be extinguished or restricted without the written consent of the Declarant and its successors and assigns.

19. General Provisions.

19.1 Interpretation. The rights and obligations of all members of the Association and any person dealing with the Association or any of its members with respect to matters pertaining to the Declaration, any Supplemental Declaration, the Articles of Incorporation, or the Bylaws shall be interpreted in accordance with and governed by the laws of the State of Oregon.

19.2 Severability. Each provision of the Declaration, any Supplemental Declaration, the Articles of Incorporation, and the Bylaws shall be independent and severable. The invalidity or partial invalidity of any section thereof shall not affect any of the remaining portions of that or any other provision of this Declaration or the Bylaws.

19.3 Waiver of Rights. The failure of the Association, the Board of Directors, an officer or a Unit owner to enforce any right, provision, covenant or condition provided in the Declaration, any Supplemental Declaration, the Articles of Incorporation, or the Bylaws shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

19.4 Legal Proceedings. Failure to comply with any of the terms of the Declaration, any Supplemental Condominium Declaration, the Articles of Incorporation, the Bylaws and any rules or regulations adopted thereunder shall be grounds for relief, which may include, without limitation, fining the noncomplying owner, bringing an action to recover money due, damages or a suit for injunctive relief, or an action to foreclose a lien, or any combination thereof. Relief may be sought by the Association, Board of Directors, an officer, a professional manager or management firm, or, if appropriate, by an aggrieved Unit owner.

19.5 **Costs and Attorneys' Fees**. In any proceeding arising because of an alleged failure by a Unit owner to comply with the terms and provisions of this Declaration (as amended or supplemented), the Bylaws (as amended), Articles of Incorporation, rules and regulations adopted under the Bylaws or the Oregon Condominium Act, the prevailing party shall be entitled to recover the cost of the proceedings and such reasonable attorneys' fees as may be determined by the trial court in any trial or by the appellate court in any appeal thereof. In addition, the Association shall be entitled to recover costs and attorneys fees incurred by it to collect delinquent assessments, or fines or to enforce the terms of the Declaration, Supplemental Declaration, Articles of Incorporation, Bylaws, or any rules or regulations promulgated thereunder, whether or not any collection or foreclosure action or suit is filed.

19.6 **Compliances**. Each Unit owner shall comply with the provisions of the Declaration, any Supplemental Condominium Declaration and the Bylaws and with the administrative rules and regulations adopted thereunder, and with all other applicable covenants, conditions and restrictions of record. Failure to comply therewith shall be grounds for suit or action, maintainable by the Association or any Unit owner, in addition to other sanctions that may be provided by the Bylaws or by any existing administrative rules and regulations.

19.7 **Conflicting Provisions**. In the event of a conflict between or among the provisions of the Declaration, Articles of Incorporation, the Bylaws and any administrative rules and regulations, the provisions of the Declaration shall be paramount to those of the Bylaws and the rules and regulations, and those of the Articles of Incorporation shall be paramount to those of the Bylaws, and the Bylaws shall be paramount to the rules and regulations. For purposes of this Section 19.7, the term "Declaration" shall include all amendments and supplements to this Declaration, and the term "Bylaws" shall include all amendments to the Bylaws.

19.8 **Section and Paragraph Captions**. Section and paragraph captions shall not be deemed to be a part of this Declaration unless the context otherwise requires. In construing this Declaration, if the context so requires, the singular shall be taken to mean and to include the plural, the masculine shall be taken to mean and to include the feminine and the neuter and, generally, all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to individuals, trusts, estates, personal representative, trustees and corporations.

The undersigned Declarant of the subject property has caused this Declaration to be executed this 6th day of March, 2006.

MATTHEW FRANK, LLC,
an Oregon limited liability company

By: ______________________
Nick Stearns, Manager

By: ______________________
Anthony Marnella, Manager

STATE OF OREGON)
)ss. March 6, 2006
County of Multnomah)

Personally appeared Nick Stearns and Anthony Marnella who, being duly sworn, did say that they are the Managers of Matthew Frank, LLC, a limited liability company, and that the foregoing instrument was signed in behalf of said company by authority of its members; and they acknowledged said instrument to be its voluntary act and deed.

Jami L. Queener
NOTARY PUBLIC FOR OREGON

OFFICIAL SEAL
JAMI L. QUEENER
NOTARY PUBLIC-OREGON
COMMISSION NO. 384993
MY COMMISSION EXPIRES SEPTEMBER 21, 2008

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

by Laurie Skillman
for Scott W. Taylor,
Real Estate Commissioner

The foregoing Declaration is approved pursuant to ORS 100.110 this 18th day of April, 2006.

COUNTY ASSESSOR

By: ______________

EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 1-8, BLOCK 12, LOTS 1-4 AND LOTS 7-8, BLOCK 13, "P.T. SMITH'S ADDITION TO ST. JOHNS", (BOOK 151, PAGE 90, MULTNOMAH COUNTY PLAT RECORDS) AND LOTS 5, 6, AND 9-13 "SUBDIVISION OF PART OF BLOCK 13, LOTS 5 AND 6, P.T. SMITH'S ADDITION TO ST. JOHNS" (BOOK 414, PAGE 88, MULTNOMAH COUNTY PLAT RECORDS), ALONG WITH A PORTION OF VACATED N. LEONARD STREET, BEING LOCATED IN THE SOUTHEAST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 1, AND THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 1 NORTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 8, BLOCK 13, "P.T. SMITH'S ADDITION TO ST. JOHNS"; THENCE ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF N. LEAVITT AVENUE SOUTH 24°34'21" WEST 483.52 FEET TO A FOUND BRASS SCREW WITH 3/4 INCH DIAMETER BRASS WASHER STAMPED "LS 2264" AT THE MOST SOUTHERLY CORNER OF LOT 1, BLOCK 12, "P.T. SMITH'S ADDITION TO ST. JOHNS"; THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH KELLOGG STREET NORTH 65°23'30" WEST 200.03 FEET TO A FOUND BRASS SCREW WITH 3/4 INCH DIAMETER BRASS WASHER STAMPED "LS 2264" AT THE MOST WESTERLY CORNER OF LOT 4, BLOCK 12, "P.T. SMITH'S ADDITION TO ST. JOHNS"; THENCE ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF N. BURLINGTON AVENUE NORTH 24°36'00" EAST 563.59 FEET TO A FOUND 5/8 INCH DIAMETER IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PARIS & ASSOC. PLS 2264" AT THE MOST NORTHERLY CORNER OF LOT 13, "SUBDIVISION OF PART OF BLOCK 13, LOTS 5 AND 6, P.T. SMITH'S ADDITION TO ST. JOHNS"; THENCE ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF NORTH CENTRAL STREET SOUTH 43°33'21" EAST 215.26 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Unit No.	Square Footage Area	Assessment Index	Percentage Ownership in Common Elements as of Stage 1
1-1	1,260 + 217 (garage)	1.20	4.1667
1-2	1,653 + 217 (garage	1.60	5.5556
1-3	728	.80	2.7777
1-4	728	.80	2.7777
1-5	1,657 + 217 (garage)	1.60	5.5556
1-6	1,264 + 217 (garage)	1.20	4.1667
2-1	1,264 + 217 (garage)	1.20	4.1667
2-2	1,657 + 217 (garage)	1.60	5.5556
2-3	728	.80	2.7777
2-4	728	.80	2.7777
2-5	1,653 + 217 (garage)	1.60	5.5556
2-6	1,260 + 217 (garage)	1.20	4.1667
3-1	1,264 + 217 (garage)	1.20	4.1667
3-2	1,658 + 217 (garage)	1.60	5.5556
3-3	728	.80	2.7777
3-4	728	.80	2.7777
3-5	1,658 + 217 (garage)	1.60	5.5556
3-6	1,264 + 217 (garage)	1.20	4.1667
4-1	1,264 + 217 (garage)	1.20	4.1667
4-2	1,657 + 217 (garage)	1.60	5.5556
4-3	728	.80	2.7777
4-4	728	.80	2.7777
4-5	1,657 + 217 (garage)	1.60	5.5556
4-6	1,264 + 217 (garage)	1.20	4.1667
TOTAL		**28.80**	**100.0000**