

EXHIBIT B

SHEET	<div>1 OF 1</div>	REVISIONS									
		<div><div><div></div></div></div>	DATE	8/16/04	SCALE	AS SHOWN					
		<div><div><div></div></div></div>	J.R.M.	W.O. No.	509						
		<div><div><div></div></div></div>	12/11/13	MM							
		<div><div><div></div></div></div>	8/7/14	MM							
<div><div><div></div></div></div>	9/12/14	MM									
<div><div><div></div></div></div>	1/30/15	MM									
<div><div><div></div></div></div>	2/4/15	MM									

SHEET CONTENT

PROPOSED PARKING & BUILDING PLAN

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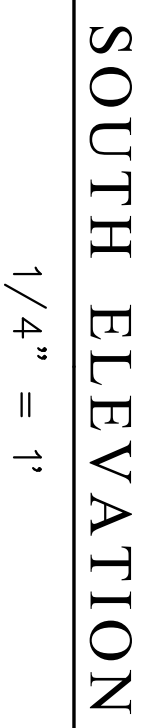
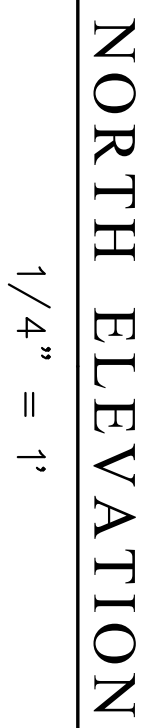
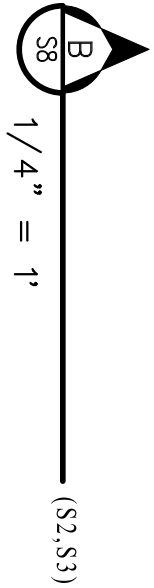
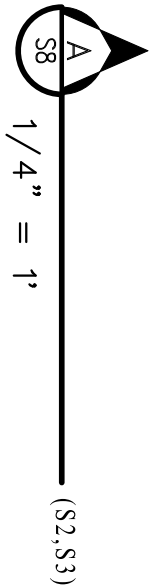



EXHIBIT C



MIKE McALLISTER ENGINEERING
11301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326


SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR

APARTMENT COMPLEX

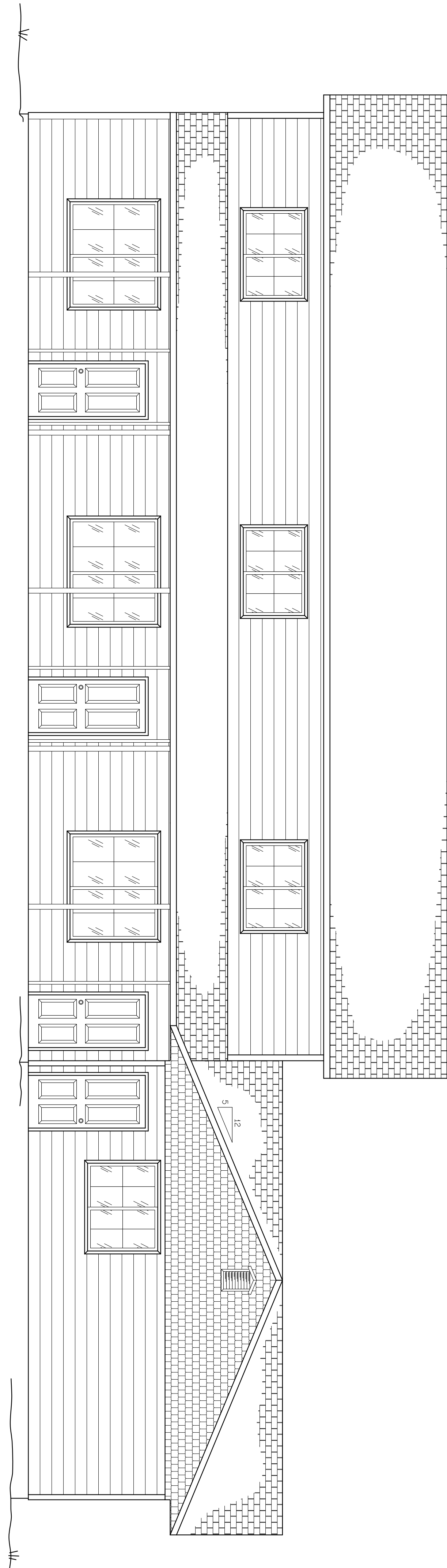
FOR

WHISPERING PINES DEVELOPMENT

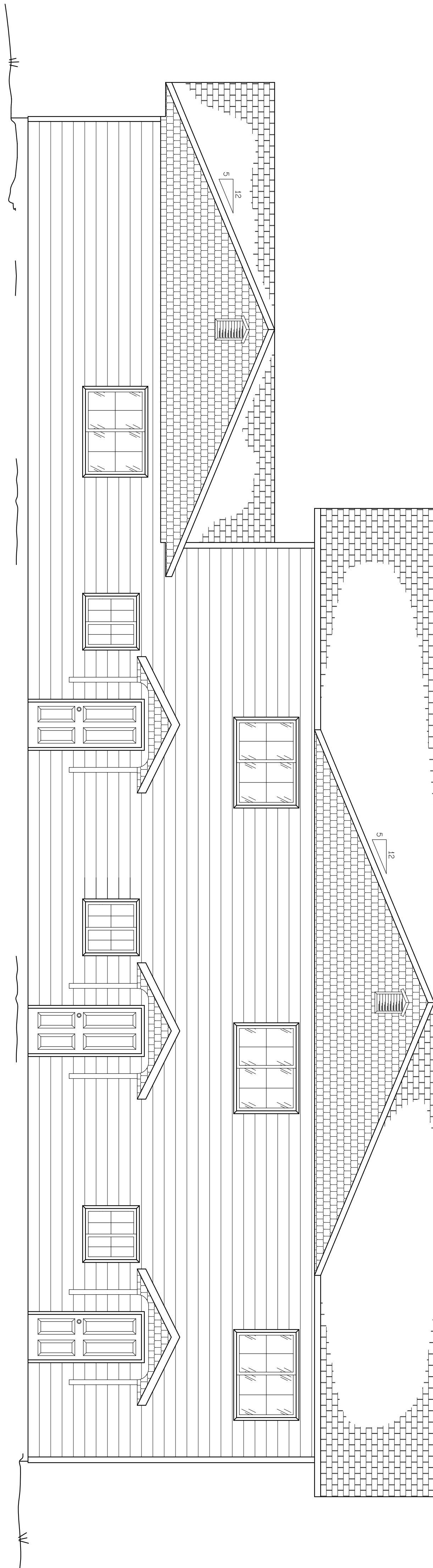
87829 HWY. 101
FLORENCE, OR 97439

 1/12/05	REVISIONS	SHEET CONTENT STRUCTURAL PLANS	
	DATE 10/22/04	DRAWN J.R.M.	W.O. No. 509
AS SHOWN		SCALE	

SHEET
28 OF 9



EAST ELEVATION
1/4" = 1'



WEST ELEVATION
1/4" = 1'

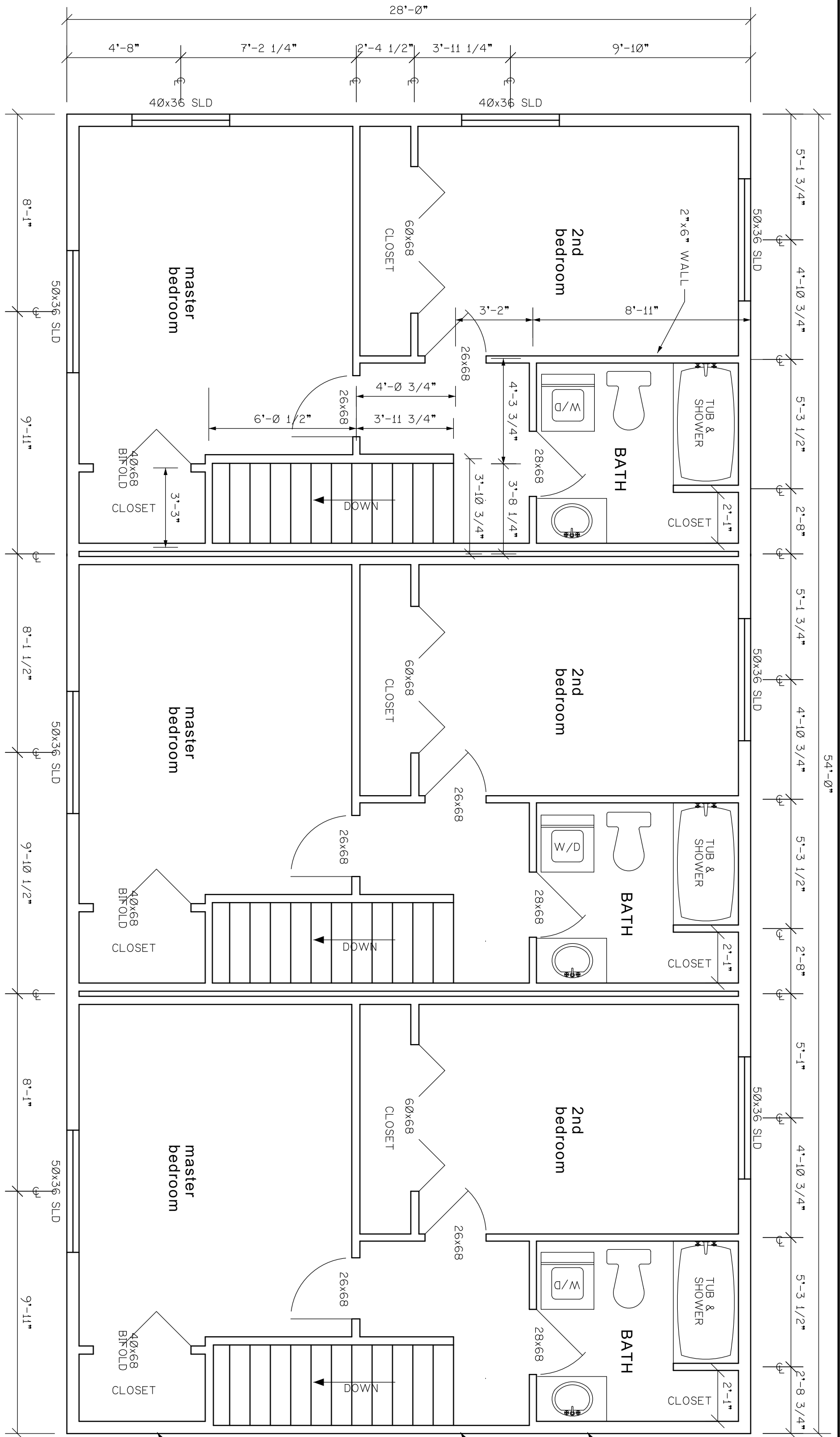
EXHIBIT C

SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR
APARTMENT COMPLEX
FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

MIKE McALLISTER ENGINEERING
11301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326

SHEET CONTENT
STRUCTURAL PLANS

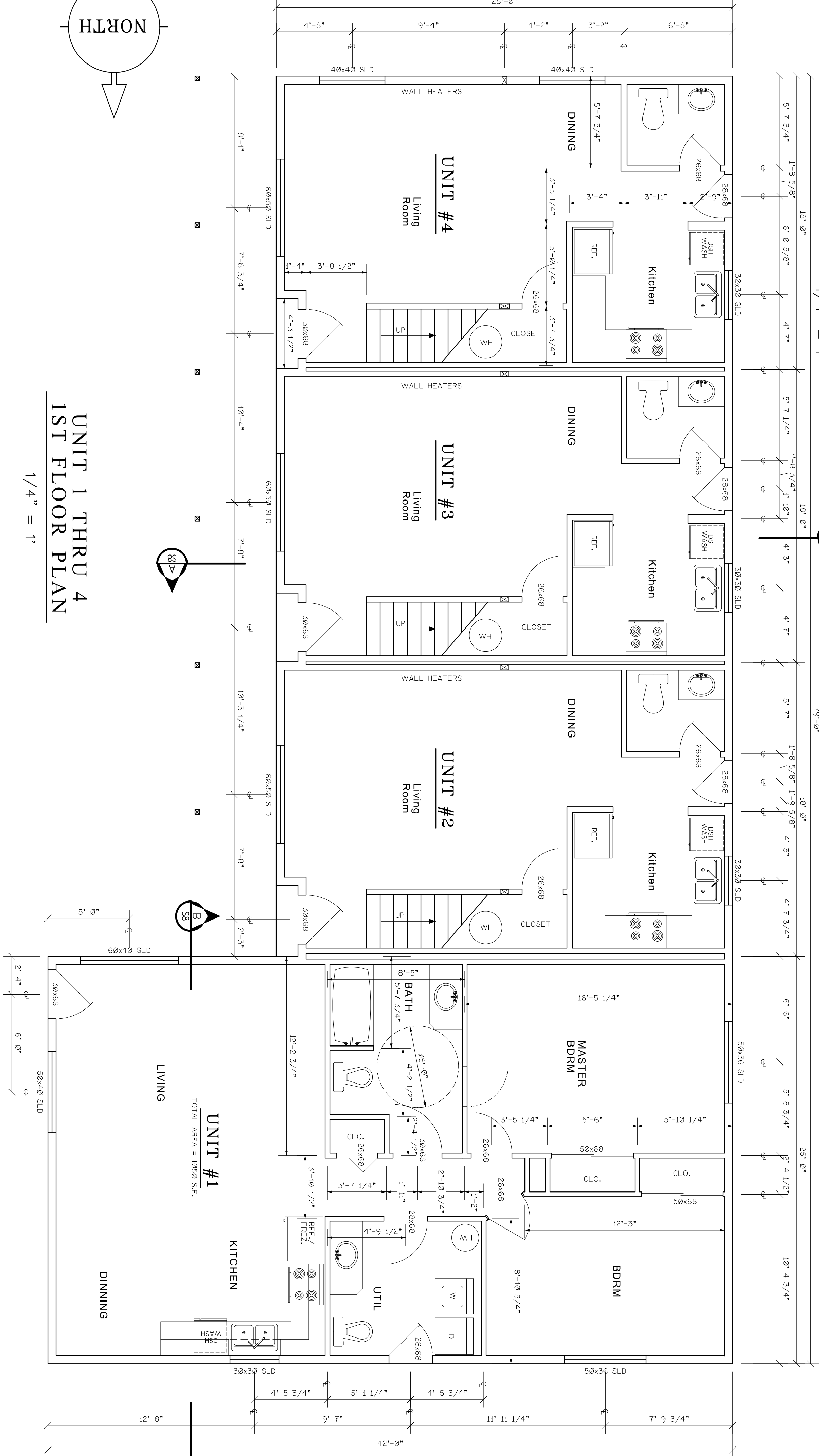
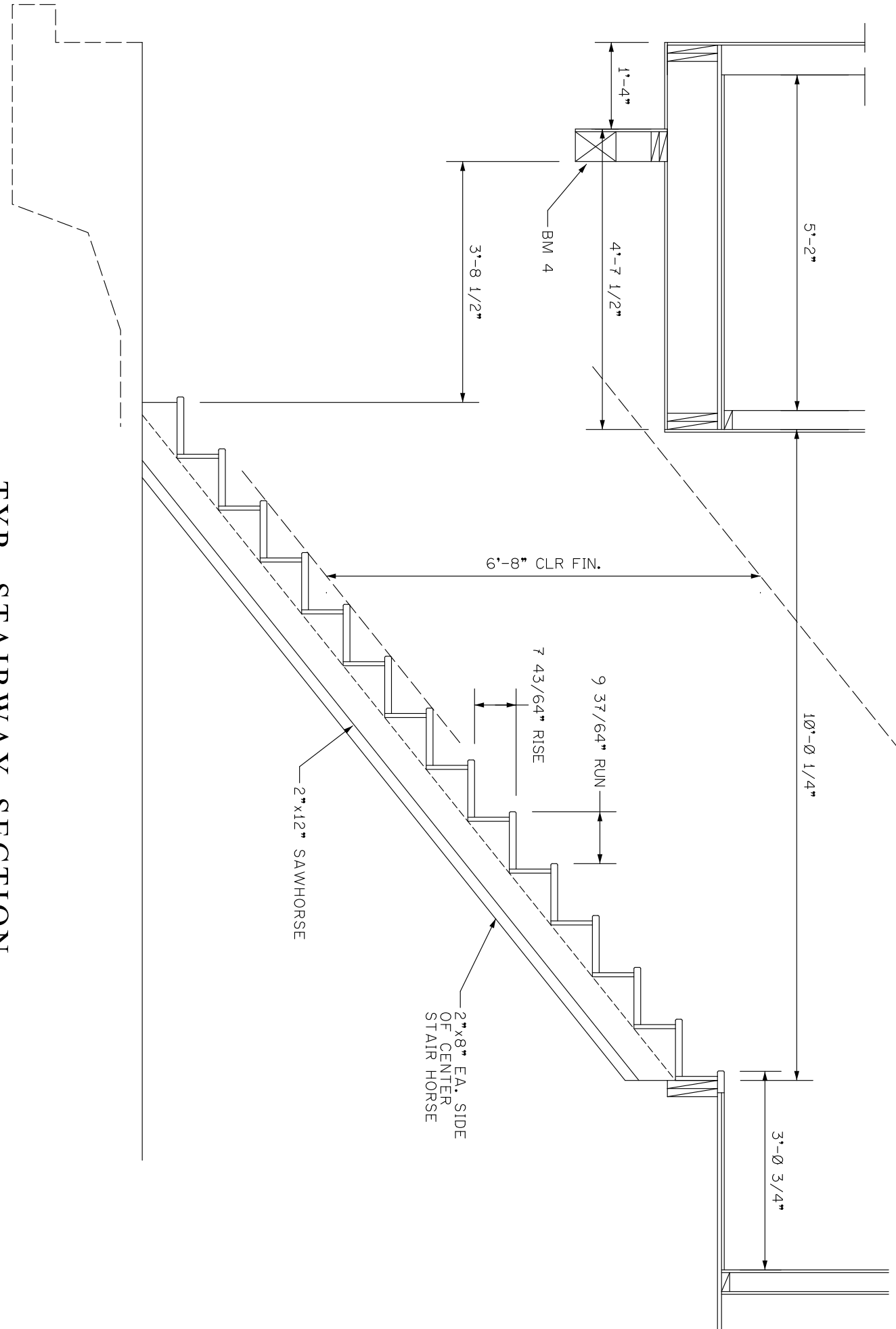
DRAWN J.R.M.	W.O. NO. 509
DATE 10/22/04	SCALE AS SHOWN
REVISIONS	
1/12/05	



UNIT 2 THRU 4 & 6 THRU 8
2ND FLOOR PLAN

1/4" = 1'

TYP. STAIRWAY SECTION
1/2" = 1'



UNIT 1 THRU 4
1ST FLOOR PLAN

1/4" = 1'

SHEET CONTENT			
STRUCTURAL PLANS			
DRAWN	W.O. NO.		
J.R.M.	509		
DATE	SCALE		
10/22/04	AS SHOWN		
REVISIONS			
11/3/04	MM		
1/12/05	MM		

SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR
APARTMENT COMPLEX
FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

MIKE McALLISTER ENGINEERING
1301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326



EXHIBIT D

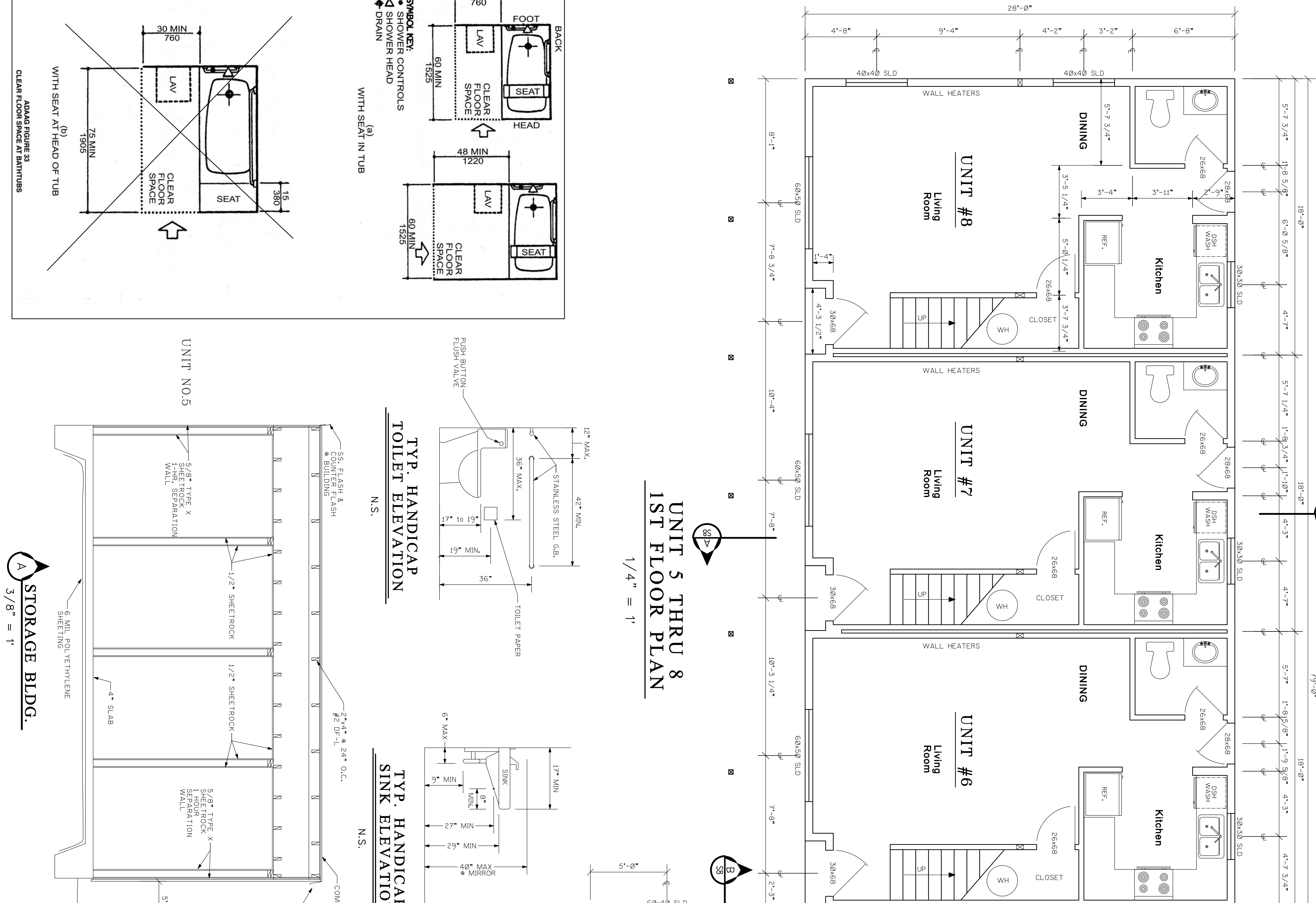
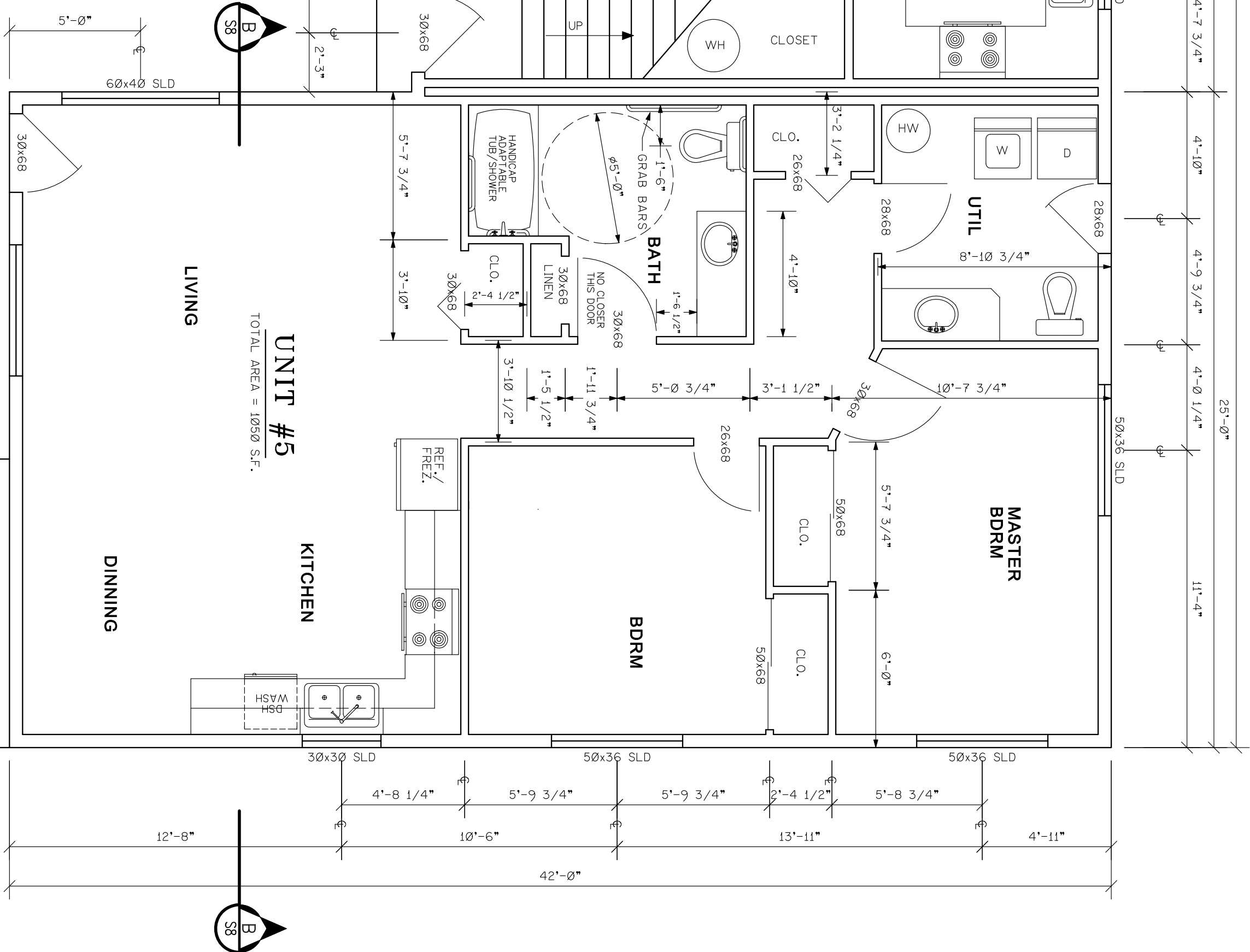
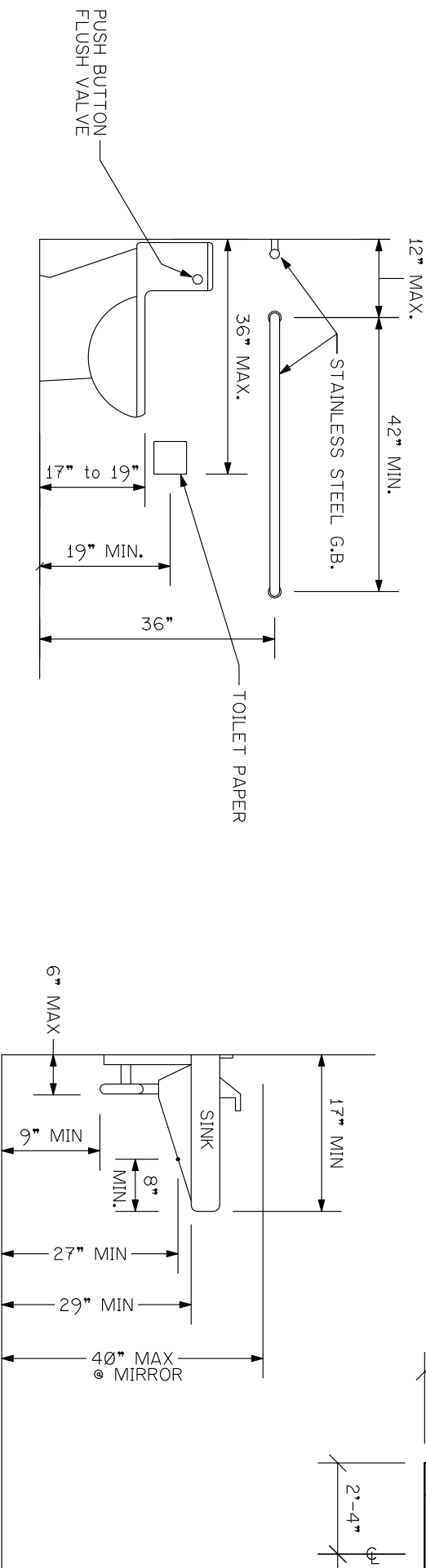
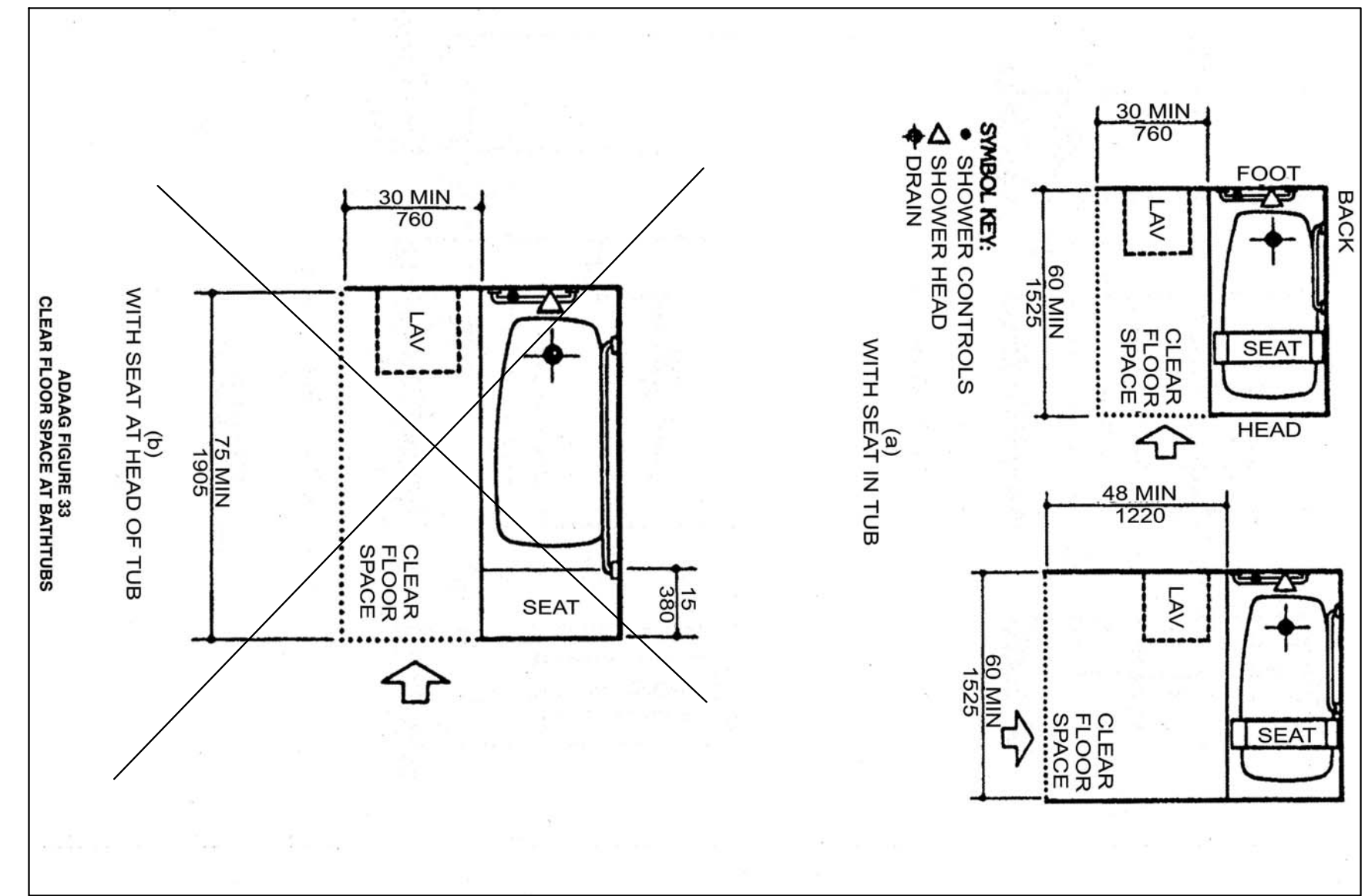
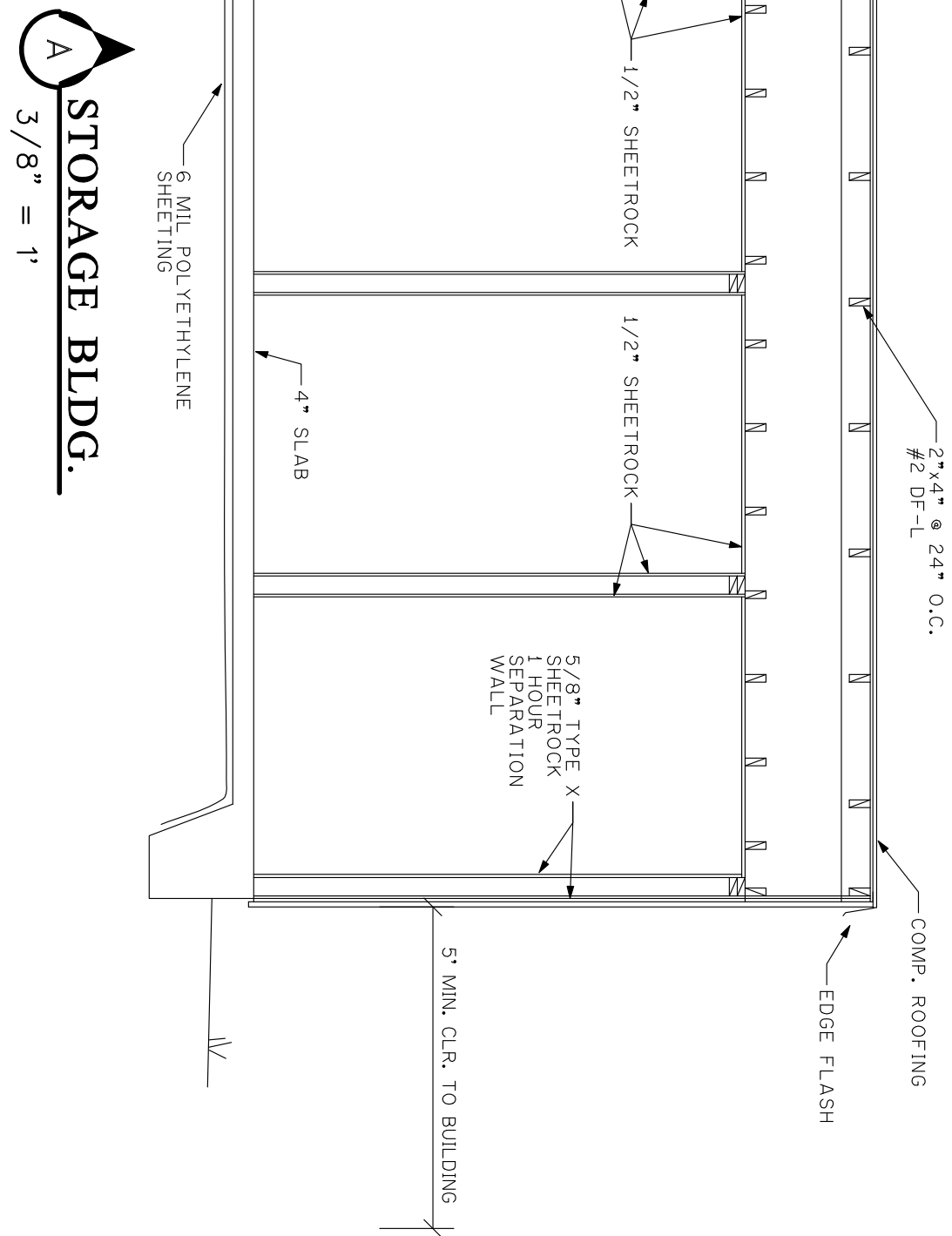
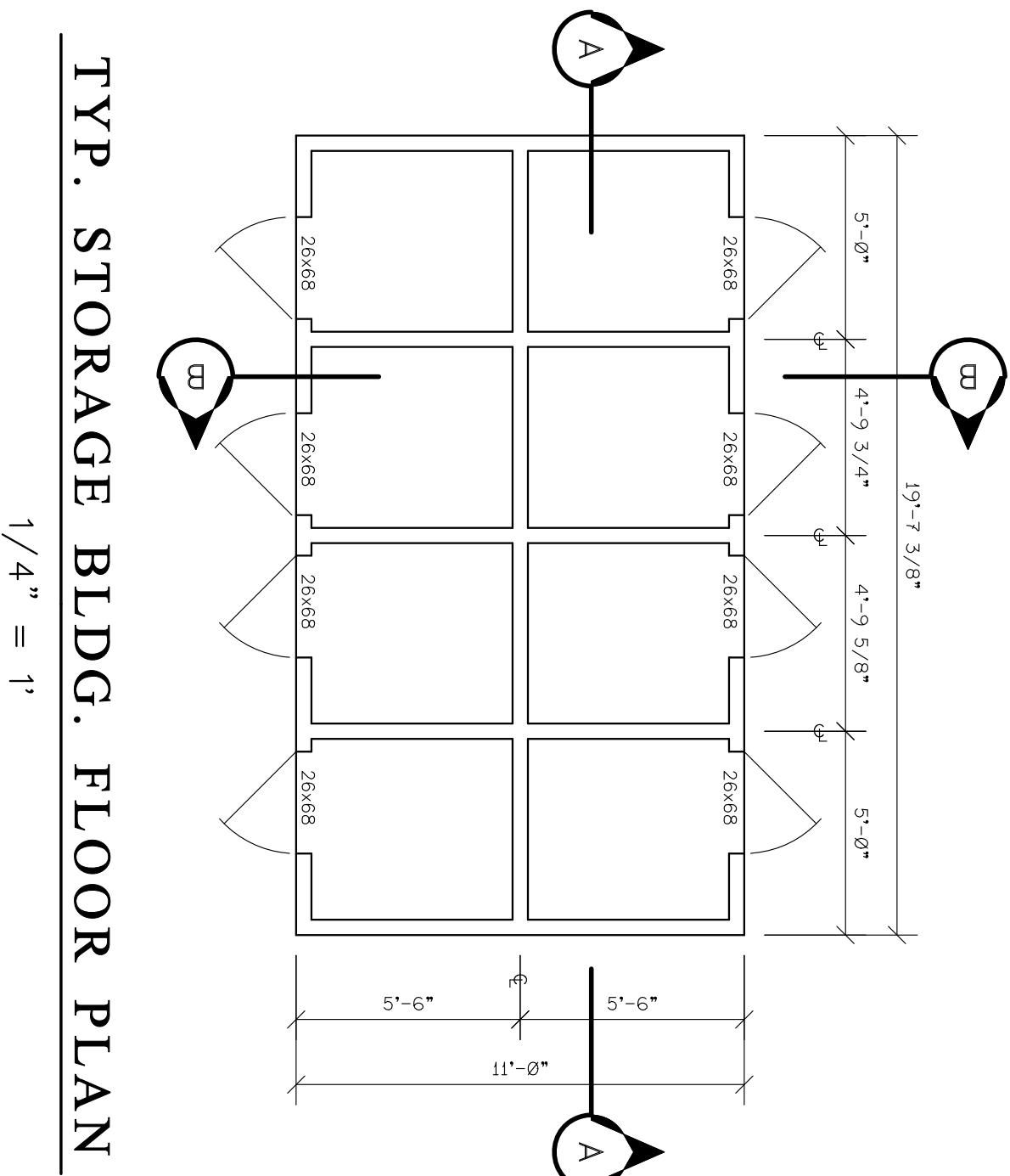
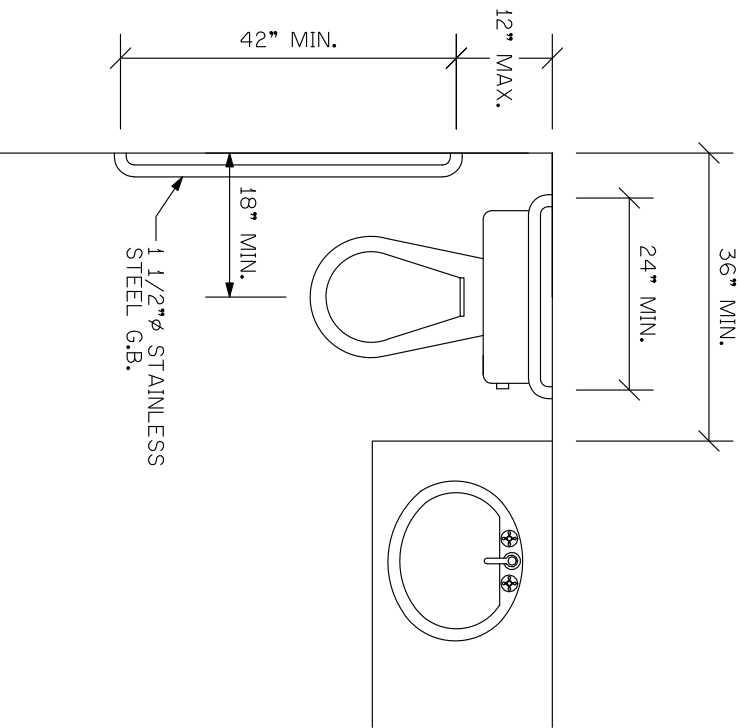
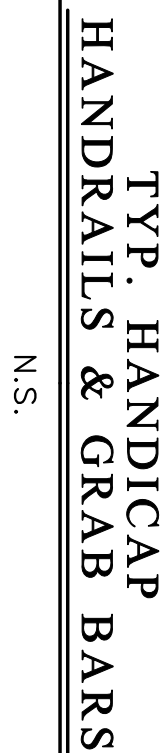
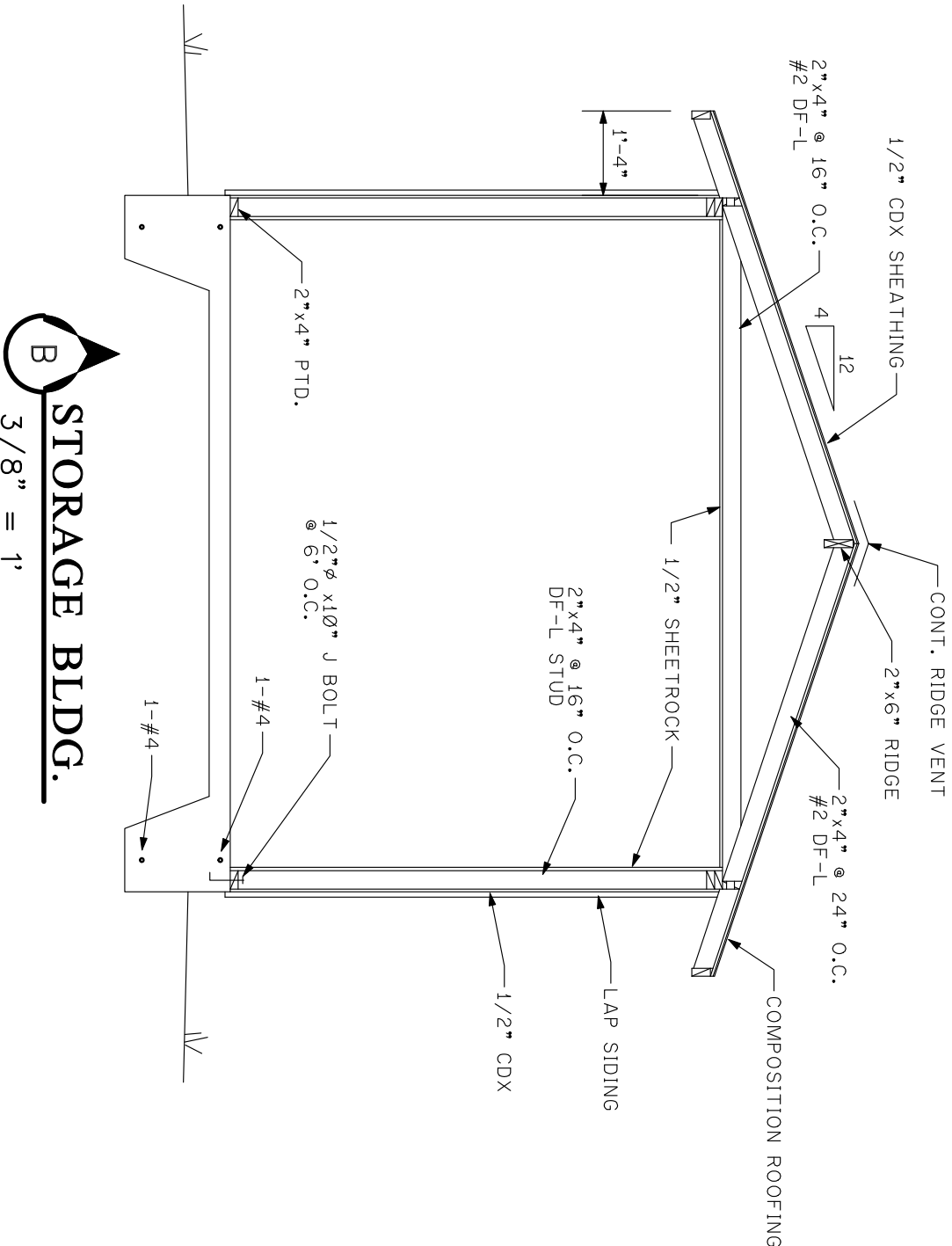
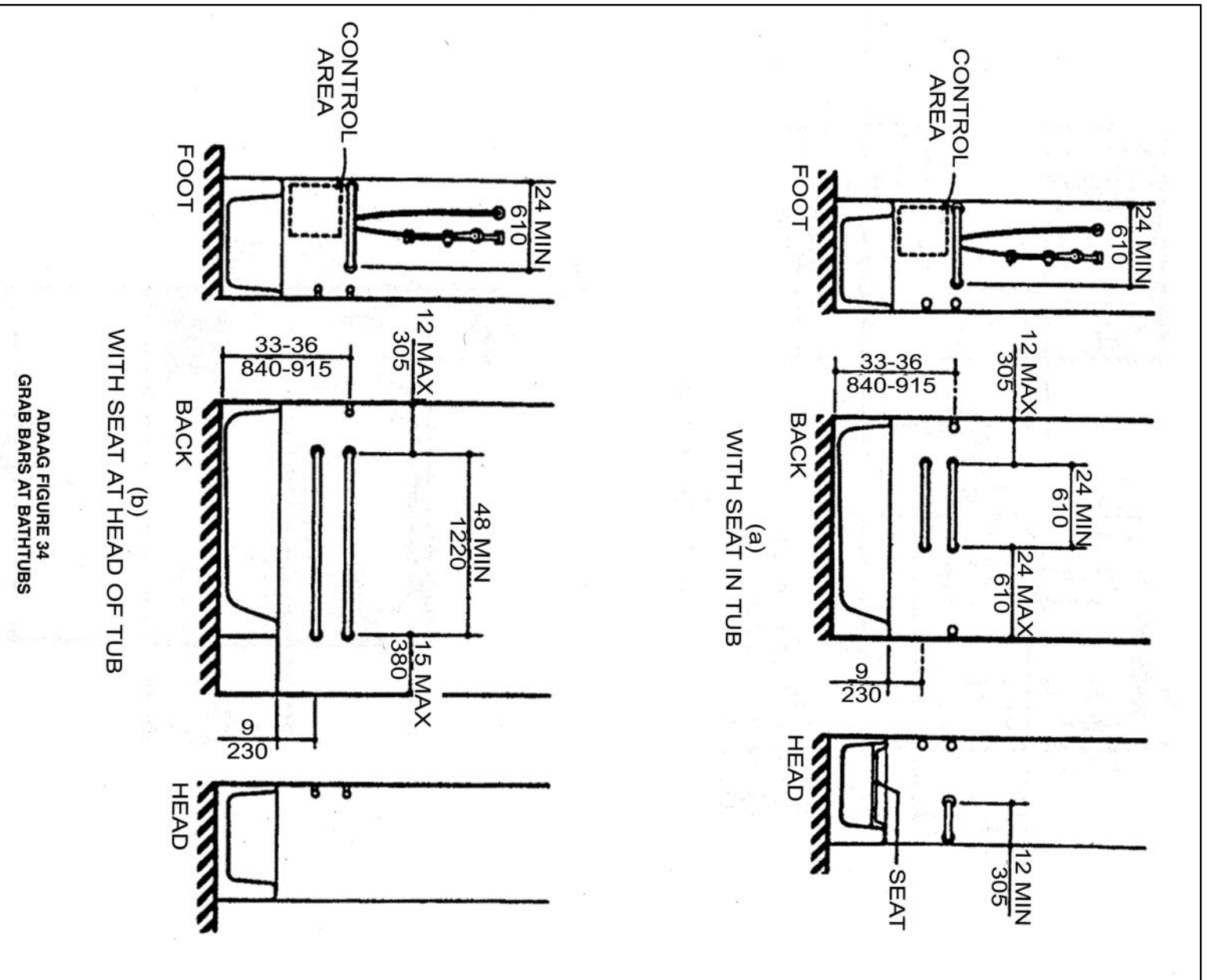
SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR

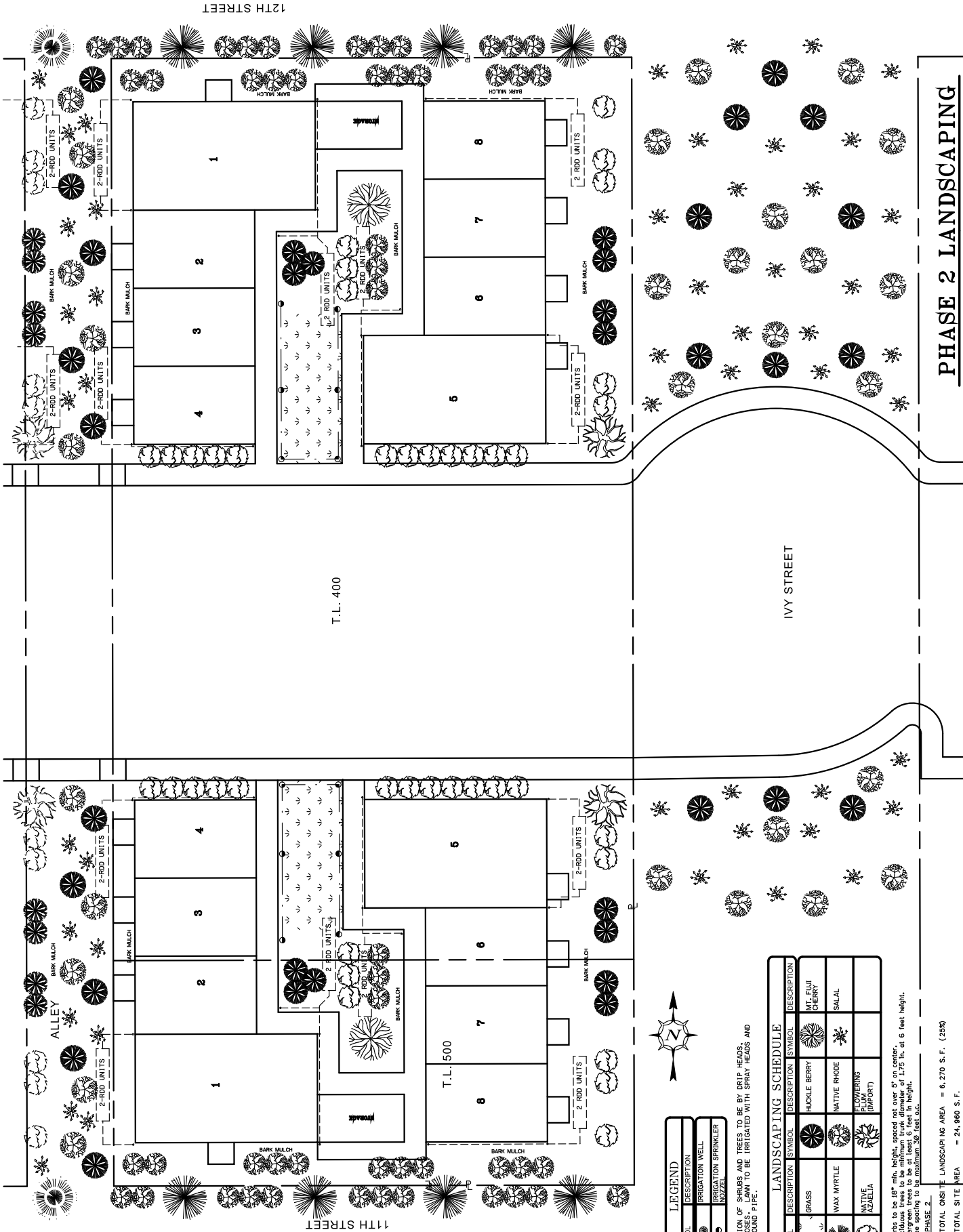
APARTMENT COMPLEX

FOR

WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

 11/3/04 MNM  1/12/05 MNM		DRAWN J.R.M. DATE 10/22/04 SCALE AS SHOWN	SHEET CONTENT STRUCTURAL PLANS
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PHASE 2 LANDSCAPING









TAX MAP: 18-12-27-42, T.L. 300 & 400
FLORENCE, OR

FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

EXHIBIT E1


LEGEND	
SYMBOL	DESCRIPTION
⊙	IRRIGATION WELL
•	IRRIGATION SPRINKLER NOZZLE

NOTE:
1) IRRIGATION OF SHRUBS AND TREES TO BE BY DRIP HEADS, USING HOSES. LAWN TO BE IRRIGATED WITH SPRAY HEADS AND UNDERGROUND PIPE.


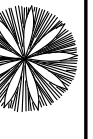



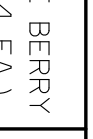
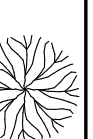

LANDSCAPING SCHEDULE					
SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
	GRASS		HUCKLE BERRY		MT. FUJI CHERRY
	WAX MYRTLE		NATIVE RHODE		SALAL
	NATIVE AZALEA		FLOWERING PLUM (IMPORT)		

NOTE:
1) Plants to be 18" min. height, spaced not over 5' on center.
2) Deciduous trees to be minimum trunk diameter of 1.75 in. at 6 feet height.
3) Tree spacing to be maximum 30' feet o.c.

PHASE 2
TOTAL ON-SITE LANDSCAPING AREA = 6,270 S.F. (25%)
TOTAL SITE AREA = 24,960 S.F.

LEGEND	
SYMBOL	DESCRIPTION
	IRRIGATION SPRINKLER NOZZEL

NOTE:
IRRIGATION OF SHRUBS AND TREES TO BE BY DRIP HEADS, USING HOSES. LAWN TO BE IRRIGATED WITH SPRAY HEADS AND UNDERGROUND PIPE.

LANDSCAPING SCHEDULE			
SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
	GRASS		HUCKLE BERRY (14 EA.)
	WAX MYRTLE (8 EA.)		NATIVE RHODE (52 EA.)
	NATIVE AZALEA (40 EA.)		FLOWERING SHRUB (IMPORT) (2 EA.)
			MT. FUJI CHERRY (2 EA.)
			SALAL (0)

- NOTE
- 1) Shrubs to be 18" min. height, spaced not over 5' on center.
 - 2) Deciduous trees to be minimum trunk diameter of 1.75 in. at 6 feet height.
 - 3) Evergreen trees to be at least 6 feet in height.
- Tree spacing to be maximum 30 feet o.c.

PHASE 3

TOTAL ONSITE LANDSCAPING AREA = 6,270 S.F. (25%)
TOTAL SITE AREA = 24,960 S.F.

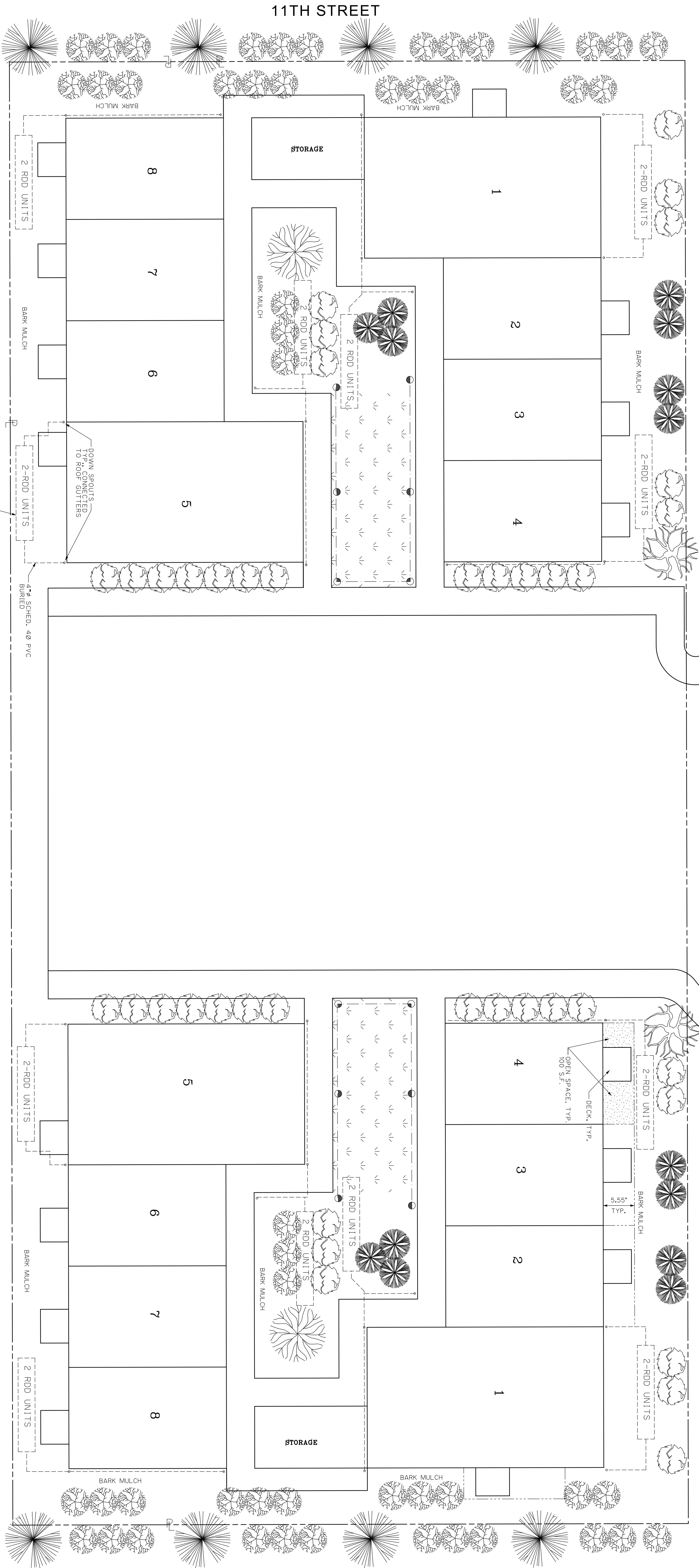


EXHIBIT E2

MIKE McALLISTER ENGINEERING
11301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326

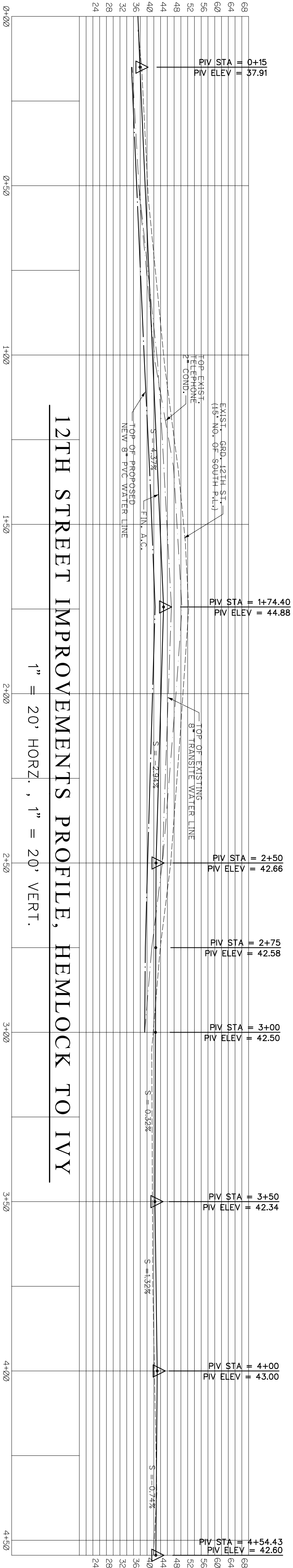
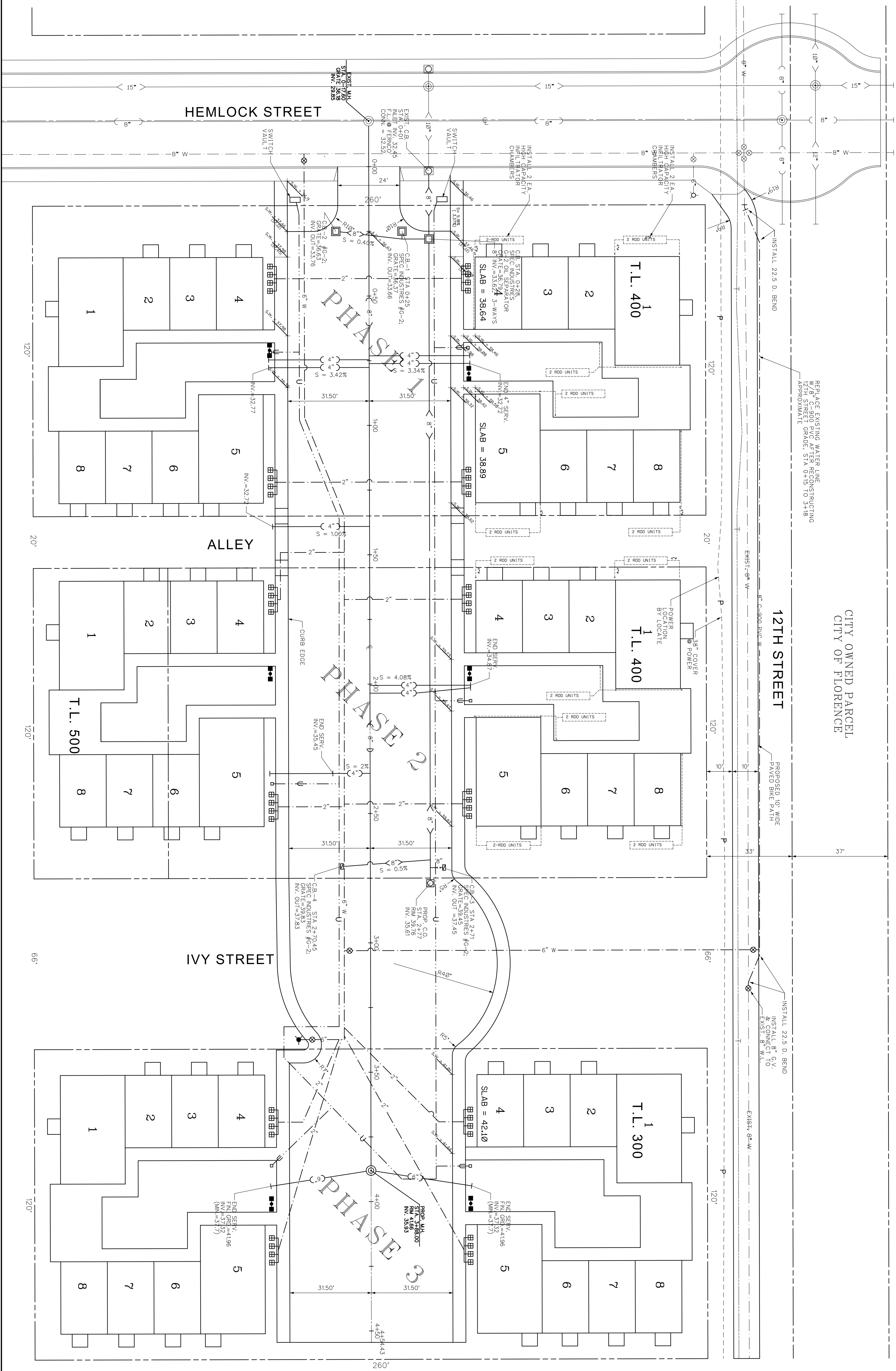
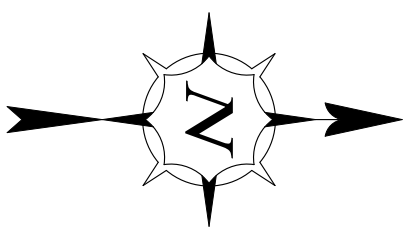
SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR
PHASE 3 LANDSCAPING
FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

SHEET CONTENT
**PROPOSED LANDSCAPE
& IRRIGATION PLAN**

DRAWN J.R.M.	W.O. NO. 509
DATE 9/12/14	SCALE 1" = 10'
REVISIONS	

SHEET

SYMBOL	DESCRIPTION
	SANITARY M.H.
	STORM M.H.
	PROPOSED SANITARY SEWER
	PROPOSED STORM SEWER
	EXISTING SANITARY SEWER
	EXISTING STORM SEWER
	EXISTING WATER LINE
	PROPOSED WATER LINE
	PROPOSED UTILITY: POWER, TEL. & TV.
	EXISTING UNDERGROUND TEL.
	EXISTING UNDERGROUND POWER
	EXISTING FIRE HYDRANT
	PROPOSED FIRE HYDRANT
	WATER VALVE
	CATCH BASIN
	CURB INLET CATCH BASIN
	SEWER CLEANOUT
	POWER VAULT
	WATER METER



MIKE McALLISTER ENGINEERING
11301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326

SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR
STREET, PARKING LOT & UTILITIES
FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

SHEET CONTENT
PLAN & PROFILE

DRAWN	J.R.M.	W.O. NO.	509
DATE	10/5/04	SCALE	1" = 20'
REVISIONS			
10/28/04			
12/15/04			
12/11/13			

October 1, 2014

City of Florence
Community Development
250 Hwy 101
Florence, Or. 97439

Re: Design Review Application Phase 3 and Revision of Phase 2
Whispering Pines, Map #18-22-27-42 Tax Lots 00300, 00400, 00500
Additional Information

Attention: Wendy Farley Campbell
Wendy.farley.campbell@ci.florence.or.us

This letter is to provide additional information as per in our recent telephone conversation.

Bicycle Parking

Bicycle racks or other hangers to hold bicycles vertical will be installed in each storage unit.

Lighting Plan Details

Proposed lights and light poles are to be the same as existing. We will be furnishing to you a lighting illumination field schematic from the lighting supplier. Light poles are 16 feet tall. The lights are the rectangular box type.

Stormwater Plans

The stormwater plans are as shown in the plans for the overall site. Drainage from roofs will be captured in eaves troughs and piped to in-ground disposal units located as per plans. The paved driveway and sidewalks paralleling the driveway are sloped to drain to catch basins; the catch basins drain by storm piping to the City storm sewer in Hemlock Street. The City storm sewer was designed to handle this flow, including Phase 3. As this whole system was designed and approved with this in mind, we believe an exception to new regulations is in order.

Bike Path in Ivy Street from 12th Street to 11th Street

The bike path now constructed in 12th Street cannot be accessed from Ivy Street due to topography. The elevation of the bike path in 12th Street is so much higher than Ivy Street it cannot be accessed by anything close to ADA required grades. There is a retaining wall now constructed between the units in Phase 1 and 12th Street. You can verify this when you make a site visit. If Public Works desires, we can make depressed area in the proposed curbs in Ivy Street. Also affecting this bike path is the existing underground utilities in 12th Street, if one is thinking of reconstructing the street to lower the ground grade.

PDF Files of New Plans

We are emailing pdf files if the drawings for this Phase 3, which also will show the changes required at Phase 2 for the additional units.

Open Space

The new landscape plan for Phase 3 shows the area of open space on the most northwest 4 plex. This plan is typical for all the 4 plexes proposed in the Phase 3 and the revised Phase 2. It is the

EXHIBIT G

same for all existing units in Phase 1 and 2 now constructed. Please note that the open area includes the landing deck area in addition to the area shown in hatch, which yields a total of 100 s.f..

If you need any other documentation please email us or call.

Sincerely,

A handwritten signature in black ink that reads "Mike McAllister". The signature is written in a cursive, flowing style.

Mike McAllister, PE

September 12, 2014

City of Florence
Community Development
250 Hwy 101
Florence, Or. 97439

Re: Design Review Application Phase 3 and Revision of Phase 2
Whispering Pines Map #18-22-27-42 Tax Lots 00300, 00400, 00500

This letter is in response to your letter of September 5, 2014. The format of this letter will conform to the numbering of your letter.

1. Site Plan

a) The site plan submitted was revised to eliminate the compact parking in Phase 3. Mr. Prater is of the opinion that it is unnecessary to change the already existing and painted parking stalls 38 through 40. If this change were made there would be a loss of one parking stall in Phase 2. This lost parking space cannot be made up in Phase 3 as the location of the existing fire hydrant prevents this addition. There are more compact cars today than when Phases 1 and 2 were constructed.

b) Bicycle parking is already achieved in the storage buildings. Each unit has a 5'x5' approx. space which easily stores bicycles in a vertical position, requiring about 2' by 2.5' of space. Mr. Prater's opinion is that most people want to store their bikes indoors as theft is a real problem. It is nothing for a new bike to cost \$ 1,500.

c) The floor plan of the proposed units is as already on file per Phase 1 and 2. The number of bedrooms for each four plex building is 8 per building. The total number of buildings for full development is 6 buildings. The total number of bedrooms is 6 times 8 or 48 total bedrooms. The total number of parking spaces required is 48 times 1.5 spaces per unit, or 72. The plan as submitted shows 72 spaces.

d) Mr. Prater is not interested in reducing the parking spaces by 10% in exchange for transit improvements along 9th Street.

e) The ground in Phase 3 was graded during Phase 2. Crushed rock for the subgrade area of the street Phase 3 was placed at that time. All that remains is to construct concrete sidewalks and curbs and install asphalt paving, after the changes have been made to accommodate the revision in the parking and sidewalk for Tax Lot 500. The grading conforms to the plans for Phase 1 and 2. Cross sections are as per plan. Typical cross slopes provide 2% slope to drain to the curb/sidewalk and then to catch basins located as per plan. All utilities for Phase 3 were installed during construction of Phase 1 and 2, and conform to approved plans.

f) Mailbox location will be the same for Phase 3 as per Phase 1 and 2, which is in the sidewalk on Hemlock Street fronting the development. Boxes to be added will be adjacent to those installed for Phase 2. The installation is to be in the sidewalk and in accordance with the Postal Department standards and requirements.

2. Lighting Plan

The proposed lighting plan is as originally approved for Phase 1 and 2. The location of the light poles is shown in the plans submitted. No changes are desired as Mr. Prater desires to match the exiting. Each pole now has two 1000 Watt HPS lights. Location of light poles and

lights as to be installed will be inconformity with present City lighting standards. Light will not cause lighting glare off site.

3. Stormwater Plan

a) Building runoff will be captured via roof gutters and transported to buried disposal units through downspouts and buried piping. The location of this system is shown on the landscaping plan for Phase 3. This plan was with the recent submittal, but will be submitted for your review. The typical stormwater disposal system for each building is similar, and shows on the plans approved for Phases 1 and 2. These systems have been operating well, so no changes are proposed.

b) The plans do not show widening of 12th Street. Topography limited the development of this street. The City of Florence decided not to develop this street for motor vehicles and opted to use it for a bicycle path. This was improvement has been performed along the entire street fronting this property, including Phase 3.


4. Landscaping Plan

a) The landscaping plan for Phase 3 conforms to the plans for the other phases. We neglected to submit a plan with the application. On further review we concur that this plan should be submitted and will do so for your review. It is Mr. Prater's desire that the landscaping for Phase 3 conform to that of the existing phases as much as possible. The landscaping as previously installed has been performed well, and so there is no desire to change midstream. The number of plants will be labeled on the plan.

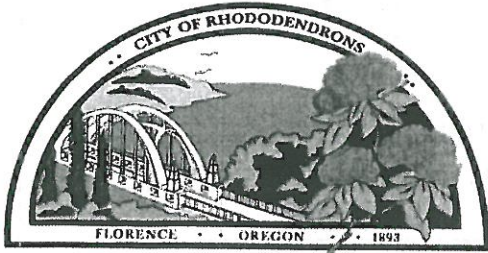
b) The location of trash enclosures has been shown on the plans. Materials for said enclosures is to be of cedar fencing as shown in plans on file for Phase 1. Mr. Prater has no desire to change the enclosure design or materials.

c) Open space has been provided as per the buildings in Phases 1 and 2. The location of open space is shown on the Landscaping Plan being submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McAllister". The signature is fluid and cursive, with the first name "Mike" and last name "McAllister" clearly distinguishable.

Mike McAllister, PE



City of Florence
Community Development Department
250 Highway 101
Florence, OR 97439
Phone: (541) 997 - 8237
Fax: (541) 997 - 4109
www.ci.florence.or.us

Type of Request

☒ Design Review (DR) (See FCC 10-6) ☐ Conditional Use Permit (CUP) (See FCC 10-4)

Applicant Information

Name: JERRY PRATER CONSTRUCTION Phone 1: 541-999-0256
E-mail Address: _____ Phone 2: _____
Address: 87829 HWY 101 NORTH, FLORENCE, OREGON
Signature: _____ Date: _____
Applicant's Representative (if any): _____

Property Owner Information

Name: SAME AS ABOVE Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: _____
Signature: _____ Date: _____
Applicant's Representative (if any): _____

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

For Office Use Only:

Received

RECEIVED
City of Florence

AUG 08 2014

By: gdfc

Approved

Exhibit

EXHIBIT I

Property Description

Site Address: 1150 HEMLOCK, FLORENCE, OREGON

General Description: WHISPERING PINES DEVELOPMENT

Assessor's Map No.: 18 - 12 - 21 - 42 Tax lot(s): 300, 400, 500

Zoning District: OFFICE RESID. MIXED USE ; MULTI-FAM. RESIDENTIAL

Conditions & land uses within 300 feet of the proposed site that is one-acre or larger and within 100 feet of the site that is less than an acre OR add this information to the off-site conditions map

(FCC 10-1-1-4-B-3): _____

Project Description

Square feet of new: 6,240 S.F.

Square feet of existing: 87,360

Hours of operation: N.A.

Existing parking spaces: 72

Is any project phasing anticipated? (Check One): ☒ Yes ☐ No

Timetable of proposed improvements: PHASE II IN SEPTEMBER 2014, PHASE III IN FUTURE

Will there be impacts such as noise, dust, or outdoor storage? ☐ Yes ☒ No

If yes, please describe: _____

Proposal: (Describe the project in detail, what is being proposed, size, objectives, and what is desired by the project. Attach additional sheets as necessary)

REVISE PHASE II, PREVIOUSLY APPROVED, TO DEVELOP T.L. 500 FOR MULTIFAMILY HOUSING.

THIS WILL CHANGE SIDEWALK AND ^{WIDEN} PAVING ON A PORTION OF SOUTH SIDE OF 12TH STREET.

REVISE PHASE III, PREVIOUSLY APPROVED, TO CHANGE COMPACT PARKING STALLS ON BOTH SIDES OF 12TH STREET TO STANDARD WIDTH PARKING STALLS.

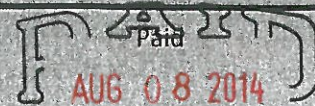
UNDERGROUND UTILITIES ARE ALL EXISTING, AND ARE TO REMAIN AS CONSTRUCTED.

STORM DRAINAGE IN STREET AND ONSITE TO BE AS PREVIOUSLY APPROVED. LANDSCAPING PLAN TO BE REVISED @ TAX LOT 500 TO BE AS PERFORMED IN ADJACENT LOTS.

For Office Use Only:

Date Submitted: 8-8-2014 Fee: \$1,400.00

Received by: gdfc



BY: _____

☐ Proposed:

Are new streets planned or needed? (Please refer to the Transportation System Plan)

☐ Yes ☒ No If yes, please describe: _____

Are utility upgrades or extensions planned or needed?

☐ Yes ☒ No If yes, please describe: _____

If you answered yes to either question above, how will these improvements be funded? _____

☐ Stormwater Plan: (SEE ATTACHMENT)

Per FCC 9-5-2-4, a drainage plan is required for projects which add **500 SQUARE FEET OR GREATER** of impervious surface area or clearing vegetation from **10,000 SQUARE FEET OR GREATER** (single family homes are excluded). Please refer to FCC 9-5 and the Florence Stormwater Design Manual for requirements.

☐ Traffic Impact Study:

Per FCC 10-1-1-4-D, larger projects may require a Traffic Impact Study. Please attach a TIA if needed.

☐ Design & Architectural Drawings:

Per FCC 10-6-6-C, if applying for a design review, please attach or describe colors and materials being used as well as elevations of the proposed building.

☐ Landscaping Plan:

Per FCC 10-34-3-2, the location, size and species of newly proposed plant materials, location(s) of area where existing vegetation will be cleared and/or preserved, irrigation and anticipated planting schedule, and location of existing and proposed fences and walls including buffering and screening materials.

☐ Erosion Control:

Projects of over 1 acre of land disturbance over a period of time (please see FCC 10-36-4) are required to obtain a National Pollution Discharge Elimination System permit from the Department of Environmental Quality prior to the issuance of a development permit or land use permit based on appropriate criteria.

☐ Site Investigation Report:

Refer to FCC 10-7-3 for the list of hazard areas within the City Limits which will require a SIR.

☐ Old Town District:

Survey: Properties within the Old Town District require a recent survey per FCC 10-17 for all new development, redevelopment, and additions which show property lines, easements, 2' contours, existing structures, floodplain, and highest observed tide.

Visual Aids: New construction or story additions require visual aids. Please refer to FCC 10-17.

Other Information Required

Below is a check list of the required information to determine if an application is complete. The Florence City Code is available at City Hall or online at www.ci.florence.or.us (click on "City Code" which is located on the main menu). You will also find the *Florence Transportation Plan*, *Downtown Architectural Guidelines*, *Highway 101 Access Management Plans*, *Stormwater Design Manual*, and *Stormwater Management Plan* available on the City's website or at the City Hall for review or purchase.

☐ Site Plan existing and proposed drawn to scale, showing the following:

- Existing and proposed site boundaries and proposed lot boundaries
- Existing and proposed structures
- Existing and proposed roads, streets, rights-of-way, pedestrian walks (widths and types), names, grades, radii
- Existing and proposed utility services – location of water and sewer lines, drainage routes and facilities, manholes, meters, fire hydrants, etc...
- Areas of scenic value, wildlife habitat, potential hazard areas (floodplains, geologic instability), wetlands, or other areas of special significance

Note: Please submit an electronic copy of any plans submitted larger than 11" x 17"

☐ A title report from a title company showing:

- Existing liens
- Access and/or utility easements
- Legal description

☐ Utility Plan: *Ne*

List all utilities currently available to the site AND add this information to a utility plan map (See FCC 10-1-1-4-B-2).

Note: For help identifying the location of utilities, please call Dig Safely Oregon at 1-800-332-2344 or dial 811. Call Public Works (541-997-4106) to determine the size of utility lines. Call the Fire Marshal (541-997-3212) to determine fire flows.

Water Supply: _____ - inch line available from _____ (Street)
Sanitary Sewer: _____ - inch line available from _____ (Street)
Storm Sewer: _____ - inch line available from _____ (Street)

Check if available: ☐ Telephone ☐ Cable TV ☐ Electrical ☐ Other (Such as fiber optics)

Please provide a plan drawn to common scale showing the location of existing and proposed buildings, existing and proposed utility services, location and size of water and sewer lines, drainage routes, manholes, meters, fire hydrants, fire flows, and 2' contours.

☐ Lighting Plan: *Ne*

Show location of each light fixture, diagram illustrating foot-candle distribution, and elevation drawing of each light fixture in conformance to FCC 10-3-8-G.

☐ Access Permits:

For properties along State or County roads (see FCC 10-35-2-4), a state or county access permit or application is required. For properties on Highway 101 located between Highway 126 and the Siuslaw River Bridge, please also refer to the *Highway 101 Access Management Plan*.

Attachment to Request for Design Review

Stormwater Plan:

Clearing area in Phase 2 to be performed will not exceed 6,240 square feet, the area of Tax Lot 500. All other areas have been cleared previously under previously approved plans for development through Phases 1 through 3.

Street areas in Ivy Street and 12th Street in Phase 3 have crushed rock surfacing ready for paving. All utilities are in place for all three Phases. This submittal proposes widening a portion of 12th Street to provide additional parking spaces required to serve the proposed additional building area in tax lot 500. This will entail the removing of a portion of the concrete sidewalk and reconstructing said concrete sidewalk in new location and the construction of additional paving subgrade and surface as required. The total of impervious surfaces added under this improvement will be 2,003 square feet. This in street drainage will flow into approved existing facilities in 12th Street. The ground area to be disturbed for the proposed street widening improvement will not exceed 1,950 square feet.

Traffic Impact Study:

None required.

Design & Architectural Drawings:

Previously approved drawings are on file. No changes planned.

Landscaping Plan:

The landscaping plan has been revised for Phase 2 to include tax lot 500. The plan extends the same plan as previously approved in adjacent areas of the development. The revised plan is submitted with this application.

Erosion Control:

The area to be disturbed is estimated at 8,190 square feet, or 0.19 acres. A NPDES permit is not required.

Site Investigation Report:

A SIR is not required as this development as all conforms to previously approved plans and conditions.

City of Florence
250 Highway 101
Florence OR 97439

CITY OF FLORENCE
250 HIGHWAY 101
FLORENCE, OR. 97439-7628
541-997-3436

541-997-3436

Sale

ID: 0054070000006019668001
08/08/14

14:07:01

Receipt No: 5.100890

Aug 8, 2014

MASTERCARD

*****0774

Appr Code: 00575Z

Invoice#: 000001

Total:

\$ 1400.00

Customer Copy
THANK YOU!

PRATER, JERRY

Previous Balance:

.00

Community Development - Planning Fees-DESIGN
REVIEW

1,400.00

001-000-431117 PLANNING/ZONING FEES

Total:

1,400.00

CC - FIN (9668) Check No: AC00575Z

1,400.00

Payor: PRATER, JERRY

Total Applied:

1,400.00

Change Tendered:

.00

08/08/2014 02:07PM

**PATRICIA P. RENO
87944 LAKE POINT DR
FLORENCE, OR 97439
541-991-0557**



October 15, 2014

Florence Planning Commission
City of Florence
250 Highway 101
Florence, OR 97439

Re: Resolution PC14 16 DR 01, Jerry Prater Construction

Commissioners:

I am writing to request that you require compliance by Jerry Prater Construction (the developer of Whispering Pines Condominiums located at 1150 Hemlock Street) with certain conditions of the 2013 Oregon Revised Statutes 100, Condominiums, which governs condominiums in Oregon before approving his Design Review application to complete Phases 2 and 3 of this development.

1. As required in 2013 ORS 100.175, a reserve study should have been completed, a reserve account should have been set up and sufficient monies deposited in the reserve account as indicated by the reserve study. This has never been done. (See Exhibits A, B, C and D)
2. As required in 2013 ORS 100.200, the homeowners' association should have been turned over to the owners in its entirety. This has never been done. (See Exhibits E and F)

My husband, David E. Reno, and I are current owners of Unit B7 at 1150 Hemlock Street. We have tried unsuccessfully to have Mr. Prater comply with these provisions of ORS 100, Condominiums.

Because our unit is currently up for sale, my husband and I have found out that lending institutions will not loan money to potential buyers of this project because of items 1 and 2 above. (See Exhibits J and K)

If Mr. Prater is not required to comply with the law before he finishes his project, we will, as owners, have no recourse but to file a complaint with the Real Estate Commissioner requesting the commissioner order Jerry Prater Construction to desist and refrain from

EXHIBIT J

Florence Planning Commission
Page 2
October 15, 2014

violating such provisions or from further sale of condominium units. (See Exhibits G, H and I)

The City of Florence will have a condominium development that cannot be sold.

None of what we ask Mr. Prater to do is onerous; all that we ask is required by law; and all that we ask should have been done by Mr. Prater years ago.

Please do not hesitate contacting me at 541-991-0557 or via email at preno47@hotmail.com if you have any questions or would like any further information or clarification. Thank you very much for your consideration of the above request.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patricia P. Reno".

Patricia P. Reno

Enclosures

LIST OF EXHIBITS

Exhibit A

Chapter 100 Condominiums (Table of Contents).

Exhibit B

2013 ORS 100.175, Reserve account for maintaining, repairing and replacing common elements.

Exhibit C

Email chain from Michael Hanifin, Land Development Assistant, Oregon Real Estate Agency, Salem, last dated 11/26/13, stating there was no reserve study filed by Whispering Pines Condominiums.

Exhibit D

Discussion of Reserve Account.

Exhibit E

2013 ORS 100.210, Turnover meeting; notice; transfer of control.

Exhibit F

Discussion of homeowners' association turnover.

Exhibit G

2013 ORS 100.635, Filing with commissioner; fee.

Exhibit H

2013 ORS 100.640, Filing; required documents and information.

Exhibit I

2013 ORS 100.905, Cease and desist order; injunction.

Exhibit J

Condominium Resales - Buyer Advisory (see line 218).

Exhibit K

Chase Condo Certification Questionnaire.

Exhibit A



Chapter 100 Condominiums

General Provisions

- § 100.005 Definitions
- § 100.010 Short title
- § 100.015 Rules
- § 100.020 Condominium provisions
- § 100.022 Application of zoning, subdivision, building code or real property law to condominium
- § 100.025 Rule against perpetuities

Creation Of Unit Ownership

- § 100.100 Property submitted to unit ownership by declaration
 - § 100.102 Leasehold condominium submitted to unit ownership
 - § 100.103 Effect of submission of leasehold condominium to unit ownership
 - § 100.105 Contents of declaration
 - § 100.110 Approval of declaration, supplemental declaration or amendment required
 - § 100.115 Recording declaration and plat
 - § 100.116 Plat amendment
 - § 100.117 Correction amendment to declaration or bylaws
- more...

Flexible Condominiums

- § 100.150 Declarants options until termination date
- § 100.155 Variable property

Rights And Duties Of Declarant

- § 100.170 Easement held by declarant
- § 100.175 Reserve account for maintaining, repairing and replacing common elements

Warranties On New Units

- § 100.185 Express warranties

Declarant Control; Turnover

- § 100.200 Declarant control of association
- § 100.205 Transitional committee
- § 100.210 Turnover meeting

Special Declarant Rights

- § 100.220 Liabilities and obligations arising from transfer of special declarant right
- § 100.225 Acquisition of special declarant rights by successor declarant

Document Filing

- § 100.250 Documents required to be filed with Real Estate Agency
- § 100.255 Processing of documents filed with Real Estate Agency
- § 100.260 Condominium Information and Annual Reports
- § 100.265 Annual Report
- § 100.275 Application of ORS 100.250 to 100.280
- § 100.280 Termination of filing Condominium Information Report
- § 100.285 Resignation of designated agent
- § 100.290 Rules

Conversion Condominiums

- § 100.300 Inapplicability of ORS 100.301 to 100.320 to transient lodgings
- § 100.301 Definitions for ORS 100.301 to 100.320
- § 100.305 Conversion condominium
- § 100.310 Rights of tenants in conversion
- § 100.315 Improvements in conversion condominium during notice period

§ 100.320 Authority of city or county to require developer to pay tenant moving expenses

Association Of Unit Owners; Management Of Property; Encumbrances; Conveyances

§ 100.405 Association of unit owners

§ 100.407 Annual and special meetings of association

§ 100.408 Quorum for meeting of association

§ 100.409 Rules of order

§ 100.410 Adoption of bylaws

§ 100.412 Annual budget

§ 100.415 Contents of bylaws

§ 100.416 Criteria for board of directors membership

more...

Attributes And Duties Of Ownership

§ 100.505 Status and ownership of units

§ 100.510 Units and common elements distinguished

§ 100.515 Interest of units in common elements

§ 100.520 Easement held by units and common elements

§ 100.525 Voting or consenting

§ 100.530 Allocation of common profits and expenses

§ 100.535 Maintenance and improvement of units

§ 100.540 Use and maintenance of common elements

more...

Removal Of Property From Unit Ownership

§ 100.600 Termination of association or removal of real property by unit owners

§ 100.605 Removal of property from association

§ 100.610 Common ownership of property removed from unit ownership

§ 100.615 Action for partition

§ 100.620 Termination or removal no bar to resubmission

Dividing Or Converting Units

§ 100.625 Procedure for dividing or converting units

Electric Vehicle Charging Stations

§ 100.627 Electric vehicle charging stations

Regulation Of Sales; Filing Requirements

§ 100.635 Filing with commissioner

§ 100.640 Filing

§ 100.645 Filing information to be kept current

§ 100.650 Service of process on nonresident developer

§ 100.655 Disclosure statement

§ 100.660 Nonresidential condominium or security filing

§ 100.665 Exemption to certain disclosure and notice requirements

§ 100.670 Fees

more...

Inspection Of Condominium; Disclosure Statement

§ 100.700 Inspection of condominium

§ 100.705 Sale prohibited prior to issuance of disclosure statement

§ 100.710 Inspection deposit

Requirements For Sale

§ 100.720 Conditions prerequisite to sale

§ 100.725 Documents prerequisite to execution of sale agreement and conveyance of unit

§ 100.730 Cancellation of sale of unit

§ 100.735 Waiver of right to cancel

§ 100.740 Notice to purchaser of cancellation rights

§ 100.745 Escrow documents required of successor to vendors interest

§ 100.750 Inspection of records

Prohibited Acts

- § 100.770 Fraud and deceit prohibited
- § 100.775 False or misleading advertising prohibited
- § 100.780 Waiver of legal rights void
- § 100.785 Blanket encumbrance prohibited

Enforcement

- § 100.900 Civil penalty
- § 100.905 Cease and desist order
- § 100.910 Use of fees

Miscellaneous

- § 100.920 Changes or actions that require approval or consent of mortgagee

Criminal Penalties

- § 100.990 Criminal penalties

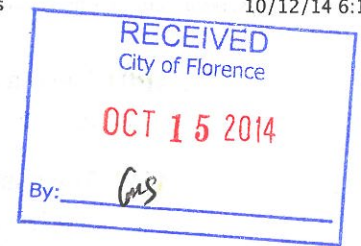
Source:

Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

Currency Information

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Exhibit B

**2013 ORS § 100.175¹****Reserve account for maintaining, repairing and replacing common elements**

- reserve study
- maintenance plan

- (1) The declarant, on behalf of the association of unit owners, shall:
 - (a) Conduct an initial reserve study as described in subsection (3) of this section;
 - (b) Prepare an initial maintenance plan as described in subsection (4) of this section;
and
 - (c) Establish a reserve account as provided in subsection (2) of this section.
- (2) (a) A reserve account shall be established to fund major maintenance, repair or replacement of those common elements all or part of which will normally require major maintenance, repair or replacement in more than one and less than 30 years, for exterior painting if the common elements include exterior painted surfaces, and for such other items as may be required by the declaration or bylaws. The reserve account need not include:
 - (A) Items that can reasonably be funded from the general budget or other funds or accounts of the association; or
 - (B) A reserve for limited common elements for which maintenance and replacement are the responsibility of one or more, but less than all, unit owners under the provisions of the declaration or bylaws.
- (b) The reserve account shall be established in the name of the association of unit owners. The association is responsible for administering the account and for making periodic payments into the account.
- (c) The reserve portion of the initial assessment determined by the declarant shall be based on:
 - (A) The reserve study described in subsection (3) of this section;
 - (B) In the case of a conversion condominium, the statement described in ORS 100.655 (Disclosure statement) (1)(g); or
 - (C) Other reliable information.

- (d) The reserve account must be funded by assessments against the individual units for the purposes for which the reserve account is established.
- (e) The assessment under this subsection accrues from the time of the conveyance of the first individual unit assessed as provided in ORS 100.530 (Allocation of common profits and expenses).
- (3) (a) The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements. Subject to subsection (10) of this section, after a review of the reserve study or the reserve study update, the board may, without any action by the unit owners:

 - (A) Adjust the amount of payments in accordance with the study or review; and
 - (B) Provide for other reserve items that the board of directors, in its discretion, may deem appropriate.

(b) The reserve study shall:

 - (A) Identify all items for which reserves are or will be established;
 - (B) Include the estimated remaining useful life of each item as of the date of the reserve study; and
 - (C) Include for each item, as applicable, an estimated cost of maintenance and repair and replacement at the end of the items useful life.
- (4) (a) The board of directors shall prepare a maintenance plan for the maintenance, repair and replacement of all property for which the association has maintenance, repair or replacement responsibility under the declaration or bylaws or this chapter. The maintenance plan shall:

 - (A) Describe the maintenance, repair and replacement to be conducted;
 - (B) Include a schedule for the maintenance, repair and replacement;
 - (C) Be appropriate for the size and complexity of the maintenance, repair and replacement responsibility of the association; and
 - (D) Address issues that include but are not limited to warranties and the useful life of the items for which the association has maintenance, repair or replacement responsibility.

(b) The board of directors shall review and update the maintenance plan described under this subsection as necessary.
- (5) (a) Except as provided in paragraph (b) of this subsection, the reserve study requirements under subsection (3) of this section and the maintenance plan requirements under subsection (4) of this section do not apply to a condominium consisting of one or two units, excluding units used for parking, storage or other uses ancillary to a unit:

- ORS 100.175 – Reserve account for maintaining, repairing and replacing common elements – 2013 Oregon Revised Statutes

Assessments paid into the reserve account are the property of the association of unit
(9) owners and are not refundable to sellers of units.

(10) (a) Except as provided under paragraph (b) of this subsection, unless the board of directors under subsection (3) of this section determines that the reserve account will be adequately funded for the following year, the board of directors or the owners may not vote to eliminate funding a reserve account required under this section or under the declaration or bylaws.

(b) Following the turnover meeting described in ORS 100.210 (Turnover meeting), on an annual basis, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year. [Formerly 94.072; 1997 c.816 §7; 1999 c.677 §44; 2001 c.756 §34; 2003 c.569 §27; 2005 c.543 §2; 2007 c.409 §23; 2009 c.641 §23; 2011 c.532 §7]

• • •

§§ 100.005 (Definitions) to 100.910 (Use of fees)

(formerly 94.004 to 94.480)

See also annotations under ORS 91.505 to 91.675 in permanent edition.

Notes of Decisions

Even if declarations filed for purpose of bringing development within condominium law were defective for failure to conform to statutory requirements, development was not vitiated but deficiencies would constitute mistake in transaction thus making instrument eligible for reformation in equity. *Dickey v. Barnes, Mossberg*, 268 Or 226, 519 P2d 1252 (1974)

Developers of planned unit developments which are not organized as condominiums cannot claim the tax advantages of the Unit Ownership Law. *Brooks Resources v. Dept. of Rev.*, 276 Or 1177, 558 P2d 312 (1976)

Purchasers of condominium units are automatically members of the unit owners association and subject to its declaration and bylaws; where those declarations and bylaws provide discretion to the Board of Directors to assess for fees necessary to create a unified plan for the development and operation of the condominium, and the purchaser has alleged no abuse of discretion, the judgment of the Board of Directors is upheld. *Assn. of Unit Owners of the Inn of the Seventh Mountain v. Gruenfeld*, 277 Or 259, 560 P2d 641 (1977)

Acquisition of property by condominium association is not limited to property subject to annexation requirements. *Giers Liquor v. Association of Unit Owners*, 124 Or App 365,

862 P2d 560 (1993)

Law Review Citations

16 WLR 253 (1979)

Chapter 100

Notes of Decisions

This chapter does not authorize regulation by the Real Estate Division of sales of right to use time share interests in condominiums. *Royal Aloha Partners v. Real Estate Division*, 59 Or App 564, 651 P2d 1350 (1982)

Law Review Citations

18 WLR 95 (1982)

Related Statutes³

- 100.020
Condominium provisions
- 100.210
Turnover meeting
- 100.412
Annual budget
- 100.415
Contents of bylaws
- 100.480
Maintaining documents and records
- 100.530
Allocation of common profits and expenses
- 100.640
Filing
- 100.655

Disclosure statement

¹ Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

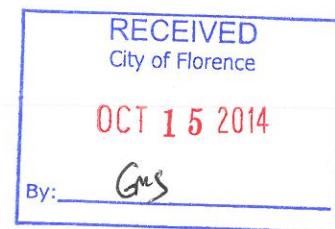
² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 100*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano100.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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Exhibit C

[Print](#)[Close](#)

FW: Whispering Pines Condominiums

From: **Hanifin, Michael** (michael.b.hanifin@state.or.us)
Sent: Tue 11/26/13 8:29 PM
To: Pat Reno (preno47@hotmail.com) (preno47@hotmail.com)
1 attachment
Whispering Pines annual reports.pdf (356.3 KB)

I have looked again and I can't find a reserve study. Let me know if there's anything else I can help you with.

I'll keep the file on hand for another week in case you have other requests.

Respectfully,

Michael Hanifin | Land Development Assistant

Oregon Real Estate Agency

1177 Center St. NE, Salem, OR 97301

Phone: 503-378-4632 | Fax: 503-378-2491

michael.b.hanifin@state.or.us | www.rea.state.or.us

From: Hanifin, Michael
Sent: Tuesday, November 26, 2013 5:08 PM
To: 'Pat Reno'
Subject: RE: Whispering Pines Condominiums

Pat,

I have the file in hand but I'm not seeing the reserve study. I will take another look.

Attached are the last 5 years of annual reports (no charge).

Respectfully,

Michael Hanifin | Land Development

Oregon Real Estate Agency

1177 Center St. NE, Salem, OR 97301

Phone: 503-378-4632 | Fax: 503-378-2491

michael.b.hanifin@state.or.us | www.rea.state.or.us

From: Pat Reno [<mailto:preno47@hotmail.com>]

Sent: Tuesday, November 12, 2013 3:10 PM

To: Hanifin, Michael

Subject: Whispering Pines Condominiums

Michael,

Thank you very much for your help earlier today.

As you suggested, this is a formal request for copies of documents filed for Whispering Pines Condominium, 1150 Hemlock St, Florence, OR 97439. Jerry Prater is the Agent and Chairperson of the Association, and the address of record is 87829 Highway 101N, Florence, OR 97439. The documents being requested are the annual reports for the past 5 years, as well as the reserve study that was required to be filed initially for the condominium complex. I understand that there is a charge of 25 cents per page, and that you will let me know how many pages are included in this request.

If you have any questions, please do not hesitate contacting me at 541-991-0557. Thank you very much for your assistance, Michael!

Pat Reno

1150 Hemlock St B7

Florence

OCT 15 2014

GWS

EXHIBIT D
DISCUSSION OF RESERVE STUDY AND ACCOUNT

Chapter 100.175, Reserve account for maintaining, repairing and replacing common elements. (See Exhibit B)

This chapter requires that the declarant shall: "(a) Conduct an initial reserve study as described in subsection (3) of this section; (b) Prepare an initial maintenance plan as described in subsection (4) of this section; and (c) Establish a reserve account as provided in subsection (2) of this section."

It also states that "The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements."

According to the State of Oregon, a reserve study was never submitted for this project by Mr. Prater or anyone associated with Jerry Prater Construction or the Whispering Pines Homeowners Association (see Exhibit C). In addition, when Mr. Prater was asked by me about this requirement, he insisted such a study was not required, had not been done and was not going to be done.

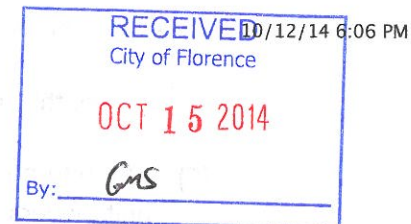
Without such a study, purchasers of units within this development have no idea whether or not sufficient funds have been and are being collected to complete future repairs such as a new roof, new driveway, painting, replacement of items, etc.

Requiring Mr. Prater to complete such a study is doing nothing more than requiring him to obey the law - which he should have done when he began this project in 2005, nine years ago.

According to this chapter, a reserve account must also be set up and sufficient funds deposited into that account each month by Mr. Prater to meet the funding requirements that the reserve study shows. According to Mr. Prater and Chris Vaughn, CPA in Reedsport, a reserve account has never been set up and no funds have been deposited into such an account. Instead, all funds received by the Whispering Pines Homeowners Association is deposited into a checking account from which all bills are paid. There is no separate reserve account.

The fact that no reserve study was done, no separate account set up and no funds deposited into such account is in violation of the Oregon Condominium Act. In addition, as shown by Exhibits J and K, it makes it virtually impossible to sell a unit that requires financing.

Exhibit E



2013 ORS § 100.210¹ Turnover meeting

- notice
- transfer of control

- (1) A turnover meeting shall be called by the declarant within 90 days of the expiration of any period of declarant control reserved in the declaration or bylaws under ORS 100.200 (Declarant control of association). If no control has been reserved, the declarant shall call the turnover meeting within 90 days of the earlier of:
 - (a) In a single stage condominium, three years from the date of conveyance of the first unit to a person other than a successor declarant or conveyance of 50 percent of the units.
 - (b) In a staged or flexible condominium, seven years from the date of conveyance of the first unit to a person other than the declarant or conveyance to persons other than a successor declarant of 50 percent of the total number of units which the declarant may submit to the provisions of this chapter under ORS 100.125 (Annexation of additional property) or 100.150 (Declarants options until termination date).
- (2) The declarant shall give notice of the turnover meeting in accordance with the bylaws of the condominium to each unit 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 where it is to be held.
- (3) If the meeting required under subsection (1) of this section is not called by the declarant within the time specified, the meeting may be called and notice given by a unit owner or any first mortgagee of a unit.
- (4) At the turnover meeting:
 - (a) The declarant shall relinquish control of the administration of the association of unit owners and the unit owners shall assume the control;
 - (b) If a quorum of the unit owners is present, the unit owners shall elect not fewer than the number of directors sufficient to constitute a quorum of the board of directors in accordance with the declaration or bylaws of the condominium; and
 - (c) The declarant shall deliver to the association the items specified in subsection (5)

of this section.

- (5)** At the turnover meeting the declarant shall deliver to the association all property of the unit owners and the association of unit owners held or controlled by the declarant including, but not limited to, the following items, if applicable:
- (a)** The original or a photocopy of the recorded declaration and bylaws of the condominium and any supplements and amendments thereto.
 - (b)** A copy of the articles of incorporation.
 - (c)** The minute books, including all minutes, and other books and records of the association.
 - (d)** The reserve study, the maintenance plan and all updates described in ORS 100.175 (Reserve account for maintaining, repairing and replacing common elements) and other sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175 (Reserve account for maintaining, repairing and replacing common elements).
 - (e)** Any rules and regulations which have been promulgated.
 - (f)** Resignations of officers and members of the board of directors who are required to resign because of the expiration of any period of declarant control reserved under ORS 100.200 (Declarant control of association).
 - (g)** A financial statement. The financial statement:
 - (A)** Must consist of a balance sheet and an income and expense statement for the preceding 12-month period or the period following the recording of the declaration, whichever period is shorter.
 - (B)** Must be reviewed, in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, by an independent certified public accountant licensed in the State of Oregon if the annual assessments of an association of unit owners exceed \$75,000.
 - (h)** Association funds or control thereof, including, but not limited to, funds for reserve required under ORS 100.530 (Allocation of common profits and expenses) (3)(b) and any bank signature cards.
 - (i)** All tangible personal property that is property of the association and an inventory of such property.
 - (j)** A copy of the following, if available:
 - (A)** The as-built architectural, structural, engineering, mechanical, electrical and plumbing plans.
 - (B)** The original specifications indicating thereon all material changes.

- (C) The plans for underground site service, site grading, drainage and landscaping together with cable television drawings.
 - (D) Any other plans and information relevant to future repair or maintenance of the property.
 - (k) Insurance policies.
 - (L) Copies of any occupancy permits which have been issued for the condominium.
 - (m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year prior to the date the unit owners assume control of the administration of the association of unit owners.
 - (n) A list of the general contractor and the subcontractors responsible for construction or installation of the major plumbing, electrical, mechanical and structural components of the common elements.
 - (o) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the records of the declarant.
 - (p) Leases of the common elements and any other leases to which the association is a party.
 - (q) Employment or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service.
 - (r) Any other contracts to which the association of unit owners is a party.
- (6) In order to facilitate an orderly transition, during the three-month period following the turnover meeting, the declarant or an informed representative shall be available to meet with the board of directors on at least three mutually acceptable dates to review the documents delivered under subsection (5) of this section.
- (7) If the declarant has complied with this section, unless the declarant otherwise has sufficient voting rights as a unit owner to control the association, the declarant is not responsible for the failure of the unit owners to elect the number of directors sufficient to constitute a quorum of the board of directors and assume control of the association in accordance with subsection (4) of this section. The declarant shall be relieved of any further responsibility for the administration of the association except as a unit owner of any unsold unit.
- (8) If the unit owners present do not constitute a quorum or the unit owners fail to elect the number of directors sufficient to constitute a quorum of the board of directors at the turnover meeting held in accordance with subsection (1) of this section:
- (a) At any time before the election of the number of directors sufficient to constitute a

quorum, a unit owner or first mortgagee of a unit may call a special meeting for the purpose of election of directors and shall give notice of the meeting in accordance with the notice requirements in the bylaws for special meetings. The unit owners and first mortgagees present at the special meeting shall select a person to preside over the meeting.

- (b) A unit owner or first mortgagee of a unit may request a court to appoint a receiver as provided in ORS 100.418 (Receivership for failure of association to fill vacancies on board of directors). [Formerly 94.091; 1999 c.677 §46; 2001 c.756 §36; 2003 c.803 §21; 2007 c.409 §24]

• • •

§§ 100.005 (Definitions) to 100.910 (Use of fees)

(formerly 94.004 to 94.480)

See also annotations under ORS 91.505 to 91.675 in permanent edition.

Notes of Decisions

Even if declarations filed for purpose of bringing development within condominium law were defective for failure to conform to statutory requirements, development was not vitiated but deficiencies would constitute mistake in transaction thus making instrument eligible for reformation in equity. *Dickey v. Barnes, Mossberg*, 268 Or 226, 519 P2d 1252 (1974)

Developers of planned unit developments which are not organized as condominiums cannot claim the tax advantages of the Unit Ownership Law. *Brooks Resources v. Dept. of Rev.*, 276 Or 1177, 558 P2d 312 (1976)

Purchasers of condominium units are automatically members of the unit owners association and subject to its declaration and bylaws; where those declarations and bylaws provide discretion to the Board of Directors to assess for fees necessary to create a unified plan for the development and operation of the condominium, and the purchaser has alleged no abuse of discretion, the judgment of the Board of Directors is upheld. *Assn. of Unit Owners of the Inn of the Seventh Mountain v. Gruenfeld*, 277 Or 259, 560 P2d 641 (1977)

Acquisition of property by condominium association is not limited to property subject to annexation requirements. *Giers Liquor v. Association of Unit Owners*, 124 Or App 365, 862 P2d 560 (1993)

Law Review Citations

16 WLR 253 (1979)

Chapter 100

Notes of Decisions

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Law Review Citations

18 WLR 95 (1982)

Related Statutes²

- 100.005
Definitions
- 100.020
Condominium provisions
- 100.175
Reserve account for maintaining, repairing and replacing common elements
- 100.205
Transitional committee
- 100.415
Contents of bylaws
- 100.418
Receivership for failure of association to fill vacancies on board of directors
- 100.425
Use of written ballot for approving or rejecting matters subject to meeting of unit owners
- 100.480
Maintaining documents and records

- 100.530

Allocation of common profits and expenses

¹ Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 100*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano100.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

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By: GS

EXHIBIT F
DISCUSSION OF HOMEOWNERS' ASSOCIATION TURNOVER

Chapter 100.200, Declarant Control of Association. (See Exhibit E)

This chapter requires that the Declarant (developer) turn over the homeowners association to the owners when certain circumstances occur. While the provisions for turnover were met in 2012, Mr Prater has not turned the homeowners association over to the owners.

Mr. Prater did call an owner's meeting in 2013, during which he informed us of the following:

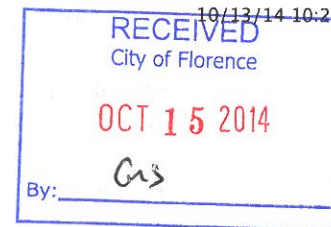
- Buildings E and F had not been turned over to the homeowners association but were the private property of Jerry Prater Construction/Jerry Prater.
- Mr. Prater was not going to turn Buildings E and F over to the homeowners association at this time.
- All the units in Buildings E and F were being used as rentals and none had been sold.
- Mr. Prater was not paying dues to the homeowners' association for these units.
- The homeowners association only consisted of Buildings A, B, C and D.
- Mr. Prater/Jerry Prater Construction wanted to turn over the homeowners association to the owners, which only included Buildings A, B, C and D.
- Mr. Prater would retain complete control over Buildings E and F.
- Mr. Prater would continue to have his tenants drive through Phase 1 of the development without compensation to the homeowners association for wear and tear.

The owners in attendance told Mr. Prater at that time that we would take over all of the homeowners association or none of it.

The owners also told Mr. Prater at that time that a reserve study, account and funding had to be completed before we would take over the homeowners association. (See Exhibit D)

Mr. Prater refused to turn it all over to us and has remained in complete charge of the homeowners association.

Exhibit G



2013 ORS § 100.635¹

Filing with commissioner

• fee

Except as provided by ORS 100.660 (Nonresidential condominium or security filing) and 100.665 (Exemption to certain disclosure and notice requirements), prior to negotiating within this state for the sale of a condominium unit located in another state, or prior to the sale of any condominium unit located within this state, the developer shall file the following information with the Real Estate Commissioner:

- (1) General information on the condominium, including:
 - (a) The name and address of the condominium and the county in which the condominium is located; and
 - (b) The name, address and telephone number of the developer.
- (2) Two copies of the disclosure statement for the condominium prepared in accordance with ORS 100.655 (Disclosure statement).
- (3) The documents for and other information on the condominium as required by ORS 100.640 (Filing).
- (4) The filing shall be accompanied by a fee as provided in ORS 100.670 (Fees). [Formerly 94.331]

...

§§ 100.005 (Definitions) to 100.910 (Use of fees)

(formerly 94.004 to 94.480)

See also annotations under ORS 91.505 to 91.675 in permanent edition.

Notes of Decisions

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Purchasers of condominium units are automatically members of the unit owners association and subject to its declaration and bylaws; where those declarations and bylaws provide discretion to the Board of Directors to assess for fees necessary to create a unified plan for the development and operation of the condominium, and the purchaser has alleged no abuse of discretion, the judgment of the Board of Directors is upheld. *Assn. of Unit Owners of the Inn of the Seventh Mountain v. Gruenfeld*, 277 Or 259, 560 P2d 641 (1977)

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Law Review Citations

16 WLR 253 (1979)

Chapter 100

Notes of Decisions

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Law Review Citations

18 WLR 95 (1982)

Related Statutes^a

- 100.015
Rules
- 100.020

Condominium provisions

- 100.105
Contents of declaration
- 100.220
Liabilities and obligations arising from transfer of special declarant right
- 100.640
Filing
- 100.645
Filing information to be kept current
- 100.650
Service of process on nonresident developer
- 100.655
Disclosure statement
- 100.665
Exemption to certain disclosure and notice requirements
- 100.900
Civil penalty
- 100.905
Cease and desist order
- 100.990
Criminal penalties

¹ Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 100*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano100.html (2013) (last accessed Apr. 27, 2014).

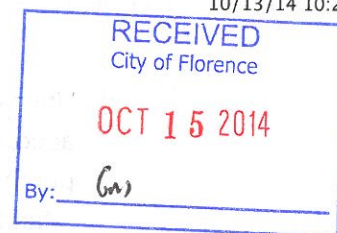
³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

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Exhibit H



2013 ORS § 100.640¹

Filing

• required documents and information

The following documents and information shall be submitted to the Real Estate Commissioner as part of the filing required under ORS 100.635 (Filing with commissioner):

- (1) A copy of the proposed or recorded declaration or supplemental declaration of condominium ownership drawn in conformance with ORS 100.105 (Contents of declaration) or 100.120 (Supplemental declaration and plat required to annex additional property or reclassify variable property), or the law applicable in the state where the condominium was created;
- (2) A copy of the proposed or recorded bylaws drawn in conformance with ORS 100.415 (Contents of bylaws) or the law applicable in the state where the condominium was created;
- (3) A copy of the full size plat prepared in conformance with ORS 100.115 (Recording declaration and plat) (1) or the law applicable in the state where the condominium was created, or a copy of the site plan;
- (4) A statement from the county assessor or county surveyor that the name for the condominium is acceptable under ORS 100.105 (Contents of declaration) (6);
- (5) A copy of a preliminary title report, title insurance policy or condominium guarantee that has been issued within the preceding 30 days, including a map showing the location of property described in the report, policy or guarantee or other evidence of title satisfactory to the commissioner;
- (6) A copy of all restrictive covenants, reservations or other documents that may create an encumbrance on or limit the use of the property other than those restrictions contained in the declaration or bylaws;
- (7) A copy of the reserve study required by ORS 100.175 (Reserve account for maintaining, repairing and replacing common elements) and other sources of information that serve as a basis for calculating reserves in accordance with ORS 100.175 (Reserve account for maintaining, repairing and replacing common elements), unless the information is contained in the disclosure statement;
- (8) The following sample forms:

- (a) Unit sales agreement, including the notice to purchaser of cancellation rights in accordance with ORS 100.730 (Cancellation of sale of unit) and 100.740 (Notice to purchaser of cancellation rights), the statement required by ORS 93.040 (Mandatory statements for sales agreements, earnest money receipts or other instruments for conveyance of fee title to real property) (2) and any warranty required under ORS 100.185 (Express warranties); **and**
 - (b) A receipt for documents required under ORS 100.725 (Documents prerequisite to execution of sale agreement and conveyance of unit);
- (9) If required by ORS 100.680 (Escrow):
 - (a) A copy of the escrow agreement drawn in conformance with ORS 100.680 (Escrow) and executed by both the declarant and the escrow agent. If individual escrow agreements or instructions are to be executed by the purchaser, other than the standard escrow instruction required by the escrow agent, submit sample form and a letter from the escrow agent, agreeing to the establishment of the escrows and the procedure set forth in the sample form; **and**
 - (b) A unit sales agreement drawn in conformance with ORS 100.680 (Escrow);
- (10) If any of the sales will be by means of an installment contract of sale:
 - (a) A copy of the escrow agreement or escrow instructions executed by the developer and the escrow agent providing for the establishment of collection escrows and the deposit of documents in accordance with ORS 100.720 (Conditions prerequisite to sale); **and**
 - (b) The proposed installment contract of sale form, if available;
- (11) Any other documents by which the purchasers will be bound;
- (12) Any report or disclosure statement issued for the condominium, by the federal government and any other state; **and**
- (13) A statement of any additional facts or information which the developer desires to submit to the commissioner. [Formerly 94.353; 1997 c.816 §13; 2001 c.756 §53; 2007 c.409 §35; 2007 c.410 §20; 2009 c.641 §48]

...

§§ 100.005 (Definitions) to 100.910 (Use of fees)

(formerly 94.004 to 94.480)

See also annotations under ORS 91.505 to 91.675 in permanent edition.

Notes of Decisions

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Law Review Citations

18 WLR 95 (1982)

Related Statutes³

- 100.020
Condominium provisions
- 100.110
Approval of declaration, supplemental declaration or amendment required
- 100.635
Filing with commissioner

¹ Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 100*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano100.html (2013) (last accessed Apr. 27, 2014).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

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Exhibit I



2013 ORS § 100.905¹ Cease and desist order

• injunction

- (1) Whenever the Real Estate Commissioner finds that any developer or other person is violating any of the provisions of ORS 100.015 (Rules), 100.635 (Filing with commissioner) to 100.730 (Cancellation of sale of unit) and 100.740 (Notice to purchaser of cancellation rights) to 100.780 (Waiver of legal rights void) or the rules adopted thereunder or of the alternative requirements of the commissioner prescribed pursuant to ORS 100.720 (Conditions prerequisite to sale) (3), the commissioner may order the persons to desist and refrain from violating such provisions or requirements, or from the further sale of condominium units.
- (2) Whenever the commissioner finds that any developer or other person is violating, or has violated or is about to violate, any of the provisions of ORS 100.015 (Rules), 100.635 (Filing with commissioner) to 100.730 (Cancellation of sale of unit) and 100.740 (Notice to purchaser of cancellation rights) to 100.780 (Waiver of legal rights void) or the rules adopted thereunder or the alternative requirements of the commissioner prescribed pursuant to ORS 100.720 (Conditions prerequisite to sale) (3), the commissioner may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where such person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against such person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in such violation, to enjoin such person, firm or corporation or any other person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the assets of the defendant where such appointment is appropriate. [Formerly 94.475]

• • •

§§ 100.005 (Definitions) to 100.910 (Use of fees)

(formerly 94.004 to 94.480)

See also annotations under ORS 91.505 to 91.675 in permanent edition.

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Law Review Citations

18 WLR 95 (1982)

Related Statutes³

- 100.020
Condominium provisions

¹ Legislative Counsel Committee, *CHAPTER 100—Condominiums*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors100.html (2013) (last accessed Apr. 27, 2014).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 100*, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano100.html (2013) (last accessed Apr. 27, 2014).

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Exhibit J

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CONDOMINIUM RESALES – BUYER ADVISORY

1 *The following Advisory is intended to briefly address some of the practical and legal issues that can arise in the purchase of a*
2 *condominium previously occupied. What follows is a summary of a few of the more important issues – however, it is by no*
3 *means exhaustive. Your real estate broker is not an expert in condominium development law, construction law, engineering, or*
4 *other matters related to the physical structure or systems. You should secure your own independent expert(s) when purchasing*
5 *a condominium, especially a qualified home inspector. Caveat: This Advisory does not constitute legal advice, and should not*
6 *be relied upon in lieu of securing legal counsel from an attorney familiar with condominiums.*

7 **1. FORMS.** Oregon law requires that sellers of pre-owned condominiums, as well as sellers of one-to-four family dwellings, must provide
8 their buyers with a completed Seller's Property Disclosure form. However, the form addresses only limited issues regarding
9 condominiums, and there is much more that buyers should know before making a final purchasing decision. It is recommended that
10 buyers use the Residential Condominium Real Estate Sale Agreement (Form No. OREF-011) when making an offer to purchase a
11 condominium, since that form requests that sellers provide their buyers with certain documents and information that goes well beyond
12 those items addressed in the Seller's Property Disclosure form.

13 **2. HOMEOWNERS' ASSOCIATION ("HOA") DUES AND ASSESSMENTS.** One significant financial issue for condominium purchasers
14 is to investigate the past, present, and anticipated future HOA dues. When are dues assessed – e.g. monthly, annually, etc.? How
15 much are they and how long have they been at their current level? Try to obtain copies of a two or three year assessment history.
16 Have the dues increased significantly over the years? If so, why? Are there any large or special assessments planned (or being
17 discussed) by the Board of Directors? How do the HOA dues compare to those at other comparable condominium developments?
18 What do they cover, e.g. sewer, water, reserves, insurance, etc.? Do the dues include an allocation for a reserve fund for capital
19 improvements and major repairs? How long have contributions been made to this fund? What are the reserves being set aside for and
20 will they be sufficient to replace or repair major capital items such as the roof, parking area or heating and cooling systems - or will there
21 be a large special assessment because the reserves are inadequate? Buyers should consider obtaining a copy of all recent budgets
22 and other financial information regarding the HOA – preferably going back at least for the last 12 months. Oregon law (ORS 100)
23 requires that the condominium Board of Directors conduct a reserve study annually. Buyers may wish to verify that this is being
24 done and review the studies. How realistic have they been? Copies of the HOA's minutes for the last 12 months or more should be
25 secured. Speaking with the treasurer of the HOA may be helpful. Is there any litigation existing or planned by the HOA for claims
26 against the developer or others for construction defects or for any other reasons? Is there a possibility of litigation by (or against) the
27 HOA? If so, the buyer should consult with an attorney to secure further information.

28 **3. DECLARATION AND BYLAWS.** The declaration is the document that sets out the rules and regulations for the condominium unit
29 owners. They are generally considered to be legally binding and enforceable. Violations can result in fines. The HOA has the power to
30 file a lien on the owner's condominium unit for nonpayment of the HOA dues and/or fines. There can be personal liability for
31 nonpayment, as well. The bylaws govern the operation and business affairs of the HOA, such as the rules for election of officers and
32 directors, voting, and general governance of the HOA. Not all condominium documents are the same. Many place limitations on pets,
33 vehicle parking, rental of units, in-home businesses, and other important issues. (Note: Some lenders place limitations on the
34 percentage of units that may be rented, and if too many, financing may be difficult or impossible to obtain.) Buyers should also review
35 any informal guidelines or rules that may have been established by the HOA which are not found in the recorded declaration or bylaws.
36 Are the declaration and bylaws clear and understandable? Are there any other restrictions contained in them that could interfere with
37 the buyer's intended use and enjoyment of their unit?

38 **4. ADMINISTRATION OF THE HOA.** How does the HOA enforce violations of the declaration or bylaws? Have they had to resort to
39 lawsuits to do so? Do the officers of the HOA get along with the rest of the unit owners or is there an adversarial relationship? Some
40 HOAs may be run by a small group of unit owners who become overly zealous in how they approach their responsibilities. Is there
41 professional third-party management? If so, what is the cost and are they doing a good job? Are violations enforced uniformly in a
42 timely and fair manner? Current unit owners should be asked whether they are satisfied with management, and if not, why not.

43 **5. THE PHYSICAL STRUCTURE.** The quality of construction of condominiums can vary greatly. Occasionally, pre-existing apartments
44 or other structures are converted into condominiums. Sometimes these conversions, such as lofts, were originally designed and built for
45 other purposes, such as storage facilities. Although there can be very good conversions, some may pose a greater risk that portions of
46 the structure, such as the mechanical systems, roof, or exterior, are not as modern or effective as those used in new projects.
47 This can be especially true of electrical, plumbing and HVAC systems. Soundproofing is especially important. This applies not just
48 to condo conversions, but to developments that were originally built as condominiums, since the proximity of neighbors is much

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49 closer in this type of community living than in detached single family residences. Checking with other unit owners is essential
 50 before entering into a binding purchase contract. Is there any obvious deferred maintenance either in the unit itself, or in any of the
 51 common areas, such as the roof or parking area? Maintenance of the common areas, including the limited common areas (such as
 52 exterior decks or patios) is usually an HOA responsibility, so deferred maintenance could reflect some financial inability of the HOA
 53 or neglect by management. Is the siding a manmade product, and if so, how is it holding up? Will any of the siding have to be
 54 replaced? What is the age of the roof? Where necessary, is the exterior uniformly sealed, painted and repaired? A professional
 55 home inspector should be used to evaluate the interior of the condominium unit, no matter how new it is. If possible, the inspector
 56 should be asked about any areas of concern in the limited and general common areas, as well, although special permission may be
 57 necessary from the HOA to do any intrusive or exploratory examinations or testing. Buyers should ask the seller about common
 58 area problems, such as water, drainage or flooding issues, even though they do not negatively impact the unit itself. (Note: The
 59 Seller's Property Disclosure form asks questions about the residence in general, but does not distinguish between a condominium
 60 unit and the common areas. As a result, some sellers may fail to disclose known defects in the common areas, believing that the
 61 disclosure form only deals with the unit itself.) Have there been any repair problems with the common elements, especially
 62 involving water leakage in and around the roof, decks, patios, windows or siding? The declaration should be reviewed closely on
 63 this issue – since the responsibility for repairing or replacing the windows and sliding doors, can be imposed upon the unit owner
 64 rather than the HOA. Lastly, some condominium developments included more than one building. Some were built in phases, where
 65 some buildings are older than others. Prospective purchasers should look at the development as a whole, since problems can exist
 66 in some buildings or phases, and not in others. It is for this reason that it can be valuable to speak with unit owners in diverse
 67 portions of the development to get a better understanding of any structural or maintenance problems, even if they do not affect the
 68 particular unit or common area of interest to the prospective purchaser.

69 **6. INSURANCE.** The nature and amount of insurance coverage is frequently overlooked by buyers - until it is too late. How much
 70 liability insurance does the HOA maintain in case someone is injured in a common area? Is the amount and type of coverage
 71 comparable to similar developments, and is it adequate? If the development has a pool or other recreational facilities, will there be
 72 enough coverage in the event of a personal injury claim? Similarly, is the hazard insurance coverage adequate? If one of the structures
 73 burned to the ground, would there be enough coverage to replace it? Prospective buyers should be sure to carry their own personal
 74 liability coverage as well as personal property coverage for the contents of their unit. Most carriers have policies specifically designed
 75 for condominium unit owners. Do those running the HOA have Directors and Officers (D&O) insurance, in case they are sued
 76 individually for a decision made in their official capacity? This is important for those prospective buyers who may wish to serve in a
 77 leadership role.

78 **7. DEVELOPMENT/DEVELOPER.** Some condominium projects are developed in phases. Buyers should clarify with the developer if
 79 the project is a phased development and, if so, whether all phases have been completed. If not completed, where and when is further
 80 construction planned? Also, if the condominium development is relatively new, the developer may still control the HOA due to weighted
 81 voting. If so, prospective buyers should ask how the developer is currently running the HOA. Remember, the developer's interests may
 82 not be the same as the unit owners'. Has the developer sought to amend the declaration to secure more favorable provisions? If the
 83 developer submitted an initial reserve study, as required by Oregon law, how realistic is it? Have any subsequent reserve studies
 84 resulted in a substantial increase in assessments? Unless there is an absolute prohibition against renting the units, the developer may
 85 rent unsold units to defray any overhead costs incurred during the marketing process. As noted above, the number of rental units may
 86 affect the buyer's ability to obtain financing. Is the developer paying for the assessments for all of the unsold units? If the developer has
 87 turned the HOA over to the unit owners within the last couple of years, a prospective buyer may wish to review the financial information
 88 that was delivered at the time of initial turnover. At that time did the developer deliver to the HOA all plans, budgets, insurance policies,
 89 and financial documents required by law?

90 **8. CONCLUSION.** Buyers have a significant responsibility to perform their due diligence in the purchase of a condominium – much of
 91 which is quite different than the purchase of a detached single family home. Not only must the condominium and its limited and general
 92 common elements be evaluated, but the books, records and operation of the HOA must be reviewed as well.

93 ACKNOWLEDGEMENT

94 *The undersigned Buyer(s) acknowledge that they (a) have read and understand this Advisory; (b) have been provided with a*
 95 *copy for their own files, and (c) are aware that the use of one or more experts is recommended before entering into a binding*
 96 *transaction for the purchase of a condominium.*

97 Buy~~ _____ Date _____ ← Buyer _____ Date _____ ←

98 Selling Licensee _____ Selling Firm: _____

99
100

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OREF-031

Sale Agreement # **cv7162014****FINAL AGENCY ACKNOWLEDGMENT**

1 Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent
 2 to the following agency relationships in this transaction: (1) _____ (Name of Selling Licensee)
 3 of Berkshire-Hathaway NW Real Estate (Name of Real Estate Firm) is the agent of (check one):
 4 ☐ Buyer exclusively ("Buyer Agency"). ☐ Seller exclusively ("Seller Agency"). ☐ Both Buyer and Seller ("Disclosed Limited Agency").
 5 (2) Dale A. Saari (Name of Listing Licensee)
 6 of Windermere/Florence Real Estate (Name of Real Estate Firm) is the agent of
 7 (check one): ☐ Seller exclusively ("Seller Agency"). ☐ Both Buyer and Seller ("Disclosed Limited Agency").
 8 (3) If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same
 9 principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both
 10 Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and
 11 Licensee(s).
 12 Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at
 13 the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this
 14 Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.

15 Buyer _____ Print : _____ Date _____ ←
 16 Buyer _____ Print _____ Date _____ ←
 17 Seller _____ Print David E. Reno Date _____ ←
 18 Seller _____ Print Patricia P. Reno Date _____ ←

RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT

19 **This Agreement is NOT to be used for the sale and purchase of a townhouse or a new condominium never before**
 20 **occupied. Additionally, this Agreement is intended to be a legal and binding contract. If it is not understood, seek**
 21 **competent legal advice before signing. Time is of the essence of this Agreement.**

22 **1. DEFINITIONS:** All references in this Agreement to "Licensee" and "Firm" shall refer to Buyer's and Seller's real estate agents licensed in the
 23 State of Oregon and the respective real estate companies with which they are affiliated. Licensee(s) and Firm(s) identified in the Final Agency
 24 Acknowledgment Section above are not parties to this Agreement, except as may be expressly applicable. Unless otherwise provided herein: (1)
 25 Time calculated in days after the date Buyer and Seller have signed this Agreement shall start on the first full business day after the date of Seller's
 26 signature indicating acceptance of Buyer's offer or counteroffer, or Buyer's signature indicating acceptance of Seller's counteroffer. (2) Written
 27 notices required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Licensee with the same
 28 effect as if delivered to that Buyer or Seller; (3) A "business day" shall mean Monday through Friday, except recognized legal holidays as
 29 enumerated in ORS 187.010 and 187.020; (4) Unit owner's association is referred to as the "HOA"; (5) "Governance Documents" refers to the
 30 Declaration, HOA articles of incorporation and bylaws.

31 **2.1 PRICE/PROPERTY DESCRIPTION:** Buyer (print name(s)) _____
 32 offers to purchase from Seller (print name(s)) David E. Reno, Patricia P. Reno
 33 the following condominium unit together with Seller's proportionate interest in all general and limited common elements (hereinafter "the Property")
 34 situated in the State of Oregon, County of Lane, and commonly known or identified as (insert street address, unit number,
 35 building, city, zip code, tax identification number, lot/block description, etc.) _____
 36 _____

37 (Buyer and Seller agree that if it is not provided herein, a complete legal description as provided by the title insurance company in accordance with
 38 Section 5, below, shall, where necessary, be used for purposes of legal identification and conveyance of title.)

39 Property includes an undivided fractional interest in the common areas and facilities and such other rights to use the common areas and facilities
 40 as defined in the Declaration of the condominium; sale may or may not include parking/garage space and/or storage space. See Section 14.

41 for the Purchase Price (in U.S. currency) of _____ A \$ _____
 42 on the following terms: Earnest money herein receipted for _____ B \$ _____
 43 on _____, as additional earnest money, the sum of _____ C \$ _____
 44 at or before Closing, the balance of down payment _____ D \$ _____
 45 at Closing and upon delivery of ☐ **DEED** ☐ **CONTRACT** the balance of the Purchase Price _____ E \$ _____:

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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**2.2 BALANCE OF PURCHASE PRICE.** (Select A or B)

A. ☐ **This is an all cash transaction.** Buyer to provide verification ("Verification") of readily available funds as follows (select only one): ☐ Buyer has attached a copy of the Verification with the submission of this Agreement to Seller or Listing Licensee. ☐ Buyer will provide Seller or Listing Licensee with the Verification within _____ business days (five [5] if not filled in) following mutual acceptance of this Agreement; or ☐ Other (Describe): _____

Seller may notify Buyer or Buyer's Licensee, in writing, of Seller's unconditional disapproval of the Verification within _____ business days (five [5] if not filled in) ("Disapproval Period") following its receipt by Seller or Listing Licensee, in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. **If Seller fails to provide Buyer or Selling Licensee with written unconditional disapproval of the Verification by Midnight of the Disapproval Period, Seller shall be deemed to have approved the Verification. If Buyer fails to submit a Verification within a time frame selected above, unless the parties agree otherwise in writing, all earnest money deposits shall be promptly refunded and this transaction shall be terminated.**

B. ☐ **Balance of Purchase Price to be financed as follows** (Select only one): ☐ Conventional; ☐ FHA; ☐ Federal VA; ☐ Other (Describe): _____ (hereinafter "Loan Program"). **Buyer agrees to seek financing through a lending institution ("Lender") participating in the Loan Program identified above.**

Pre-Approval Letter. ☐ Buyer has attached a copy of a Pre-Approval Letter from Buyer's Lender or mortgage broker; ☐ Buyer does not have a Pre-Approval Letter at the time of making this offer; ☐ Buyer agrees to secure a Pre-Approval Letter as follows: _____

3.1 FINANCING CONTINGENCIES. If Buyer is financing any portion of the Purchase Price, this transaction is subject to the following financing contingencies: (1) Buyer and the Property to qualify for the loan from Lender; (2) Lender's appraisal shall not be less than the Purchase Price; and, (3) Other (Describe): _____

All Financing Contingencies are solely for Buyer's benefit and may be waived by Buyer in writing at any time.

3.2 FAILURE OF FINANCING CONTINGENCIES. If Buyer receives actual notification that any Financing Contingencies identified above have failed or otherwise cannot occur, Buyer shall promptly notify Seller, and the parties shall have _____ business days (two [2] if not filled in) following the day of Seller's receipt of such notification to either (a) Terminate this transaction by signing a Termination Agreement (OREF-057) or such other similar form as may be provided by Escrow; or (b) Reach a written mutual agreement upon such price and terms that will permit this transaction to continue. Neither Seller nor Buyer is required under the preceding provision (b) to reach such agreement. If (a) or (b) fail to occur within the time period identified herein, this transaction shall be automatically terminated and all earnest money shall be promptly refunded to Buyer. Buyer understands that upon termination of this transaction, Seller shall have the right to immediately place the Property back on the market for sale upon any price and terms as Seller determines, in Seller's sole discretion.

3.3 BUYER REPRESENTATION REGARDING FINANCING: As of the date of signing this Agreement, Buyer makes the following representations to Seller:

(1) Buyer shall apply for a loan not later than _____ business days (three [3] if not filled in) following the date Buyer and Seller have signed this Agreement, and will thereafter complete all reasonably necessary papers in a timely manner and exercise best efforts (including payment of all application, appraisal and processing fees, where applicable) to obtain the loan;

(2) Buyer shall make a good faith effort to secure the ordering of the Lender's appraisal no later than expiration of the Inspection Contingency Period in Section 16.2 of this Agreement, or if the Professional Inspection Addendum (OREF-058) is used, expiration of the Inspection Period.

(3) Buyer currently has liquid and available funds for the earnest money deposit and down payment, sufficient to Close the transaction described herein, and is not relying upon any contingent source of funds (e.g., from loans, gifts, sale or Closing of other property, 401K disbursements, etc.), except as follows (describe): _____

(4) Buyer authorizes Buyer's Lender or mortgage broker to provide non-confidential information to Listing and Selling Licensees regarding Buyer's loan application status.

(5) Buyer shall promptly notify Seller or Seller's Licensee if, after signing this Agreement, Buyer substitutes another lender for any reason. Notwithstanding the preceding, Buyer shall not be permitted to select a Loan Program different than the one selected in Section 2.2 (B) above, without Seller's advance written consent.

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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(6) Buyer agrees to keep Seller promptly informed of all other material non-confidential developments regarding Buyer's financing and the timing of Closing.

3.4 INSURANCE: If the Property is located in a designated flood zone, Buyer acknowledges that flood insurance may be required as a condition of the new loan. Buyer is encouraged to promptly verify the availability and cost of property/casualty/flood insurance that will be secured for the Property.

4. ADDITIONAL PROVISIONS: _____

For additional provisions, see Addendum _____.

5. TITLE INSURANCE: Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report ("the PTR") showing the condition of title to the Property, and the Governance Documents. **(If not fully understood, Buyer should immediately contact the title insurance company for further information or seek competent legal advice. Neither Listing nor Selling Licensee is qualified to advise on specific legal or title issues.)** Upon signature and acceptance of this Agreement by Buyer and Seller, Seller will, at Seller's sole expense, promptly order the PTR and recorded Governance Documents from an Oregon title insurance company and furnish them to Buyer. Upon receipt of the PTR and Governance Documents, Buyer shall have _____ business days (five [5] if not filled in) within which to notify Seller, in writing, of any matters disclosed in the PTR and Governance Documents which is/are unacceptable to Buyer ("the Objections"). Buyer's failure to timely object, in writing, to any matters disclosed in the PTR and/or the Governance Documents shall constitute acceptance of the same. However, Buyer's failure to timely object shall not relieve Seller of the duty to convey marketable title pursuant to Section 6 below. If, within _____ business days (five [5] if not filled in) following receipt of the objections, if any, Seller fails to remove or correct the matters identified in the Objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed or corrected, all earnest money shall be promptly refunded to Buyer and this transaction shall be terminated. This contingency is solely for Buyer's benefit and may be waived by Buyer in writing. Within thirty (30) days after Closing, Seller shall, at Seller's expense, furnish to Buyer an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the purchase price, free and clear of the Objections and all other title exceptions agreed to be removed as part of this transaction. **(Note: This Section 5 provides that Seller will pay for Buyer's standard owner's policy of title insurance. In some areas of the country, such a payment might be regarded as a "seller concession." Under the amended Real Estate Settlement Procedures Act ("RESPA"), effective January 1, 2010 there are limitations, regulations and disclosure requirements on "seller concessions" unless the product or service paid by the Seller was one customarily paid by the Seller. In Oregon, sellers customarily and routinely pay for their buyer's standard owner's policy of title insurance. Accordingly, unless the terms of this Section 5 are modified in writing by Buyer and Seller, the parties acknowledge, agree and so instruct Escrow, that in this transaction, Seller's payment of Buyer's standard owner's policy of title insurance is not a "seller concession" under RESPA or any other federal or state law.)**

6. DEED: Seller shall convey marketable title to the Property by statutory warranty deed (or good and sufficient personal representative's or trustee's or similar legal fiduciary's deed, where applicable) free and clear of all liens of record, except property taxes which are a lien but not yet payable, zoning ordinances, building and use restrictions, reservations in Federal patents, easements of record which affect the Property, covenants, conditions and restrictions of record, and those matters accepted by Buyer pursuant to Section 5 above.

7. SELLER-CARRIED FINANCING (E.G. LAND SALE CONTRACT/TRUST DEED/MORTGAGE/OPTION AGREEMENTS, RENT-TO-OWN, ETC.): Note: State and federal laws and regulations provide that under certain circumstances, offering or negotiating the terms of seller-carried financing must be performed by a Mortgage Loan Originator (see, ORS86A.200(4)), and the terms of such financing may have to comply with certain consumer protection disclosures rules. Your real estate licensee is not qualified to provide these services or to advise you in this regard. Legal advice is strongly recommended. If this transaction is to include a trust deed, mortgage or option agreement between Buyer and Seller, the parties shall agree upon the terms and conditions of such document not later than _____ business days (ten [10] if not filled in) after the date Buyer and Seller have signed and accepted this Sale Agreement. Upon failure of Buyer and Seller to reach agreement as to the terms and conditions of the document within said time period, this transaction shall automatically terminate, all parties shall cooperate in signing such documentation reasonably necessary to effect a termination of this transaction and a refund of all deposits, if any, to Buyer. **Caveat: The additional documents identified in this Section 7 can have legally binding consequences, and Buyer and Seller are strongly encouraged to secure competent legal advice before entering into such agreements. If Escrow (as defined in Section 18) is instructed to prepare the note and trust deed or mortgage to be used in this transaction, state statute requires that Buyer and Seller receive from Escrow, at least three (3) days prior to Closing (as defined in Section 19), a statutory notice and a copy of the proposed documents. This requirement cannot be waived by Buyer or Seller without the approval of both of their respective Oregon-licensed attorneys.**

8. FIXTURES: All fixtures (including remote controls and essential related equipment) are to be left upon the Property. Fixtures shall include but not be limited to: Built-in appliances; attached floor coverings; drapery rods and curtain rods; window and door screens; storm doors and windows;

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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145 fixtures (irrigation, plumbing, ventilating, cooling and heating); water heaters; attached electric light and bathroom fixtures; light bulbs; fluorescent
146 lamps; window blinds; awnings; fences; all planted shrubs, plants and trees; EXCEPT: _____
147 _____
148 _____
149 _____
150 _____

151 **9. PERSONAL PROPERTY:** Only the following personal property, in "AS-IS" condition and at no stated value is included: _____
152 _____
153 _____
154 _____

155 **10. ALARM SYSTEM:** ☐ NONE ☐ OWNED ☐ LEASED. If leased, Buyer ☐ will ☐ will not assume the lease at Closing.

156 **11. WOODSTOVE/FIREPLACE INSERT:** Does the Property contain a woodstove or fireplace insert? ☐ Yes ☐ No
157 Is the woodstove or fireplace insert certified? ☐ Yes ☐ No ☐ Unknown If "No" or "Unknown," Seller to provide Buyer with OREF-046
158 Woodstove/Fireplace Insert Addendum.

159 **12. SELLER REPRESENTATIONS:** Subject to other written disclosures made by Seller as a part of this transaction, Seller makes the
160 following representations to Buyer:

161 (1) The primary dwelling is connected to (check all that apply): ☐ a public sewer system; ☐ a public water system; ☐ Other
162 (describe) _____

163 (2) At the earlier of possession or Closing Date, the dwelling will have one or more operating smoke alarms, smoke detectors and
164 carbon monoxide detectors as required by law (See <http://www.oregon.gov/OSP/SFM/>).

165 (3) Seller has no knowledge of any hazardous substances in or about the Property other than substances (if any) contained in appliances
166 and equipment. Buyer acknowledges that asbestos commonly exists in insulation, ceilings, floor coverings and other areas in residential
167 housing and may exist in the Property.

168 (4) Seller knows of no material defects in or about the Property, including any of the limited and general common elements of the entire
169 condominium development, even if the defects do not directly affect Seller's Unit.

170 (5) All electrical wiring, heating, cooling, plumbing and irrigation equipment and systems and the balance of the Property, including the
171 limited and general common elements, will be in substantially its present condition at the time Buyer is entitled to possession.

172 (6) Seller has no notice of any liens or assessments to be levied against the Property, including but not limited to liens or assessments
173 to be levied by the HOA.

174 (7) Seller has no notice from any governmental agency of any violation of law relating to the Property.

175 (8) Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act ("FIRPTA") as defined in this Agreement.

176 (9) Seller shall keep the Property fully insured through Closing.

177 Seller agrees to promptly notify Buyer if, prior to Closing, Seller receives actual notice of any event or condition which could result in
178 making any previously disclosed material information relating to the Property substantially misleading or incorrect. These
179 representations are made to the best of Seller's knowledge. Seller may have made no investigations.

180 Exceptions to items (1) through (9) are: _____
181 _____
182 _____
183 _____

184 Buyer acknowledges that the above representations are not warranties regarding the condition of the Property and are not a substitute
185 for, nor in lieu of, Buyer's own responsibility to conduct a thorough and complete independent investigation, including the use of
186 professionals, where appropriate, regarding all material matters bearing on the condition of the Property, its value and its suitability for
187 Buyer's intended use. Neither the Listing nor Selling Licensees shall be responsible for conducting any inspection or investigation of
188 any aspects of the Property.

189 **13. "As-IS":** Except for Seller's express written agreements and written representations contained herein, and Seller's Property
190 Disclosure, if any, Buyer is purchasing the Property "As-IS," in its present condition and with all defects apparent or not apparent.

191 **14. BUYER ACKNOWLEDGEMENT:** Buyer acknowledges that it is Buyer's primary responsibility to conduct a thorough and complete review
192 of all aspects of the condominium being purchased, including but not limited to, its association, assessments, budgets, reserves, general and
193 limited common elements, as well as all Governance Documents as soon as they become available. It is highly recommended that Buyer employ

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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the use of third-party professionals familiar with condominiums, condominium associations, and their governance. Neither the Listing or Selling Licensees can render advice on these matters. Neither Listing or Selling Licensees shall be responsible for advising Buyer on these matters.

15.1 CONDOMINIUM DOCUMENTS: Seller agrees, at Seller's expense, to provide Buyer within _____ business days (seven [7] if not filled in) after the date Buyer and Seller have both signed this Agreement, with copies of certain documents (hereinafter "Documents") checked in the boxes below. "Documents" shall be limited to official writings to or for the benefit of the HOA specifically described in the list below and dealing with the Property and/or the condominium development. (Note: Not all Documents may be readily available to Seller. Some Documents may already be available to Buyer through other disclosure documents required under Oregon law. Some important information may be available to Buyer in summary form. Buyers, Sellers and licensees should promptly determine what Documents are necessary and can be reasonably provided within the applicable time frames. If obtaining Buyer-requested Documents will cause any delay, it is suggested that the parties address this by written addendum.)

- ☐ The conditions, covenants and restrictions ("CC&Rs") and/or the Declaration.
- ☐ The HOA articles of incorporation and bylaws, and rules and regulations, including any revisions or amendments thereto.
- ☐ Rules and regulations, including any revisions or amendments thereto.
- ☐ Policies, agreements, notices (not included in the requested items above) relating to: age restrictions, pets, parking, any restrictions on rental of homes or units.
- ☐ All minutes of meetings for the preceding _____ months (twelve [12] if not filled in) for the HOA and the board of directors.
- ☐ Documents verifying coverage under the current policies of casualty and liability insurance for the HOA and its board of directors.
- ☐ Documents verifying the current HOA assessments and budget, together with any HOA notices relating to potential increases in the assessments or any potential special assessments.
- ☐ Documents prepared for the HOA or its officers and/or directors acting in their official capacity, such as inspection reports, studies, bids or proposals for repair or replacement of any actual or suspected defects in the structural integrity or safety of the Property, its common elements or common areas.
- ☐ Documents relating to any demands or claims made by or against the HOA relating to any actual or suspected defects in the structural integrity or safety of the Property, its common elements or common areas.
- ☐ Documents showing the latest reserve study conducted by or for the HOA together with current reserve fund figures.
- ☐ Other: _____

Buyer shall have _____ business days (five [5] if not filled in) from delivery of all of the requested Documents to Buyer or Selling Licensee, within which to review them ("Review Period"). Documents provided to Buyer pursuant to Section 5 shall be subject to the same Review Period as those which are to be provided by Seller in this Section 15.1. If Buyer notifies Seller or Listing Licensee, in writing, prior to Midnight of the last day of the Review Period that Buyer unconditionally disapproves of one or more of the Documents, all earnest money deposits will be promptly refunded to Buyer and this transaction shall be terminated. If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of the Document(s) by Midnight of the Review Period, Buyer shall be deemed to have approved the Document(s).

15.2 General Condominium Information

- (A) Parking space/garage # _____ is ☐ owned ☐ leased ☐ N/A The lease is \$ _____ per ☐ month ☐ year.
- (B) Storage space # _____ is ☐ owned ☐ leased ☐ N/A The lease is \$ _____ per ☐ month ☐ year.
- (C) The HOA dues at the time of this Agreement are \$ _____ per ☐ month ☐ year ☐ other _____.
- (D) The current HOA: (Name) _____
 (Contact Person) _____
 (Address) _____
 (Phone) _____

HOA Website: _____

HOA Email Address: _____

If the information in (A) through (D) is blank, is incorrect, or is not current, Seller shall promptly notify Buyer and Escrow with the current information based on upon Seller's best information through the date of Closing.

INSPECTIONS:

(CHECK ONLY ONE BOX)

16.1 ENVIRONMENTAL HEALTH CONDITIONS: The following list identifies some, but not all, environmental conditions that may be found in and around all real property that may affect health: Asbestos, carbon monoxide, electric and magnetic fields, formaldehyde, lead and other contaminants in drinking water and well water, lead based paint, mold and mildew, radon, and leaking underground storage tanks. If Buyer has any concerns about these conditions or others, Buyer is encouraged to secure the services of a professional inspector, consultant, or health expert, for

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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information and guidance. Neither the listing nor selling licensees are experts in environmental health hazards or conditions. For additional information, go to the Oregon Association of Realtors® Buyer advisory at: <http://www.oregonrealtors.org> and the Oregon Public Health Division at <http://public.health.oregon.gov/Pages/Homes.aspx>

16.2 INSPECTIONS: Buyer understands that it is advisable to have a complete inspection of the Property by qualified professional(s) relating to such matters as structural condition, soil condition/compaction/stability, environmental issues, survey, zoning, operating systems, and suitability for Buyer's intended purpose. Such inspection should include general common elements and limited common elements where Buyer or Buyer's inspector(s) have reason to believe that there are other portions of the condominium development that may warrant it. Neither Listing nor Selling Licensee is qualified to conduct such inspections and shall not be responsible to do so. For further details, Buyer is encouraged to review the Buyer Advisory at <http://www.oregonrealtors.org>.

☐ **PROFESSIONAL INSPECTIONS:** At Buyer's expense, Buyer may have the Property and all common and limited elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property including radon and mold. Seller may not have authority to permit invasive testing on portions of the condominium property due to its general or limited common element status. Buyer understands that Buyer is responsible for the restoration of the Property following any inspection(s)/test(s) performed by Buyer or on Buyer's behalf. Buyer shall have _____ business days (ten [10] if not filled in), after the date Buyer and Seller have signed this Agreement (hereinafter "the Inspection Period"), in which to complete all inspections and negotiations with Seller regarding any matters disclosed in any inspection report. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the Property based on any inspection report(s), in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide a copy of all reports to Seller only if requested by Seller. **If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any inspection report(s) by Midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property. Note that if, prior to expiration of the Inspection Period, written agreement is reached with Seller regarding ALL Buyer's requested repairs, the Inspection Period shall automatically terminate, unless the parties agree otherwise in writing.**

☐ **ALTERNATIVE INSPECTION PROCEDURES:** OREF-058 PROFESSIONAL INSPECTION ADDENDUM OR OTHER INSPECTION ADDENDUM _____ is attached to this Agreement.

☐ **BUYER'S WAIVER OF INSPECTION CONTINGENCY:** Buyer represents to Seller and all Licensees and Firms that Buyer is fully satisfied with the condition of the Property and all elements and systems thereof and knowingly and voluntarily elects to waive the right to have any inspections performed as a contingency to the Closing of the transaction. Buyer's election to waive the right of inspection is solely Buyer's decision and at Buyer's own risk.

17. LEAD-BASED PAINT CONTINGENCY PERIOD: If the Property was constructed before 1978, a Lead-Based Paint Disclosure Addendum (hereinafter "the Disclosure Addendum") shall be promptly signed by Seller, Buyer and Listing and Selling Licensees, and become a part of this Agreement. Buyer shall also be provided with a pamphlet entitled "Protect Your Family From Lead in Your Home." Buyer shall have _____ calendar days (ten [10] unless a greater number is filled in) within which to conduct a lead-based paint assessment or inspection (hereinafter referred to as "the Lead-Based Paint Contingency Period"), which shall commence immediately when Buyer and Seller sign the Disclosure Addendum. Unless the opportunity to conduct a risk assessment or inspection is expressly waived in the Disclosure Addendum, Buyer may, in writing, unconditionally cancel this transaction during the Lead-Based Paint Contingency Period and receive a prompt return of all earnest money deposits. Buyer understands that the failure to give timely written notice of cancellation prior to Midnight on the last day of the Lead-Based Paint Contingency Period shall constitute acceptance of the condition of the Property as it relates to the presence of lead-based paint or lead-based paint hazards.

☐ OREF-021 Lead-Based Paint Disclosure Addendum is attached to this Agreement.

18. ESCROW: This transaction shall be Closed at First American Title ("Escrow"), a neutral escrow located in the State of Oregon. Costs of Escrow shall be shared equally between Buyer and Seller, unless Buyer is financing through Federal VA, in which case Seller shall pay all escrow costs.

Unless otherwise provided herein, the parties agree as follows: Seller authorizes Listing Firm to order a preliminary title report and owner's title policy at Seller's expense and further authorizes Escrow to pay out of the cash proceeds of sale the expense of furnishing such policy, Seller's recording fees, Seller's Closing costs and any encumbrances on the Property payable by Seller on or before Closing. Buyer shall deposit with Escrow sufficient funds necessary to pay Buyer's recording fees, Buyer's Closing costs, and lender's fees, if any. Real estate fees, commissions or other compensation for professional real estate services provided by Listing and/or Selling Firms shall be paid at Closing in accordance with the listing agreement, buyer service agreement or other written agreement for compensation.

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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19. **CLOSING:** Closing shall occur on a date mutually agreed upon by Buyer and Seller, but in no event later than _____, ("the Closing Deadline"). The terms "Closed", "Closing" or "Closing Date" shall mean when the deed or contract is recorded and funds are available to Seller. Buyer and Seller acknowledge that for Closing to occur by the Closing Deadline, it may be necessary to execute documents and deposit funds in Escrow prior to that date. **Caveat: Section 7 above requires three (3) days prior to the Closing Deadline if Escrow is to prepare a note and a deed of trust or mortgage.**

20. **POSSESSION:** Seller shall remove all personal property (including trash and debris) that is not a part of this transaction, and deliver possession of the Property to Buyer (select one):

(1) ☐ by 5:00 p.m. on Closing;

(2) ☐ by _____ ☐ a.m. ☐ p.m. _____ days after Closing;

(3) ☐ by _____ ☐ a.m. ☐ p.m. on the _____ day of _____, _____.

If a tenant is currently in possession of the Property (check one): ☐ Buyer will accept tenant at Closing; ☐ Seller shall have full responsibility for removal of tenant prior to Closing.

21. **PRORATIONS:** Prorates for rents, current year's taxes, interest on assumed obligations, association dues, and other prepaid expenses attributable to the Property shall be as of: (check one) ☐ the Closing Date; ☐ date Buyer is entitled to possession; or ☐ _____.

22. **SELLER POSSESSION AFTER CLOSING:** In the event that Buyer and Seller have agreed that Seller will deliver possession after Closing, Seller shall pay as consideration \$ _____ per day for each day after Closing that Seller is to remain in possession of the Property. Such payment shall be made by Seller through Escrow at the time of Closing and no landlord-tenant relationship shall be created thereby, so long as Seller's possession does not exceed 90 days after the date of Closing.

☐ OREF-054 Agreement to Occupy After Closing or Addendum _____, is attached to this Agreement.

23. **UTILITIES:** The following utilities are included in the HOA dues and are paid for the owner by the HOA: ☐ Garbage ☐ Water ☐ Sewer ☐ Electric ☐ Gas ☐ Cable ☐ Heating Fuel ☐ Other (describe) _____.

Seller shall pay all utility bills accrued to date Buyer is entitled to possession. **Buyer shall pay Seller for heating fuel then on premises, at Seller's supplier's rate on the possession date.** Payment shall be handled between Buyer and Seller outside of Escrow.

24. **HOME WARRANTIES:** Home warranty plans may be available to help cover homeowner costs to repair/replace certain home systems and appliances. (See specific plan for details.) Will a plan be purchased for Buyer as a part of this transaction? ☐ Yes ☐ No

If yes, identify plan and cost: _____ \$ _____. To be paid at Closing by: ☐ Buyer ☐ Seller

25. **ESCROW DEPOSIT:** Escrow is hereby instructed by Buyer and Seller as follows: (1) Upon your receipt of a copy of this Agreement marked "rejected" by Seller or upon Listing Firm's written advice that the offer is "rejected" by Seller, you are to refund all earnest money to Buyer. (2) Upon your receipt of a copy of this Agreement signed by Buyer and Seller, set up an escrow account and proceed with Closing in accordance with the terms of this Agreement. If you determine that the transaction cannot be Closed for any reason (whether or not there is then a dispute between Buyer and Seller), subject only to Section 38 below, you are to hold all earnest money deposits until you receive written instructions from Buyer and Seller, or a final ruling from a court or arbitrator, as to disposition of such deposits.

26. **EARNEST MONEY PAYMENT/REFUND:** If (1) Seller does not approve this Agreement; or (2) Seller signs and accepts this Agreement but fails to furnish marketable title; or (3) Seller fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided; or (4) any condition which Buyer has made an express contingency in this Agreement (and has not been otherwise waived) fails through no fault of Buyer, then all earnest money shall be promptly refunded to Buyer. However, acceptance by Buyer of the refund shall not constitute a waiver of other legal remedies available to Buyer. If Seller signs and accepts this Agreement and title is marketable; and (1) Buyer has misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money; or (3) Buyer fails to redeem, when due, any note given as earnest money; or (4) Buyer fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, then all earnest money paid or agreed to be paid shall be paid to Seller either as liquidated damages or as otherwise allowed under Oregon law, and this transaction shall be terminated. **It is the intention of the parties that Seller's sole remedy against Buyer for Buyer's failure to Close this transaction shall be limited to the amount of earnest money paid or agreed to be paid herein.**

27. **BINDING EFFECT/CONSENT:** This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

28.1 **SELLER ADVISORY: OREGON STATE TAX WITHHOLDING OBLIGATIONS.** Subject to certain exceptions, Escrow is required to withhold a portion of Seller's proceeds if they are a non-resident individual or corporation as defined under Oregon law. Buyer and Seller agree to execute and deliver,

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of Oregon law.

28.2 SELLER/BUYER ADVISORY: FIRPTA TAX WITHHOLDING OBLIGATIONS. Seller is advised that upon Closing, Federal law, known as the Foreign Investment in Real Property Tax Act ("FIRPTA"), allows an escrow company, if they agree, to withhold a portion of Seller's proceeds if the real property is located within the United States and Seller is a "foreign person." A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. The amount deducted from Seller's proceeds is ten percent (10%) of the gross sales price and is required to be delivered over to the Internal Revenue Service ("IRS") within twenty (20) days of the closing of the transaction. Buyer may become responsible for payment if FIRPTA applies and Escrow is not instructed to withhold the funds. FIRPTA will not apply to this transaction so long as: (a) The sale price is \$300,000 or less; (b) The Property is to be used by Buyer as a residence; and, (c) Buyer is an individual. Where applicable, Buyer and Seller agree to execute and deliver, as appropriate, any instrument, affidavit or statement, reasonably requested by Escrow to carry out the provisions of FIRPTA. **NOTE: AT SECTION 12 OF THIS AGREEMENT, SELLER REPRESENTS THAT SELLER IS NOT A "FOREIGN PERSON" (HEREINAFTER "SELLER'S NON-FIRPTA STATUS"). IF SELLER IS UNSURE, SELLER SHOULD FIRST CONFER WITH SELLER'S TAX COUNSEL OR CPA BEFORE ENTERING INTO THIS TRANSACTION. IN SUBMITTING THIS OFFER, BUYER REPRESENTS THAT BUYER HAS NO KNOWLEDGE, INFORMATION, OR BELIEF THAT SELLER IS A FOREIGN PERSON OR THAT THIS TRANSACTION IS SUBJECT TO FIRPTA. SELLER ACKNOWLEDGES THAT BUYER, LISTING AND SELLING LICENSEES, THEIR RESPECTIVE FIRMS, AND ESCROW, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES, SHALL HAVE THE ABSOLUTE RIGHT TO RELY UPON SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS AT SECTION 12, ABOVE. THIS RIGHT OF RELIANCE SHALL CONTINUE THROUGH THE CLOSING DATE AND THEREAFTER, UNLESS SELLER HAS DISCLOSED OTHERWISE IN A WRITTEN COUNTER-OFFER OR ADDENDUM TO THIS SALE AGREEMENT. IF AT ANY TIME DURING THIS TRANSACTION, IT IS DETERMINED THAT SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS WAS INCORRECT, FOR ANY REASON, SELLER AND BUYER HEREBY APPOINT AND INSTRUCT ESCROW TO ACT AS THE QUALIFIED SUBSTITUTE FOR BUYER AS DEFINED BY THE IRS, FOR PURPOSES OF PREPARING THE NECESSARY PAPERWORK, WITHHOLDING THE NECESSARY FUNDS, AND REMITTING THE SAME TO THE IRS. IF FOR ANY REASON, ESCROW DECLINES TO ACT AS A QUALIFIED SUBSTITUTE, ESCROW IS REQUESTED TO PROMPTLY NOTIFY SELLER AND BUYER IN A TIMELY MANNER SO THEY MAY MAKE OTHER ARRANGEMENTS PRIOR TO THE SCHEDULED CLOSING. SELLER AND BUYER ACKNOWLEDGE THAT IF FIRPTA APPLIES TO THIS TRANSACTION, ESCROW'S ROLE AS A QUALIFIED SUBSTITUTE MAY RESULT IN A DELAY IN CLOSING THIS TRANSACTION, UNLESS OTHERWISE PROVIDED IN THIS SALE AGREEMENT OR ANY SUBSEQUENT SIGNED WRITTEN AGREEMENT BETWEEN SELLER AND BUYER, CONFIRMATION OF SELLER'S NON-FIRPTA STATUS IS NOT A CONTINGENCY IN THIS TRANSACTION.**

29. APPROVED USES: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FREE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

30.1 IRC 1031 EXCHANGE: In the event Buyer or Seller elects to complete an IRC 1031 exchange in this transaction, the other party agrees to cooperate with them and the accommodator, if any, in a manner necessary to complete the exchange, so long as it will not delay the Close of escrow or cause additional expense or liability to the cooperating party. Unless otherwise provided herein, this provision shall not become a contingency to the Closing of this transaction.

30.2 LEVY OF ADDITIONAL PROPERTY TAXES: The Property: (check one) ☐ is ☐ is not specially assessed for property taxes in a way which may result in levy of additional taxes in the future. If it is specially assessed, Seller represents that the Property is current as to income or other conditions required to preserve its deferred tax status. If, as a result of Buyer's actions or the Closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, unless otherwise specifically provided in this Agreement, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom. However, if as a result of Seller's actions prior to Closing, the Property either is disqualified from its entitlement to special use assessment or loses its deferred property tax status, Buyer may, at Buyer's sole option, promptly terminate this transaction and receive a refund of all deposits paid by Buyer in anticipation of Closing; or Close this transaction and hold Seller responsible to pay into Escrow all deferred and/or additional taxes and interest which may be levied or recaptured against the Property and hold Buyer completely harmless therefrom. The preceding shall not be construed to limit Buyer's or Seller's available remedies or damages arising from a breach of this Section 30.2.

30.3 HISTORIC PROPERTY DESIGNATION: If the Property is or may be subject to a Historic Property local ordinance or is subject to or may qualify for the Historic Property Tax Assessment under ORS 358.475 to 358.565 Seller shall provide **OREF-045 Historic Property Addendum**.

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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**DISPUTE RESOLUTION INVOLVING BUYER AND SELLER ONLY**

31. DISPUTE RESOLUTION BETWEEN BUYER AND SELLER: Buyer and Seller agree that all claims, controversies and disputes between them, including those for rescission (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be resolved in accordance with the procedures set forth herein, which shall expressly survive Closing or earlier termination of this Agreement. Provided, however, the following matters shall not constitute Claims: (1) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; or (2) a forcible entry and detainer action (eviction). The filing in court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the dispute resolution procedures specified herein. In the event of any suit, action or arbitration relating to the enforcement or interpretation of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall be placed in the State of Oregon for all purposes.

32. SMALL CLAIMS BETWEEN BUYER AND SELLER: Notwithstanding the following Sections, Buyer and Seller agree that all Claims that are within the jurisdiction of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other forum.

33. MEDIATION BETWEEN BUYER AND SELLER: If Buyer or Seller were represented in this transaction by a Licensee whose principal broker is a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS®, or other organization-adopted mediation program (collectively "the System"). Provided, however, if Licensee's principal broker is not a member of the National Association of REALTORS® or the System is not available through the principal broker's Association of REALTORS®, then all Claims shall be submitted to mediation either through: (1) the special mediation program administered by Arbitration Service of Portland ("ASP"), or (2) any other impartial private mediator(s) or program(s) so long as such services are available in the county where the Property is located, as selected by the party first filing for mediation.

34. ARBITRATION BETWEEN BUYER AND SELLER: All Claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon laws. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. Buyer or Seller may file Claims either with ASP or, alternatively, with any other professional arbitration service that has existing rules of arbitration, provided that the selected alternative service also uses arbitrators who are in good standing with the Oregon State Bar, with expertise in real estate law and who can conduct the hearing in the county where the Property is located. The arbitration service in which the Claim is first filed shall handle the case to its conclusion. BY CONSENTING TO THIS PROVISION BUYER AND SELLER ARE AGREEING THAT DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE HEARD AND DECIDED BY ONE OR MORE NEUTRAL ARBITRATORS AND BUYER AND SELLER ARE GIVING UP THE RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY. THE RIGHT TO APPEAL AN ARBITRATION DECISION IS LIMITED UNDER OREGON LAW.

35. ATTORNEY FEES IN CLAIMS BETWEEN BUYER AND SELLER: The prevailing party in any suit, action or arbitration (excluding those Claims filed in Small Claims Court) between Buyer and Seller shall be entitled to recovery of all reasonable attorney fees and costs and disbursements as defined in ORCP 68 (including all filing and mediator fees paid in mediation). Provided, however, if a mediation service was available to Buyer or Seller when the Claim arose, the prevailing party shall not be entitled to any award of attorney fees unless it is established to the satisfaction of the arbitrator(s) or judge that the prevailing party offered or agreed in writing to participate in mediation prior to, or promptly upon, the filing in arbitration or court.

DISPUTE RESOLUTION INVOLVING LICENSEES OR FIRMS

36. SMALL CLAIMS COURT AND ARBITRATION: All claims, controversies or disputes relating to this transaction, including those for rescission, in which a Licensee or Firm identified in the Final Agency Acknowledgment Section above is named or included as a party, shall be resolved exclusively as follows: (1) If within the jurisdictional limit of Small Claims Court, the matter shall be brought and decided there, in lieu of arbitration or litigation in any other forum. (2) All other claims, controversies or disputes involving such Licensee or Firm shall be resolved through final and binding arbitration using the arbitration selection process described in Section 34 above. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. This Section 36 shall be in lieu of litigation involving such Licensee or Firm in any other forum. Such Licensee or Firm may voluntarily participate in formal or informal mediation at any time, but shall not be required to do so under this Section 36. This Section 36 shall not apply to those matters in which: (a) The claim, controversy or dispute is exclusively between REALTORS® and is otherwise required to be resolved under the Professional Standards Arbitration provisions of the National Association of REALTORS®; (b) Licensee or Firm has agreed to participate in alternative dispute resolution in a prior written listing, service or fee agreement with Buyer or Seller, or (c) Licensee or Firm is Buyer or Seller in this transaction (in which case, Sections 31-35 shall apply). This Section 36 shall expressly survive Closing or earlier termination of this Agreement. In the event of any suit, action or arbitration relating to the enforcement or interpretation of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall be placed in the State of Oregon for all purposes. **In the event that one or more Licensees and/or Firms have been named or included in any claims, controversies or disputes that also include Buyer and/or Seller, the alternative dispute resolution and attorney fee provisions of Sections 31-35 above shall continue to apply to Buyer and/or Seller, and this Section 36 shall apply exclusively to Licensees and/or Firms.**

Buyer Initials ____ / ____ Date ____

Seller Initials ____ / ____ Date ____

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37. RECEIPT FOR EARNEST MONEY: Selling Firm acknowledges receipt of earnest money from Buyer in the sum of \$ _____ evidenced by ☐ CASH ☐ CHECK ☐ PROMISSORY NOTE payable as follows:
☐ _____ ☐ **business** ☐ **calendar** days (check one) after mutual acceptance of this Agreement; or
☐ on or before _____, _____;
☐ Other form of earnest money: _____.

38. EARNEST MONEY INSTRUCTIONS: Buyer instructs Selling Firm, and Selling Firm agrees, to handle the earnest money as follows (check all that apply):
☐ Hold any earnest money that is in the form of a check undeposited pending mutual acceptance of this Agreement and all agreed-upon counter offers, after which time deposit it as provided herein within three (3) banking days. ☐ Deposit any earnest money funds redeemed under a promissory note with _____. ☐ Deposit in Selling Firm's client trust account, and thereafter/or ☐ Deposit with Escrow. In the event the earnest money is deposited in Selling Firm's trust account or with Escrow (collectively "the Deposit Holder"), and the Deposit Holder has arranged to have interest on such deposit transferred to a qualified public benefit corporation for distribution to organizations and individuals for first time home-buying assistance and development of affordable housing pursuant to ORS 696.241(6) or ORS 696.578(3), all parties acknowledge and agree that any interest accruing on the earnest money so deposited shall be transferred in accordance with this provision. The preceding sentence shall be subject to any other statutes or regulations governing the disposition of earnest money deposits.

SELLING LICENSEE AND SELLING FIRM SHALL HAVE NO FURTHER LIABILITY WITH RESPECT TO EARNEST MONEY WHICH THE PARTIES HAVE AUTHORIZED TO BE TRANSFERRED TO A THIRD PARTY.

Selling Firm Berkshire-Hathaway NW Real Estate Selling Licensee Signature _____
1875 Hwy 101/P. O. Box 276, Florence, OR
Office Address 97439 Phone (541) 997-6000 FAX (541) 997-1257

39. PROPERTY DISCLOSURE LAW: Buyer and Seller acknowledge that unless this transaction is otherwise exempted, Oregon law provides that Buyer has a right to revoke Buyer's offer by giving Seller written notice thereof (a) within five (5) business days after Seller's delivery of Seller's Property Disclosure Statement ("the Statement"), or (b) at any time before Closing (as defined in the Oregon Administrative Rules) if Buyer does not receive the Statement from Seller before Closing. Buyer may waive the right of revocation only in writing. Seller authorizes Listing Firm to receive Buyer's notice of revocation, if any, on Seller's behalf.

40. COUNTERPARTS/DELIVERY: This Agreement may be signed in multiple counterparts with the same legal effect as if all parties signed the same document. This shall mean that delivery (e.g., transmissions manually, by facsimile, electronic mail, overnight mail, first-class regular or certified mail, etc.) of a **legible** true copy of a signed original of this Agreement, including but not limited to all addenda, counter offers, and legal notices required thereunder, shall be treated the same as delivery of the original document.

41. AGREEMENT TO PURCHASE: Buyer agrees to purchase the Property upon the terms and conditions set forth in this Agreement. Buyer acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not relied upon any oral or written statements made by Seller or any Licensee which are not expressly contained in this Agreement. Neither Seller nor any Licensee(s) warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing or should be made an express contingency in this Agreement.

Deed or contract shall be prepared in the name of _____
This offer shall automatically expire on (insert date) _____ at _____ ☐ a.m. ☐ p.m., (the "Offer Deadline"), if not accepted by that time. Buyer may withdraw this offer before the Offer Deadline any time prior to Seller's acceptance. If Seller accepts this offer after the Offer Deadline, it shall not be binding upon Buyer unless accepted by Buyer in writing within _____ business days (two [2] if not filled in) after the date of Seller's acceptance by so indicating at Section 44 below. This offer may be accepted by Seller only in writing.

Buyer _____ Date _____, _____ a.m. _____ p.m. ←

Buyer _____ Date _____, _____ a.m. _____ p.m. ←

Address _____ Zip _____

Phone Home _____ Work _____ E-mail _____ Fax _____

Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

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484 This offer was submitted to Seller for signature on the _____ day of _____, _____, at _____ a.m. _____ p.m.
 485 By _____ (Licensee(s) presenting offer).

486 **42. AGREEMENT TO SELL / ACKNOWLEDGEMENTS / DISPOSITION OF EARNEST MONEY:** Seller accepts Buyer's offer. Seller
 487 acknowledges receipt of a completely filled-in copy of this Agreement, which Seller has fully read and understands. Seller
 488 acknowledges that Seller has not relied upon any oral or written statements of Buyer or of any Licensee(s) which are not expressly
 489 contained in this Agreement. Seller instructs that all earnest money distributable to Seller pursuant to Section 27 above, shall be
 490 disbursed as follows after deduction of any title insurance and Escrow cancellation charges: (check one) ☐ First to Listing Firm to the
 491 extent of the agreed commission just as if the transaction had been Closed, with residue to Seller, or ☐ _____.

492 Seller _____ Date _____, _____ a.m. _____ p.m. ←
 493 David E. Reno

493 Seller _____ Date _____, _____ a.m. _____ p.m. ←
 494 Patricia P. Reno

494 Address 87944 Lake Point Drive Florence OR Zip 97439
 495 Phone Home _____ Work _____ E-mail _____ Fax _____

496 **43. REJECTION/COUNTER OFFER: SELECT ONE:** ☐ Seller does not accept the above offer, but makes the attached counter offer.
 497 ☐ Seller rejects Buyer's offer.

498 Seller _____ Date _____, _____ a.m. _____ p.m. ←
 499 David E. Reno

499 Seller _____ Date _____, _____ a.m. _____ p.m. ←
 500 Patricia P. Reno

500 Address 87944 Lake Point Drive Florence OR Zip 97439
 501 Phone Home _____ Work _____ E-mail _____ Fax _____

502 **44. BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response
 503 is an acceptance of Buyer's offer that occurred after the Offer Deadline identified at Section 41 above, Buyer (select only one) ☐ agrees ☐ does
 504 not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the Offer Deadline.)

505 Buyer _____ Date _____, _____ a.m. _____ p.m. ←

506 Buyer _____ Date _____, _____ a.m. _____ p.m. ←

507 **45. FIRMS/LICENSEES:**

508
 509 Selling Licensee _____ Selling Firm Berkshire-Hathaway NW Real Estate
 510 Selling Firm Office Address 1875 Hwy 101/P. O. Box 276, Florence, OR 97439
 511 Phone (541) 997-6000 Phone (541) 997-6000 E-mail _____
 512 Fax (541) 997-1257

513
 514
 515 Listing Licensee Dale A. Saari Listing Firm Windermere/Florence Real Estate
 516 Listing Firm Office Address 3757 Hwy 101, Ste A, Florence, OR 97439
 517 Phone (541) 997-5926 Phone (541) 997-5926 E-mail dale@florencere.com
 518 Fax (541) 997-5992

519
 520 Buyer Initials _____ / _____ Date _____

Seller Initials _____ / _____ Date _____

This form has been licensed for use solely by Dale Saari pursuant to a Forms License Agreement with Oregon Real Estate Forms, LLC.

LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE OF BUYER AND/OR SELLER AND DATE

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OREF-011

RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT - Page 11 of 11

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Reno to Senner

OCT 15 2014

By: Gas

CONDO CERTIFICATION QUESTIONNAIRE

Legal Name of Project:

Project Address:

City

State

Zip

PLEASE ANSWER ALL QUESTIONS, SIGN AND DATE THE CERTIFICATION AT THE BOTTOM OF THE QUESTIONNAIRE

1.	a. Total number of residential units in entire project	#	
	b. Number of units conveyed to unit purchasers	#	
	c. Number of owner occupied and second home units	#	
	d. Number of investor owned units	#	
2.	Are there any commercial units in the project or building? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. What is the total number of commercial units?	#	
	b. What is the use of the commercial units? (e.g. retail, professional office)		
	c. Of the total project square footage , what is the percentage of commercial space square footage?	%	
	d. Does the HOA own or operate any commercial units?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3.	Are there any "Live Work Units"? (e.g. professional artist studio)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.	Are there any units in this project with resale or deed restrictions other than age restrictions? (e.g. below market rate, affordable housing, down payment assistance) If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. List the unit number or address of all resale or deed restricted units:		
5.	Is the project a conversion of an existing building (s)? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Was the conversion within the last 3 years? (If yes, provide a copy of the architect and engineers report and attach a list of improvements completed at the time of conversion.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	b. Were building(s) converted from a hotel/motel?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6.	Is the title to the units held as a leasehold estate?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
7.	Are there any manufactured homes in the project?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
8.	Does any single person or entity own more than 10% of the units, or if there are 10 units or less in the project, does any single person or entity own more than 1 unit? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. How many units?		
9.	Does the builder/sponsor have any ownership interest in the project other than unsold units? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Describe the ownership interest?		
10.	Are the unit owners the sole owners of and have the right to use the common elements including all buildings, parking and amenities?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11.	Are the project's common amenities/recreation facilities leased by or to the HOA in any agreement(s) with an outside entity? If yes, please explain:	Yes <input type="checkbox"/>	No <input type="checkbox"/>

CONDO CERTIFICATION QUESTIONNAIRE

12.	Does the HOA have the first option to purchase a unit? (Right of First Refusal)? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Is the right of first refusal exercised in a way that is non-discriminatory?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	b. Is the right of first refusal exercised in a way that does not impair the marketability of the units in the project?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13.	Indicate the utilities included in monthly unit assessment:		
	Heat <input type="checkbox"/> AC <input type="checkbox"/> Electricity <input type="checkbox"/> Gas <input type="checkbox"/> Water <input type="checkbox"/> Sewer <input type="checkbox"/> Cable <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/>		
14.	If the project is in a flood zone, is the master flood insurance premium paid by the unit owner as part of the HOA dues?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
15.	What is the number of units for which the HOA dues are currently delinquent more than 30 days?	#	
16.	What is the total dollar amount of cash on hand? (Include all accounts)	\$	
17.	Are separate bank accounts maintained for the operating/working accounts and the reserve accounts?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
18.	Does the bank send the bank statements directly to the HOA?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
19.	Are two board members required to sign any checks written from the reserve account?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
20.	If the project is managed by a management company, does the management company maintain separate records and bank accounts for each HOA that it manages?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
21.	If the project is managed by a management company, does it have the authority to write checks or transfer funds from the HOA reserve account?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
22.	Is the HOA, project developer or sponsor named as a party in any litigation (other than foreclosure activity)? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Provide details:		
23.	Are there any special assessments pending or currently collected within the HOA? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Provide the reasons, amounts, duration and/or due date of the special assessment:		
24.	Are there any adverse environmental factors affecting the project as a whole or any individual units? If yes:	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Please describe:		
25.	Does the HOA or management company advertise or facilitate short term rental of less than 30 days?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
26.	Does the project have an on-site check in rental desk?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
27.	Does the project have an on-site daily cleaning service?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
28.	Does the project have any units available for time share?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
29.	Is there a hotel located at the same address or within the project?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
30.	Do the project documents require mandatory or voluntary rental pooling or revenue sharing?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
31.	Is the project or any part of the project an assisted living community providing meals or medical care?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
32.	Does the project restrict the owner's ability to occupy the project?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
33.	Is less than 90% of the total number of units conveyed to unit purchasers?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
34.	Is the developer or sponsor in control of the HOA?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
35.	Is the project under development or subject to additional phasing?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
36.	Are any of the units in the project or subject unit's phase not complete (except for buyer selection items)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
37.	Are any of the common areas or facilities not complete, including amenities managed by a master association?	Yes <input type="checkbox"/>	No <input type="checkbox"/>



CONDO CERTIFICATION QUESTIONNAIRE

**If Any of Number 33, 34, 35, 36 or 37 Questions Above Are Answered Yes,
Please Complete the New Construction or Newly Converted Project
Questionnaire Addendum on Page 4 Below**

The undersigned certifies that to the best of my knowledge and belief, the information and statements contained on this form and any attachments are true and accurate:

Preparer's Printed Name:				
Preparer's Title:				
Preparer's Signature:				
Company Name:				
Address:	City	State	Zip	
Phone Number:				
Fax Number				
Email Address				
Date:				



CONDO CERTIFICATION QUESTIONNAIRE

NEW CONSTRUCTION OR NEWLY CONVERTED PROJECTS QUESTIONNAIRE ADDENDUM

TO BE COMPLETED BY THE DEVELOPER, BUILDER, SPONSOR OR PROPERTY MANAGER

PLEASE ANSWER ALL QUESTIONS, SIGN AND DATE THE CERTIFICATION AT THE BOTTOM OF THE QUESTIONNAIRE

I. Complete this section if the project is one legally declared phase:

1.	Total number of residential units	#
2.	Number of residential units conveyed and under contract to owner occupied and second home purchasers	#
3.	Number of residential units conveyed and under contract to investor purchasers	#

II. Complete this section if the project contains multiple legally declared phases:

Legal Phase Number	Total Number of Units In Each Legal Phase	Total Number of Units Conveyed or Under Contract	Number of Owner Occupied and Second Home Units	Number of Investor Units
Ex: Ph 1	10	7	6	1

III. Complete this section for single phase and multiple phase projects:

Legal Phase Number	Total Number of Units In Each Legal Phase	Number of Units Completed	Number of Units Under Construction	Number of Units Not Started	Anticipated Completion Date of Units Under Construction
Ex: Ph 1	10	7	3	0	12/31/2013

IV. Complete this section for single phase and multiple phase projects:

1.	Is the subject unit's HOA part of a master HOA made up of multiple projects? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. Do the unit owners pay more than \$50 per month toward the master HOA? If yes, please provide the master association's legal documents.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2.	Are any of the common areas or facilities incomplete? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. When will the common areas or facilities be complete, including amenities managed by a master association?	Date: <input type="text"/>	
3.	Are there any units in the project with less than 400 square feet?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.	Does all marketing and/or sales material used to promote this project meet all state and federal fair housing laws?	Yes <input type="checkbox"/>	No <input type="checkbox"/>



CONDO CERTIFICATION QUESTIONNAIRE

6.	Are any units rent stabilized or under rent control? If yes,	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	a. How many rent stabilized/controlled units?	#	
	b. Who is the owner(s) of the rent stabilized/controlled units?		
	c. How many rent stabilized/controlled units are currently for sale?	#	
	d. How many rent stabilized/controlled units were sold in the last 12 months?	#	

The undersigned certifies that to the best of my knowledge and belief, the information and statements contained on this form and any attachments are true and accurate:

Preparer's Printed Name:			
Preparer's Title:			
Preparer's Signature:			
Company Name:			
Address:	City	State	Zip
Phone Number:			
Fax Number			
Email Address			
Date:			

COMMENTS BEFORE THE PLANNING COMMISSION

BY PATRICIA P. RENO

OCTOBER 28, 2014

Commissioners, staff and guests.

My name is Patricia Reno. My husband, David, and I own Unit B7 at 1150 Hemlock St, in Florence which is part of the Whispering Pines Condominium Development on the agenda tonight.

Before I begin my remarks, I would respectfully like to make sure the record shows what a reserve study is and why it is required.

- According to the Oregon Condominium Act, Chapter 100.175, the reserve study is intended to identify all items for which reserves are or will be established; including the estimated remaining useful life of each item as of the date of the reserve study; and including for each item an estimated cost of maintenance and repair and replacement at the end of the items useful life.
- After the study is done, a reserve account is established to fund major maintenance, repair or replacement of those common elements all or part of which will normally require major maintenance, repair or replacement in more than one and less than 30 years, for exterior painting if the common elements include exterior painted surfaces, and for such other items as may be required by the declaration or bylaws.
- This chapter also states that the reserve account must be funded by assessments against individual units from the time the first individual unit is conveyed (in this case, 2005).
- It also states that the board of directors of the association shall review this annually and make adjustments to payments to the account as necessary.

- All of this is to make sure that there are sufficient funds collected over the years to perform the major maintenance, repair or replacement without having to charge additional “assessments” against owners of the units. If sufficient funds have not been collected over the years to perform such functions, then special assessments to make up the shortfall are charged the owners. These can be thousands of dollars.

I have previously submitted written testimony to the Planning Commission concerning Mr. Prater’s request, asking the Planning Commission to add additional conditions that must be met before Mr. Prater’s request would be considered for approval. However, I have additional testimony and exhibits to present based upon additional research.

I have discovered that the time allotted for Mr. Prater to complete his project expired on June 27, 2012. According to the Supplemental Declaration Submitting Whispering Pines Condominium Stage 2 to Condominium Ownership, Instrument #2005-085227, recorded October 26, 2005, Article 10, Plan of Development, Section 10.2:

- “Termination Date. No additional stage may be added more than seven (7) years after the recording of the Stage 1 Declaration. Pursuant to ORS 100.105(3), the date may be extended for a period not to exceed two years by an amendment to the Declaration adopted under Article 19 of the Stage 1 Declaration.”

The document in question, “The Declaration of Condominium Ownership for Whispering Pines Condominium”, for Stage 1 was recorded on June 27, 2005, as Instrument #2005-046758. Seven (7) years from this date would be June 27, 2012 - two years ago.

To the best of my knowledge, Jerry Prater Construction never filed for the two-year extension that was allowed. The City of Florence has no record of such amendment. Even if he had applied for such extension, that time would have expired on 6/27/2014.

Jerry Prater Construction is still currently the owner of the common property for Stages 1 and 2 which should have been conveyed to the Whispering Pines Homeowners Association no later than June 27, 2012.

Also provided to you is a letter that was submitted yesterday, October 27, to Kelli Weese, City Recorder, requesting that the business license for Jerry Prater Construction be suspended and/or revoked for failure to comply with State law, which is a requirement for a business license in the City of Florence.

In view of the additional information provided, I am requesting that you deny the request by Jerry Prater Construction to continue with the Whispering Pines Condominium project as he has no legal authority to do so at this time.

Thank you very much for your consideration. I would be happy to answer any questions you might have.

PATRICIA P. RENO
87944 Lake Point Dr
Florence, OR 97439
541-991-0557

October 27, 2014

Ms. Kelli Weese, City Clerk
City of Florence
250 Hwy 101
Florence, OR 97439

Re: Business License - Jerry Prater Construction

Dear Ms. Weese:

I am writing to respectfully request that you suspend and/or revoke the business license of Jerry Prater Construction, effective immediately, for failure to adhere to state law as explained below. I further respectfully request that the suspension be in effect until Jerry Prater Construction has complied with its legal responsibilities as set forth in Oregon Revised Statute Chapter 100 Condominiums.

City of Florence Code, Title 3, Chapter 1, Business Licenses, sets forth requirements for business licenses, as follows:

- 3-1-1. "... The business license required by this Chapter shall not be construed ... as a waiver of any other regulatory license requirements imposed by the City or by federal, state or local law. ..."
- 3-1-3-2. "General License Requirements: In addition to any other requirements of this Chapter, each licensee shall: A. Conform to all Federal, State and local laws and regulations, the provisions of this Code, and any rules adopted there under. ..."
- 3-1-7-2: "Denial, Revocation, or Suspension of License: A. ...2. The licensee is in violation, as determined by the applicable governing jurisdiction, of application Federal, State, or local requirements and such violations reasonably relates or has a nexus to the licensee's business activities. ..."
- 3-1-7-3: "Summary Suspension: A. Upon determining that a licensed activity or device presents an immediate danger to person or property, the City may suspend the license for the activity or device. ... C. The City may continue a suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under Section 3-1-7-4."

Ms. Kelli Weese, City Clerk
Page 2
October 27, 2014

Jerry Prater Construction is in violation of State of Oregon 2013 ORS 100.175 and 2013 ORS 100.200 with respect to its Whispering Pines Condominiums project located at 1150 Hemlock Street in Florence, to wit, (1) failure to do a reserve study, review the study annually, set up a reserve account, and fund the reserve account; and (2) failure to turn over the homeowners association to the owners after the requisite time.

As evidence of the above, I have attached a letter and its enclosures dated October 15, 2014, from me to the Florence Planning Commission with respect to Resolution PC14 16 DR 01, Jerry Prater Construction.

In addition, on October 23, 2014, I contacted Michael Hanifin, Land Development Assistant, Oregon Real Estate Agency, Salem, and requested that he check the State files again to ascertain whether or not Jerry Prater Construction had filed a reserve study since I checked with him last November 26, 2013 (see email included in Planning Commission package). Mr. Hanifin confirmed that such a document has still not been filed.

I believe that an immediate suspension of the business license for Jerry Prater Construction is required to prevent "immediate danger to person or property", to wit, Jerry Prater Construction intends to begin construction on Phase 2 and Phase 3 of the Whispering Pines Condominium development mentioned above. Approval of this resolution is coming before the Planning Commission on Tuesday, October 28, 2014. If the business license is not revoked, he will begin construction while being in violation of the laws cited above and will have no incentive to comply with the law.

Please let me know if there is any other information you need to evaluate my request. Thank you very much for your consideration.

Sincerely yours,

Patricia P. Reno

Enclosures

WHEN RECORDED, RETURN TO:
THOMAS C. NICHOLSON, P.C.
P.O. Box 308
Florence, Oregon 97439-0011
(541) 997-7151

Division of Chief Deputy Clerk
Lane County Deeds and Records

2005-046758



\$191.00

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06/27/2005 01:24:30 PM

RPR-DECL Cnt=1 Stn=10 CASHIER 05
\$170.00 \$10.00 \$11.00

**DECLARATION
OF CONDOMINIUM OWNERSHIP
FOR
WHISPERING PINES
CONDOMINIUM**

DECLARANT:
JERRY PRATER CONSTRUCTION, INC.
An Oregon Corporation

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For
WHISPERING PINES CONDOMINIUM

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**DECLARATION
OF CONDOMINIUM OWNERSHIP
FOR
WHISPERING PINES CONDOMINIUM**

THIS DECLARATION, made this 16 day of June, 2005, by Jerry Prater Construction, Inc., an Oregon corporation ("**Declarant**"), pursuant to the provisions of the Oregon Condominium Act.

Declarant proposes to create a condominium, to be known as Whispering Pines Condominium, which will be located in the City of Florence, Lane County, Oregon. The purpose of this Declaration is to submit the land, all buildings, improvements, structures, easements and any rights and appurtenances thereto to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act, ORS Chapter 100.

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

**ARTICLE 1
DEFINITIONS**

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

- 1.1 "**Act**" means the Oregon Condominium Act, ORS Chapter 100.
- 1.2 "**Association**" means Whispering Pines Condominium Association established pursuant to Article 13 below.
- 1.3 "**Bylaws**" means the Bylaws of the Association adopted pursuant to Section 13.4 below and recorded simultaneously with this Declaration, as they may be amended from time to time.
- 1.4 "**Condominium**" means the land, buildings, improvements submitted by this Declaration and all easements, rights, and appurtenances belonging thereto plus any additional property annexed to the project pursuant to Article 16 below.
- 1.5 "**Declarant**" means Jerry Prater Construction, Inc., an Oregon corporation, and its successors and assigns.
- 1.6 "**Declaration**" means this Declaration as the same may hereafter be amended and any supplemental declaration annexing property to the Condominium pursuant to Article 16 below.
- 1.7 "**Eligible Mortgage Insurer or Guarantor**" means an insurer or governmental guarantor of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 14.1 below.

1.8 **"Eligible Mortgage Holder"** means a holder of a first mortgage on a unit who has requested notice of certain matters from the Association in accordance with Section 14.1 below, but does not include a contract vendor.

1.9 **"Majority" or "Majority of Unit Owners"** means more than fifty percent (50%) of the voting rights allocated to the unit under Section 9.2 below.

1.10 **"Mortgage" and "Mortgagee"** mean, respectively, a recorded mortgage, trust deed, or contract of sale and the holder, beneficiary, or vendor of such instrument.

1.11 **"Percent of Owners or Unit Owners" or "Percentage of Owners or Unit Owners"** means the percent of the voting rights allocated under Section 9.2 below.

1.12 **"Plat"** means the plat of Stage 1 of Whispering Pines Condominium recorded simultaneously with this Declaration and any amendment thereto.

1.13 **"Turnover Meeting"** means the meeting provided for under Article 17 below in accordance with ORS 100.210.

1.14 **Incorporation By Reference.** Except as otherwise provided in this Declaration, the terms used in this Declaration that are defined in ORS 100.005, a part of the Act, have the meanings set forth in ORS 100.005.

ARTICLE 2

DESCRIPTION OF THE PROPERTY

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

ARTICLE 3

NAME OF CONDOMINIUM

The name of the Condominium is **"Whispering Pines Condominium."**

ARTICLE 4

UNITS IN STAGE 1

4.1 **General Description of Buildings.** Stage 1 consists of one (1) building, without basement, containing four (4) units. A portion of the building is two story and a portion is single story. The building contains three (3) two-level (townhouses) units and one (1) single level unit. The building has a concrete foundation and is of wood frame construction with concrete lap siding and composition roof.

4.2 **General Description, Location, and Designation of Units.** Stage 1 consists of three (3) two level (townhouse) units and one (1) single level unit. The dimensions, designation, and location of each unit are shown on the Plat. The designation and area of each of the units are shown on the attached **Exhibit B** and on the Plat.

4.3 **Boundaries of Units.**

(a) Each unit is bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim. The unit includes all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, 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 Condominium. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions are a part of the common elements. In addition, each unit includes the following:

- (1) All spaces, non-bearing interior partitions, interior doors and all other fixtures and improvements within the boundaries of the unit;
- (2) The glazing and screening of windows and unit access doors; and
- (3) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the unit, but not any part of the lines or ducts themselves.

(b) **Interpretation.** 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 unit or of a unit reconstructed in substantial accordance with the original Plat 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 or buildings.

ARTICLE 5
GENERAL COMMON ELEMENTS

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

- 5.1 The land, yards, pathways, sidewalks, walkways, driveway, fences and grounds.
- 5.2 Pipes, ducts, conduits, wires, and other utility installations to their outlets.
- 5.3 Roofs, foundations, subfloors, windows, except glazing and screening, window frames, exterior building doors and door frames, unit access doors, except glazing and screening, unit access door frames, bearing walls, perimeter walls, beams, columns and girders to the interior surfaces thereof.

5.4 All other elements of the building and the Condominium necessary or convenient to their existence, maintenance, and safety, or normally in common use.

ARTICLE 6 **LIMITED COMMON ELEMENTS**

Patios adjacent to each unit as shown on the Plat constitute limited common elements, the use of which shall be restricted to the units to which it adjoins as shown on the Plat.

ARTICLE 7 **PARKING & STORAGE**

7.1 Parking Spaces.

(a) General Common Elements. All parking spaces, including numbered or designated spaces, are general common elements and intended for the use of vehicles of owners or guests subject to such rules and regulations as the Board of Directors may deem necessary.

(b) Parking Space Assignment. If the Board of Directors determines that it is in the best interest of the Association and owners, the Board may assign one numbered or designated parking space to each unit. The assignment shall be in the sole discretion of the Board of Directors; however, to the extent feasible, the parking space must be located in the stage in which the unit is located. Once a parking space is assigned, the Board may not by rule or other action prohibit, restrict or change the assignment without giving the owner of the affected unit at least thirty (30) days written notice of the intended action.

7.2 Storage Spaces.

(a) General Common Elements. The storage spaces located in general common element buildings are general common elements and intended for the use of owners subject to such rules and regulations as the Board of Directors may deem necessary.

(b) Storage Space Assignment. The Board of Directors shall assign one numbered storage space to each unit. The assignment shall be in the sole discretion of the Board of Directors; however, to the extent feasible, a unit must be assigned a storage space in the building closest the unit. Once a storage space is assigned, the Board may not by rule or other action prohibit, restrict or change the assignment without giving the owner of the affected unit at least thirty (30) days written notice of the intended action.

(c) Responsibility for Security of Storage Spaces. Owners are responsible for providing locks to secure the storage space assigned to owner. The Association is not responsible to provide any security for individual storage spaces or to provide insurance for property located in storage spaces.

7.3 Master Lists of Parking Space and Storage Space Assignments. The Board of Directors shall maintain a Master Storage Space List that lists each unit and the assigned storage

space. If parking spaces are assigned pursuant to Section 7.1 above, the Board shall maintain a Master Parking List that lists each unit and the assigned parking space.

ARTICLE 8
ALLOCATION OF UNDIVIDED INTEREST
IN COMMON ELEMENTS

8.1 Each unit has an equal undivided one-fourth (1/4th) fractional ownership interest in the common elements. The equal undivided interest is allocated according to the right of each unit to use the common elements of the Condominium. The allocations will change if additional stages are added to the Condominium as is more particularly described in Section 16.4 below.

8.2 Each unit's interest in the common elements is inseparable from the unit and any conveyance, encumbrance, judicial sale or other transfer, voluntary or involuntary, of any undivided interest in the common elements is 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 and Expenses.** The common profits derived from, and the common expenses of the Condominium, shall be allocated to each unit equally. Amounts may be rounded to the nearest dollar.

9.2 **Allocation of Voting Rights.** Each unit is entitled to one vote in the affairs of the Association and for the purpose of this Declaration. The method of voting is as specified in the Bylaws.

ARTICLE 10
USE OF PROPERTY

10.1 **Use of Units.** Each unit shall be used for residential purposes as described in the Bylaws. Additional use limitations are contained in the Bylaws and in rules and regulations adopted pursuant to the Bylaws by which all owners are bound.

10.2 **Restrictions Imposed by Other Documents.** In addition to the provisions of this Declaration, the Bylaws, Articles of Incorporation, the Act, other laws and ordinance and regulations of local governing bodies, the Condominium is subject to:

(a) Avigation Easement, Agreement and Reconveyance recorded April 6, 2005 as Document No. 2005-024224, Records of Lane County, Oregon.

(b) City of Florence Planning Commission Resolution No. 04-07-27-21 adopted August 24, 2004, a copy of which is attached as **Exhibit D**.

10.3 **Declaration of Anticipated Noise Levels.** In accordance with the requirements of City of Florence Planning Commission Resolution No. 04-07-27-21, a Declaration of Anticipated Noise Levels is attached as **Exhibit E.**

10.4 **Adoption of Rules.** The avigation easement and Resolution No.04-07-27-21 set forth in Section 10.2 above include provisions that limit the use of units and common elements. The Board of Directors has authority to adopt by resolution such rules as it deems necessary to interpret, implement and enforce, including a schedule of fines for violation, the provisions of the easement and resolution.

ARTICLE 11 **MAINTENANCE OF COMMON ELEMENTS**

11.1 **General Common Elements Maintenance.** The cost of maintenance, repair and replacement of the general common elements is a common expense and the performance of the work is the responsibility of the Board of Directors and shall be carried out as provided in the Bylaws except:

(a) The owner of a townhouse unit is responsible for performance of maintenance, repair and replacement of that part of the general common elements constituting the ceiling of the lower level and the floor of the second level. The owner is responsible for the cost of the maintenance, repair and replacement to the extent the cost is not covered by Association insurance, including any insurance deductible determined the responsibility of the owner under Section 10.5 of the Bylaws.

(b) Subject to Subsection (a) of this section, the Association shall repair any damage to the general common elements caused by the negligence or intentional act of an owner or owner's invitee, guest, tenant or servant at the responsible owner's sole cost, including any insurance deductible determined the responsibility of the owner under Section 10.5 of the Bylaws. The cost is collectable as an assessment under Article VI of the Bylaws.

11.2 **Limited Common Elements Maintenance.** The cost of maintenance, repair and replacement of the limited common elements is a common expense and the performance of the work is the responsibility of the Board of Directors and shall be carried out as provided in the Bylaws except:

(a) Any damage caused by the negligence or intentional act of an owner or owner's invitee, guest, tenant or servant shall be repaired by the Association at the responsible owner's sole cost, including any insurance deductible determined the responsibility of the owner under Section 10.5 of the Bylaws. The cost is collectable as an assessment under Article VI of the Bylaws.

(b) Each unit owner shall keep the patio in a safe, neat, clean and sanitary condition.

ARTICLE 12
SERVICE OF PROCESS

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

ARTICLE 13
THE ASSOCIATION OF UNIT OWNERS

13.1 **Organization.** Upon the recording of this Declaration, an association of unit owners shall be organized to serve as a means through which the unit owners may take action with regard to the administration, management, and operation of the Condominium. The name of the Association shall be "Whispering Pines Condominium Association" or other similar name which includes the complete name of the Condominium. The Association shall be an incorporated association in accordance with Section 1.5 of the Bylaws.

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

13.3 **Powers and Duties.** The Association has 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) as the statute may be amended to expand the scope of association powers, together with such additional powers and duties afforded by this Declaration, the Bylaws and the Oregon Nonprofit Corporation Act, ORS Chapter 65.

13.4 **Adoption of Bylaws; Appointment of Interim Board; Designation of Manager.**

(a) **Adoption of Bylaws.** Concurrently with the execution and recording of this Declaration, the Declarant has adopted Bylaws for the Association.

(b) **Appointment of Interim Board of Directors.** Not later than conveyance of the first unit, Declarant shall appoint an interim Board of Directors of the Association, which directors shall serve until their successors have been elected at the Turnover Meeting as provided in Article 17 below and the Bylaws. The interim Directors may appoint a manager or managing agent for the Condominium on behalf of the Association, and the manager or managing agent shall have complete authority to assume full control and responsibility for the management, operation, and maintenance of the Condominium from the date of its formation at the expense of the Association.

13.5 **Duration and Termination of Initial Agreements.** Any management, service, or employment agreement entered into prior to the Turnover Meeting which is made directly by or on behalf of the Association, the Board of Directors, or the unit owners may not be for a term in excess of three (3) years, and may be terminated without penalty by the Association or the Board of Directors upon not less than thirty (30) days written notice given not more than sixty (60) days after the Turnover Meeting.

ARTICLE 14
RIGHTS OF MORTGAGEES

14.1 **Notice of Action.** Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the unit number or address of the unit on which it has (or insures or guarantees) the mortgage, any such Eligible Mortgage Holder or Eligible Insurer or Guarantor is entitled to timely written notice of the following:

- (a) Any condemnation or casualty loss which affects a material portion of the Condominium or affects the unit securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by an owner of any unit on which it holds the mortgage.
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.
- (d) Any proposed action which would require consent of a specified percentage of eligible holders as required by this article.

14.2 **Termination.**

- (a) The approval of Eligible Mortgage Holders holding mortgages on units which have at least sixty-seven percent (67%) of the voting rights of units subject to mortgages held by Eligible Mortgage Holders is required to terminate the legal status of the project as a condominium for reasons other than substantial destruction or condemnation of the property.
- (b) Except where a greater percent is required by the Act, the approval of unit owners who represent at least sixty-seven percent (67%) of the voting rights and by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the units subject to mortgages held by Eligible Mortgage Holders is required to terminate the legal status of the Condominium after substantial destruction or condemnation occurs.

14.3 **Amendment.**

- (a) Except when a greater percent is required by the Declaration or Bylaws, or a greater or lesser percent is required by the Act, the consent of the owners of units holding at least sixty-seven percent (67%) of the voting rights and the approval of Eligible Mortgage Holders holding mortgages on units which have at least fifty-one percent (51%) of the voting rights of the units subject to mortgages held by Eligible Mortgage Holders is required for an amendment of a material nature to the Declaration or Bylaws. Any amendment to the Declaration or Bylaws which changes any of the following constitutes a material change:

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

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

(b) An addition or amendment to the Declaration or Bylaws is not considered material for purposes of Subsection (b) of this section if it is for the purpose of correcting technical errors, or for clarification only.

14.4 **Additional Approvals.** In addition to any other approvals required by the Act, this Declaration or the Bylaws, prior written approval of two-thirds (2/3) of the holders of first Mortgages on units in the Condominium (based upon one vote for each first Mortgage owned) or unit owners (other than Declarant) must be obtained for the following:

- (a) Abandonment or termination of the Condominium regime.
- (b) Any change in the pro rata interest or obligation of any individual unit for:
 - (1) Purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

(2) Determining the pro rata share of ownership of each unit in the common elements.

(c) The partition or subdivision of any unit.

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

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

14.5 Additional Rights. In addition to the approvals and rights required or specified in this article, a mortgagee (or beneficiary of a trust deed or vendor and including guarantors) has the following rights:

(a) Right to Examine Books and Records. All mortgagees have the right to examine the books and records of the Association or the Condominium property upon reasonable notice and at reasonable times.

(b) Right to Annual Reports. All mortgagees, upon written request, are entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

(c) Right to Written Notice of Meetings. The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and the mortgagees are permitted to designate a representative to attend all the meetings.

(d) Right to Notice of Default. Any first mortgagee, upon written request, is entitled to written notification from the Association of any default in the performance by the owner of the mortgaged unit of any obligation under this Declaration, the Bylaws or rules and regulations adopted pursuant thereto which is not cured within sixty (60) days.

(e) Mortgagee's Rights Upon Failure to Maintain.

(1) If the mortgagee of any unit determines that the Board of Directors is not providing an adequate maintenance, repair and replacement program for the common elements, the mortgagee, at its option, may give notice to the Board by delivering the same to the registered agent, setting forth the particular defect which it believes exists in the maintenance, repair and replacement program.

(2) If the specified defects are not corrected within ninety (90) days subsequent to receipt of the notice, then the mortgagee, upon written notice to the registered agent that it is exercising its proxy rights, has the right to attend succeeding annual or special meetings of

the Association and to cast a vote for each unit on which it holds a mortgage on all business coming before the meetings. The proxy rights continue until the defects listed on the notice are corrected.

14.6 Approval of Veterans Administration. If the Condominium has been approved by the Veterans Administration, the condominium regime, including the Declaration or Bylaws, may not be amended or merged with a successor condominium regime (if permitted under the Act) without the prior written approval of the Veterans Administration.

14.7 Request for Approval of Mortgagee. Any mortgagee who receives a written request to approve amendments to this Declaration or the Bylaws, or any other action to be taken by the Board of Directors, the Association or owners, any termination, additions or amendments and who does not deliver or post to the requesting party a negative response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, is deemed to have approved the request.

ARTICLE 15

EASEMENTS

15.1 In General.

(a) Each unit has an easement in and through each other unit and the common elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each unit and all the common elements are specifically subject to easements as required for the electrical wiring and plumbing for each unit.

(b) Each unit owner has an unrestricted right of ingress and egress to his or her unit. This right is perpetual and passes with the ownership of the unit.

(c) The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common elements reserved by law.

15.2 Right of Entry.

(a) The Board of Directors of the Association, managing agent, manager, or any other person authorized by the Board of Directors, has the right to enter any unit and limited common element in the case of any emergency originating in or threatening the unit or other Condominium property, whether or not the owner is present at the time. The Board or other authorized person entering a unit under this subsection may not be deemed guilty of any manner of trespass.

(b) The persons specified in Subsection (a) of this section have the right to enter any unit and limited common element for the purpose of performing installations, alterations, or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in this Declaration and the Bylaws, provided requests for entry are made in advance and the entry is at a time convenient to the owner.

15.3 Encroachments.

(a) Pursuant to ORS 100.520, each unit and all common elements have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments exist, and except as otherwise provided in Subsection (b) of this section, the rights and obligations of owners may not be altered in any way by the encroachment.

(b) The easement described under Subsection (a) of this section does not relieve a unit owner of liability in case of willful misconduct of a unit owner or relieve the Declarant or any contractor, subcontractor, or materialman of liability for failure to adhere to the Plat.

(c) The encroachments described in subsection (a) of this section may not be construed to be encumbrances affecting the marketability of title to any unit.

(d) If structures are partially or totally destroyed and then rebuilt, the owners of the units agree that minor encroachment of parts of the common elements due to such rebuilding are allowed and an easement exists for such purpose.

15.4 Granting of Easements and Other Interest by Association.

(a) Pursuant to ORS 100.405(5), the Association has the authority to execute, acknowledge, deliver, and record on behalf of the unit owners, leases, easements, rights-of-way, licenses, and other similar interests affecting the common elements and to consent to vacation of roadways within and adjacent to the Condominium.

(b) Subject to Subsections (d) and (e) of this Section 15.4, the granting of a lease, easement, right of way, license or other similar interest must first be approved by at least seventy-five percent (75%) of the unit owners as required by ORS 100.405, except:

(1) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two (2) years or less requires only the approval of a majority of the Board of Directors.

(2) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of more than two (2) years to a public body, as defined in ORS 174.109, or to a utility or a communications company for underground installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires only the approval of a majority of the Board of Directors.

(3) The granting of an easement, right of way or other similar interest affecting the general common elements required by the City of Florence under City of Florence Planning Commission Resolution 04-07-27-21 adopted August 24, 2004 requires only the approval of a majority of the Board of Directors.

ORS 100.120, together with a plat of the stage being annexed bearing a completion certificate as required by ORS 100.120 and 100.115.

16.1 **Maximum Number of Units.** If fully developed, the Condominium will contain not more than forty-four (44) units.

16.2 **Termination Date.** No additional stage may be added more than seven (7) years after the recording of this Declaration. Pursuant to ORS 100.105(3), the date may be extended for a period not to exceed two (2) years by an amendment to this Declaration adopted under Article 19 below.

16.3 **Additional Common Elements.** Declarant does not propose to include in future stages any common elements which would substantially increase the proportionate amount of the common expenses payable by owners of units in Stage 1.

16.4 **Allocation of Interests in Common Elements.** The allocation of undivided interest in the common elements of units in Stage 1 will change if additional stages are annexed to the Condominium. The allocation shall be determined as provided in Article 8 above.

16.5 **Allocation of Common Profits and Expenses; Voting Rights.** Upon annexation of additional stages, the allocation of common profits and expenses and voting rights shall be determined as provided in Article 9 above.

16.6 **Legal Description of Additional Stages.** A legal description of the property upon which additional stages will be located if annexed is included in attached Exhibit C. An additional stage may be located on all a part of the property described in Exhibit C.

ARTICLE 17
DECLARANT RIGHTS AND ADMINISTRATIVE
CONTROL OF ASSOCIATION

17.1 **Administrative Control of Association.** The Declarant shall assume full administrative control through an appointed interim Board of Directors. The interim Board shall serve until the Turnover Meeting, which must be held within ninety (90) days of the earlier of seven (7) years from the date of conveyance of the first unit in the Condominium to a person other than the Declarant or the date the Declarant has sold or conveyed seventy-five percent (75%) of the number of units which may be annexed under ORS 100.125. Declarant may elect to relinquish control of the Association at an earlier time by written notice to owners.

17.2 **Other Rights.** In addition to any other rights under this Declaration, the Bylaws, the Act, or other law, unless otherwise provided, until annexation of the last stage of the Condominium under Article 16 above and so long as Declarant owns at least one (1) unit, Declarant has the rights set forth below.

(a) **Sales Office and Model.** Declarant has the right to maintain a sales office in one (1) or more of the units which Declarant owns. Declarant and prospective purchasers and

their agents have the right to use and occupy the sales office during reasonable hours any day of the week.

(b) "For Sale" Signs. Declarant may maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations in the Condominium, including without limitation, the general common elements.

(c) No Capital Assessments Without Consent. Neither the Association nor the Board of Directors may make any assessments for new construction, acquisition, capital improvements or otherwise without the prior written consent of the Declarant.

(d) Common Element Maintenance by the Association. The Association shall maintain all common elements in a clean and attractive condition. If the Association fails to do so, the Declarant may perform the maintenance at the expense of the Association.

(e) Declarant's Easements. The Declarant and Declarant's agents, employees, successors and assigns have an easement on and over the common elements as may be reasonably necessary for the purpose of:

(1) Completion of any portion of the Condominium, including the furnishing and decoration of any unit.

(2) Carrying out sales and rental activities necessary or convenient for the sale or rental of units, including, without limitation, the right to use the units owned by Declarant as model units and the right to use a unit as a sales office.

(3) Storing materials on the common elements at reasonable places and for reasonable lengths of time and for the purpose of completion of any portion of the Condominium.

(4) Discharging any other obligation of Declarant or exercising any other special Declarant rights, whether arising under the Act or reserved in this Declaration or the Bylaws.

(f) Declarant's Other Special Rights. The rights reserved to the Declarant in this Article 17 in no way limit any other special rights that Declarant, as declarant, may have, whether pursuant to the Act or otherwise. Upon the expiration of any or all rights reserved under this article, the Declarant shall have the same rights as any other owner in the Condominium with respect to the ownership of a unit.

(g) Assignment of Declarant's Rights. The Declarant has the right to assign any and all of its rights, including without limitation, Declarant's special rights as set forth in this article, or to share the rights with one or more other persons exclusively, simultaneously or consecutively.

ARTICLE 18
CHANGES TO UNIT BOUNDARIES AND PARTITIONS

18.1 Removal or Alterations of Partitions; Creation of Apertures.

(a) Pursuant to ORS 100.535, after acquiring an adjoining unit, or an adjoining part of an adjoining unit, a unit owner may submit a written request to the Board of Directors for permission to remove or alter any intervening partition or to create apertures therein even if the partition, in whole or in part, is a common element.

(b) The Board of Directors shall approve the change unless it determines within forty-five (45) days of the written request that the proposed change will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium.

(c) The Board of Directors may require the unit owner, at owner's own expense, to submit an opinion of a registered architect or registered professional engineer that the proposed change will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium.

(d) The Board or any agent appointed by the Board may supervise the work necessary to effect the removal of partitions or creation of apertures under this section.

(e) Removal of partitions or creation of apertures under this section is not an alteration of boundaries subject to the requirements of Section 18.2 below.

(f) Expenses incurred in conjunction with an alteration as set forth in this section shall be borne by the affected unit owners.

18.2 Relocation or Elimination of Boundaries.

(a) Pursuant to ORS 100.130, the boundaries between adjoining units, including any intervening common elements, may be relocated or eliminated by an amendment to this Declaration. The owners of the affected units shall submit to the Board of Directors a proposed amendment which shall:

- (1) State that the Declaration is being amended pursuant to this section;
- (2) Identify the units involved;
- (3) State any reallocations of common element interest, voting rights, common expenses liability and right to common profits in accordance with Paragraph (2) of this subsection; and
- (4) Contain words of conveyance.

(b) The Board of Directors shall approve the amendment unless it determines within forty-five (45) days of submission of the proposed amendments that the reallocations are

unreasonable or the relocation or elimination will impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium or the amendment otherwise does not conform to the requirements of the Act.

(c) The Board of Directors may require the owners of the affected units to submit an opinion of a registered architect or registered professional engineer that the proposed relocation will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium.

(d) The Board or any agent appointed by the Board may supervise the work necessary to effect the boundary relocation or elimination.

(e) The amendment shall be executed by the owners and mortgagees of the affected units, certified by the chairperson and secretary of the Association as being adopted in accordance with ORS 100.130 and this Declaration, approved as required by law and recorded in the Deed Records of Lane County, Oregon. A plat necessary to show the altered boundaries between the adjoining units must be prepared, approved and recorded as required by the Act.

(f) Any expenses incurred under this Section 18.2 shall be charged to the owners of the units requesting the boundary relocation or elimination.

ARTICLE 19 **AMENDMENT**

19.1 **How Proposed.** Amendments to the Declaration must be proposed by either a majority of the Board of Directors or by unit owners holding thirty percent (30%) or more of the voting rights presenting the proposed amendment to the Board for presentation to the owners. The proposed amendment must be reduced to writing and 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.

19.2 Approval Required.

(a) Subject to Subsections (b) and (c) of this section, except as may be otherwise provided in this Declaration or by the Act, this Declaration may be amended if the amendment is approved by unit owners holding at least seventy-five percent (75%) of the voting rights of the Condominium and by mortgagees to the extent required by Article 14 above.

(b) The Declarant's prior written consent is also required for any amendment until annexation of the last stage of the Condominium under Article 16 above and so long as Declarant owns at least one (1) unit.

(c) Except as may otherwise be permitted by the Act, unless the amendment has been approved by the owners and mortgagees of the affected unit, no amendment may change:

(1) The allocation of undivided interest in the common elements specified in Section 8.1 above;

- in Section 9.1 above;
- (2) The method of determining liability for common expenses specified in Section 9.1 above; or
- (3) The method of determining right to common profit specified in Section 9.2 above.
- (4) The method of determining voting rights of any unit specified in Section 9.2 above.

19.3 **Execution; Approval and Recording.** The amendment or the Declaration as amended shall be:

- (a) Executed and certified by the chairperson and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Act;
- (b) Approved by the Real Estate Commissioner, Lane County assessor and tax collector, if the approvals are required by the Act; and
- (c) Effective upon recording in the Deed Records of Lane County, Oregon.

ARTICLE 20 **SEVERABILITY**

Invalidation of any one of these covenants or restrictions by judgment or court order in no way affects any other provision which remains in full force and effect.

ARTICLE 21 **APPLICABILITY**

Each unit owner, including Declarant as to any unsold unit, is subject to all of the rights and duties assigned to unit owners under the terms of the Declaration and Bylaws.

ARTICLE 22 **COMPLIANCE**

Each unit owner shall comply with the provisions of the Declaration, the Articles of Incorporation, 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 is grounds for suit or action, maintainable by the Association or any unit owner in addition to other sanctions that may be provided in the Bylaws or in any existing administrative rules and regulations.

ARTICLE 23 **CONFLICTING PROVISIONS**

Subject to ORS 100.122 and 100.100, if a conflict arises between or among the provisions of the Declaration, the Articles of Incorporation of the Association, the Bylaws, and any administrative rules and regulations, the provisions of the Declaration are paramount to those of the

Articles, the Bylaws, and the rules and regulations; the Articles are paramount to the Bylaws and the rules and regulations and those of the Bylaws are paramount to the rules and regulations, except to the extent the Declaration, Bylaws and Articles are inconsistent with the Act.

ARTICLE 24
ENFORCEMENT

24.1 **Right to Enforce.** The Association, or any owner, has the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Additional enforcement remedies are contained in the Bylaws.

24.2 **Waiver, Precedent and Estoppel.** No restriction, condition, obligation, or provision contained in this Declaration or in the rules and regulations adopted pursuant hereto may be deemed to have been abrogated or waived by the Association or by any owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same may not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

ARTICLE 25
INTERPRETATION

The invalidity of any part of this Declaration does not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine and neuter include the masculine, feminine, and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and may in no way limit any of the provisions of this Declaration.

BALANCE OF THIS PAGE
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16th IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this day of June, 2005.

Jerry Prater Construction, Inc., an Oregon corporation

By: *Jerry Prater*
Jerry Prater, President

STATE OF OREGON)
)ss
County of)

The foregoing instrument was acknowledged before me on June 16th, 2005, by Jerry Prater, President, of Jerry Prater Construction, Inc., an Oregon corporation, on its behalf.



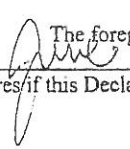
Constance L. Owens
NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/17/07

GOVERNMENTAL APPROVALS

The foregoing Declaration is approved pursuant to ORS 100.110 this 27TH day of JUNE, 2005.

LANE COUNTY ASSESSOR AND TAX
COLLECTOR

By: 

 The foregoing Declaration is approved pursuant to ORS 100.110 this 14th day of JUNE, 2005 and in accordance with ORS 100.110(7), this approval automatically expires if this Declaration is not recorded within two (2) years from this date.

SCOTT W. TAYLOR
REAL ESTATE COMMISSIONER

By: 

Brian DeMarco

EXHIBIT A
LEGAL DESCRIPTION
STAGE 1

Beginning at the Northwest corner of Lot 20, Block 7, Amended Plat of Chicago Addition to Florence as platted and recorded in Volume 25, Page 552 and 553, Lane County Oregon Plat Records, in Lane County, Oregon; thence along the Northerly line of said Lot 20 North $89^{\circ}51'52''$ East for 84.50 feet; thence leaving said Northerly line South $0^{\circ}08'08''$ East for 26.00 feet; thence South $89^{\circ}51'52''$ West for 10.00 feet; thence South $0^{\circ}08'08''$ East for 23.50 feet; thence South $89^{\circ}51'52''$ West for 14.00 feet; thence South $0^{\circ}08'08''$ East for 112.00 feet; thence South $89^{\circ}51'52''$ West for 60.50 feet to the Easterly right of way line of Hemlock Street; thence along said right of way line North $0^{\circ}08'08''$ West for 161.50 feet to the point of beginning in Lane County, Oregon.

EXHIBIT B
UNIT DESIGNATION AND AREA
(SQUARE FOOTAGE)

UNIT NO.	UNIT DESIGN	SQUARE FOOTAGE AREA
1	Single Level	990
2	Townhouse	931
3	Townhouse	930
4	Townhouse	926

NOTICE

THE SQUARE FOOTAGE OF UNITS STATED ABOVE WAS CALCULATED FROM MEASUREMENTS SHOWN ON THE PLAT. THE PLAT MEASUREMENTS ARE BASED ON THE UNIT BOUNDARIES DESCRIBED IN THIS DECLARATION. THE UNIT AREAS STATED IN THIS DECLARATION MAY VARY FROM SQUARE FOOTAGE CALCULATIONS MADE FOR ASSESSMENT, APPRAISAL AND OTHER PURPOSES, AND MAY VARY FROM THE ACTUAL LIVING AREA OF THE UNITS.

EXHIBIT C
LEGAL DESCRIPTION FOR PROPOSED STAGES

Lots 11 through 20, Block 6, and Lots 1 through 8 and 11 through 20, Block 7, AMENDED PLAT OF CHICAGO ADDITION, AS PLATTED AND RECORDED in Volume 25, Page 552 and 553, Lane County Oregon Plat Records, in Lane County, Oregon.

SAVE AND EXCEPT the following described property:

Beginning at the Northwest corner of Lot 20, Block 7, Amended Plat of Chicago Addition to Florence as platted and recorded in Volume 25, Page 552 and 553, Lane County Oregon Plat Records, in Lane County, Oregon; thence along the Northerly line of said Lot 20 North 89°51'52" East for 84.50 feet; thence leaving said Northerly line South 0°08'08" East for 26.00 feet; thence South 89°51'52" West for 10.00 feet; thence South 0°08'08" East for 23.50 feet; thence South 89°51'52" West for 14.00 feet; thence South 0°08'08" East for 112.00 feet; thence South 89°51'52" West for 60.50 feet to the Easterly right of way line of Hemlock Street; thence along said right of way line North 0°08'08" West for 161.50 feet to the point of beginning in Lane County, Oregon.

EXHIBIT D
CITY OF FLORENCE
PLANNING COMMISSION

RESOLUTION 04-07-27-21

IN THE MATTER OF AN APPLICATION FOR A MAJOR DESIGN REVIEW TO CONSTRUCT A 44 UNIT MULTI-UNIT FAMILY RESIDENTIAL DEVELOPMENT. THE PROPERTY IS EAST OF HEMLOCK BETWEEN THE UNDEVELOPED 11TH AND 12TH STREETS, SOUTH OF AN UNDEVELOPED SINGLE FAMILY RESIDENTIAL SUBDIVISION AND NORTH, WEST, AND EAST OF VACANT LAND IN THE PROFESSIONAL OFFICE / INSTITUTIONAL DISTRICT, MAP 18-12-27-42, TAX LOT 300 & 400, AS APPLIED FOR BY JERRY PRATER.

WHEREAS, application was made by Jerry Prater for a construction of a 44 unit multi-unit family residential development; and

WHEREAS, the Planning Commission/Design Review Board met in a public hearing on July 27, 2004 to consider the application, evidence in the record and testimony received, and continued the hearing to August 24, 2004; and

WHEREAS, the Planning Commission/Design Review Board determined, after review of the application, testimony and evidence in the record, that the application meets the applicable criteria, or can meet the criteria through compliance with certain Conditions of Approval; and

WHEREAS, the Planning Commission/Design Review Board of the City of Florence finds, based on the Findings of Fact, staff recommendation and evidence and testimony presented to them, that the following conditions are required for full compliance with applicable criteria:

1. Approval shall be shown on:

"B" Site Plan (revised)	"G" Zoning Map
"C" Utility Plan	"H" Land use Application
"D" Landscape and Irrigation Plan	"I" Map and Tax Lot
"E" Elevations	"J" Comp Plan Exhibits
"F" Floor Plans	"K" Airport Overlay Zone Exhibits

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted

Prater Jerry
Hemlock Multi-Family
04-07-27-21

in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to the criteria regulated by the Uniform Building Code, will require approval by the Community Services Director (CSD) or the Planning Commission/Design Review Board.

2. Applicant shall resubmit plans with the required revisions as appropriate from the following conditions of approval:
3. Before building permits are issued or additional clearing permits are granted, the applicant shall provide a vegetation retention plan for Phases 2 and 3. The plan shall identify those plant specimens that are outside of the building footprint and other improved areas. Tree specimens larger than 8" in diameter and 4' in height shall be preserved unless an arborist determines that they are a hazard.
4. The applicant shall resubmit the landscape plan for Phase 1, indicating plant sizes and retaining native vegetation where possible. Prior to issuance of a building permit for Phases 2 and/or 3, a landscape plan shall be submitted and approved by the Community Services Director. For areas where native vegetation is removed, trees shall be planted 30' on center with additional vegetative plants introduced such that at least 50% of the ground is covered within 3 years, with the remainder of the area in ground cover, grass and/or bark-mulch etc.... For that area abutting 12th Street right-of-way a minimum of a 3 feet high landscaped berm, hedge, natural vegetation or dense landscaped planting shall be provided.
5. All parking spaces and driveways shall be hard surface (asphalt or concrete) and striped according to city and state requirements.
6. All signs shall be in accordance with FCC 10-26.
7. The applicant shall ensure the trash enclosures are not constructed in the right-of-way. Staff recommends each Phase have trash receptacles and enclosures to ensure convenience to the residents. Staff also recommends that a trash enclosure not be located adjacent to the entrance of the development.
8. Prior to submittal of building permit applications, the storage unit elevations shall be provided to the Community Services Department for approval. The storage units shall be painted to coordinate with the units and shall not be flat roofed.
9. Applicant shall provide security lighting along the length of the parking area and at dwelling entryways. All outdoor lighting shall be shielded and directed away from adjoining property and streets. There will be no illumination beyond the site boundary. The applicant shall submit a lighting plan to the Community Services

Department for review and approval prior to application for building permits. All proposed lighting shall conform to 10-27-5-G.

10. The applicant shall ensure all mechanical and telecommunications equipment are screened during development and included on any sales agreement for the dwellings, or if CC&Rs are developed, this provision to prohibit roof mounted appurtenances.
11. All fences will be required to comply with Section 10-2-5, General Provisions, of the Zoning Code.
12. The irrigation shall be installed as proposed on the revised landscape plan and the plants and grounds maintained in a weed free and healthy condition.
13. The applicant shall not clear vegetation in the alley or Ivy Street except the area delineated for use as the private drive, any pedestrian way and/or other improvements such as refuse collection, etc. established as a condition of approval.
14. The Ivy St. cul-de-sac shall have a hard surface for emergency service vehicles turn-around and maneuverability.
15. The private drive shall be developed to city street standards including where it traverses Ivy St and the alley. Sidewalks shall be provided on both sides of the private drive for the entire length of the project.
16. The applicant shall either provide a half street improvement for 11th Street between Hemlock and Ivy Street when 50 per cent of the adjacent properties are ready to develop the street or provide an access easement to the owners of Tax Lot 500. Cost of this easement shall be negotiated at the time it is needed.
17. The applicant shall work with the Florence Post Office to locate the mail receptacles in a suitable location.
18. A 5' sidewalk shall be constructed adjacent to Hemlock Street prior to issuance of Certificate of Occupancy for Phase 1.
19. The applicant shall construct a bike path in 12th Street with a 10' wide asphalt path along the entire length of the project. The path shall be at or above grade due to the location of the water line 18" below the surface. It is recognized that the some portions of the path may be steeper than ADA standards.

20. A declaration of anticipated noise levels shall be attached to any deed and C, C & R's. Prior to issuance of a building permit, a noise abatement strategy shall be incorporated into the building design that will achieve an indoor noise level equal or less than 55 DNL. Additionally the applicant shall ensure the proposed use complies with FCC 10-21-2-7 regarding noise, outdoor lighting, glare, emissions, and communications facilities and electrical interferences.
21. Failure to initiate Phase 1 site development within one year will require the applicant return to the Planning Commission for an extension. Phase 2 shall be complete by the end of the third year. Phase 2 and 3 shall be constructed within 5 years. Otherwise the applicant will lose the design review approval and reapplication will be required.
22. The applicant shall provide a 6" water main, and loop it to the existing water main in the 12th St. right-of-way. If reasonable care is taken during the connection of the water line to the transit line in 12th Street, the applicant shall not be held liable for damage to the transit line.
23. The applicant shall branch the sewer laterals west of the man hole in Ivy Street rather than at or after.
24. Improvement of the private access drive shall occur prior to or concurrent with each phase of development. The sidewalk along Hemlock shall be developed prior to the issuance of a certificate of occupancy for any dwelling in Phase 1. The multi-use path shall be completed prior to the issuance of a certificate of occupancy for any dwelling in Phase 2.
25. Applicant shall install all stormwater lines and outlets so that run-off does not drain across the paved surface of any public or private right of way.
26. A performance agreement, petition or bond for improvements shall be submitted to and approved by the City prior to application for building permits.
27. The maximum height allowed within the development is 35 feet to ensure compliance with the airport overlay district. This includes all construction such as flagpoles, antennas, towers, spires, etc,
28. Prior to issuance of building permits, an aviation easement shall be recorded that allows unobstructed passage for aircraft.
29. The applicant will present to the Community Development Department a signed "Affidavit of Acceptance" of all conditions prior to issuance of building permits.

NOW THEREFORE BE IT RESOLVED by the Planning Commission/Design Review Board of the City of Florence that the proposal is approved and that the Findings of Fact attached as Exhibit "A", revised August 24, 2004, and Supplementary Findings of Fact dated August 10, 2004 are hereby incorporated by reference and adopted in support of this decision.

ADOPTED BY THE FLORENCE PLANNING COMMISSION/DESIGN REVIEW BOARD the 24th day of August, 2004.

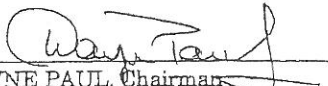
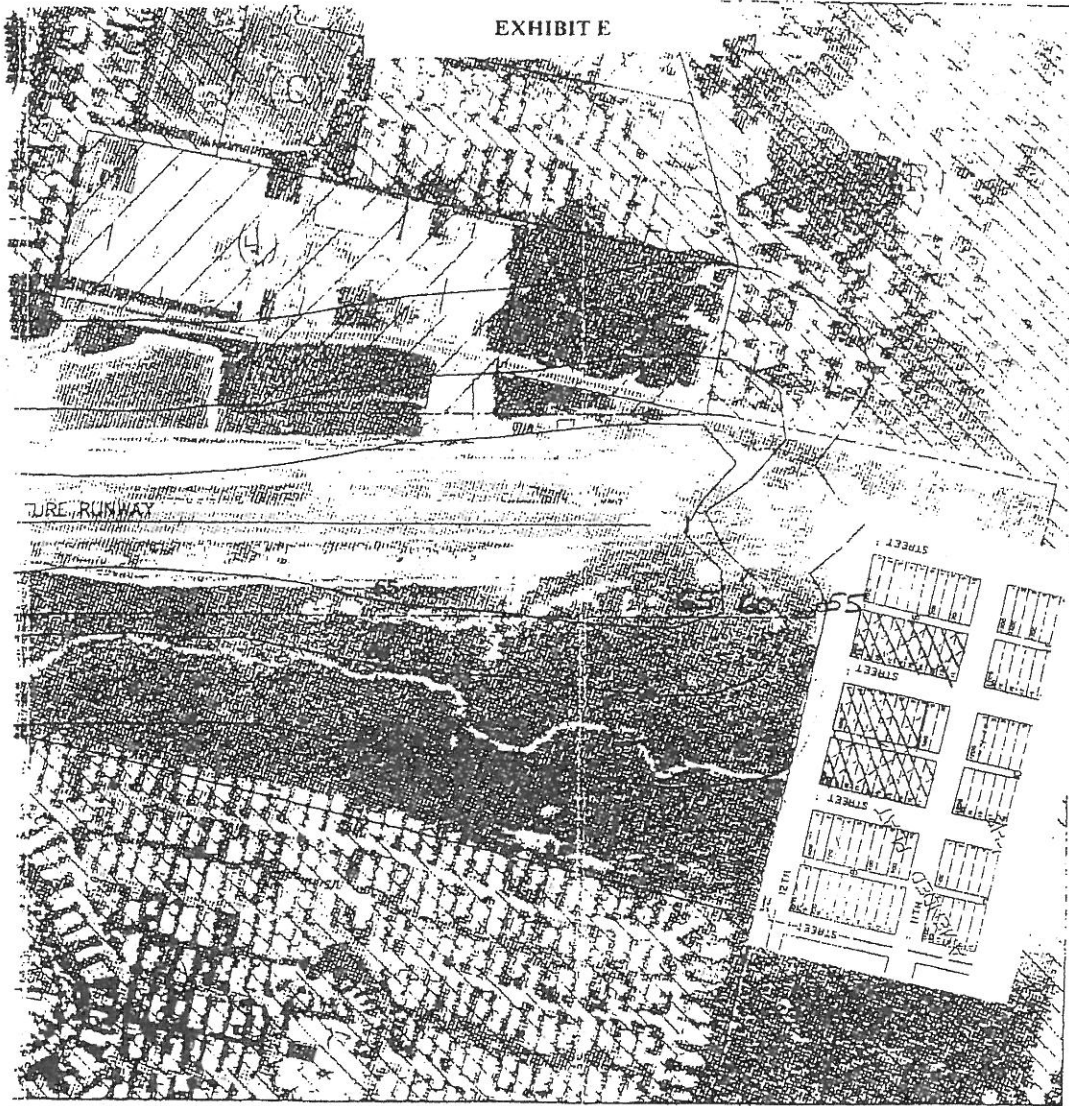

WAYNE PAUL, Chairman
Florence Planning Commission

EXHIBIT E



1. DNL BASED ON 7,000 OPS
PROJECTED FOR YEAR 1995

2. LAND USE DESIGNATION, PER
CITY OF CHICAGO, ILL.
AND SURROUNDING AREA

1/2



WHEN RECORDED, RETURN TO:
THOMAS C. NICHOLSON, P.C.
P.O. Box 308
Florence, Oregon 97439-0011
(541) 997-7151

**SUPPLEMENTAL DECLARATION
SUBMITTING WHISPERING PINES
CONDOMINIUM STAGE 2
TO
CONDOMINIUM OWNERSHIP**

DECLARANT:
JERRY PRATER CONSTRUCTION, INC.
An Oregon Corporation

Division of Chief Deputy Clerk
Lane County Deeds and Records

2005-085227



\$86.00

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**SUPPLEMENTAL DECLARATION SUBMITTING
WHISPERING PINES CONDOMINIUM STAGE 2
TO CONDOMINIUM OWNERSHIP**

THIS SUPPLEMENTAL DECLARATION, is made this 26th day of August, 2005, by Jerry Prater Construction, Inc., an Oregon corporation ("**Declarant**"), pursuant to the provisions of the Oregon Condominium Act.

RECITALS

A. Whispering Pines Condominium is a condominium created by the following documents recorded June 27, 2005 in the Records of Lane County, Oregon:

Declaration of Condominium Ownership of Whispering Pines Condominium recorded June 27, 2005 as Document No. 2005-046758.

Bylaws of Whispering Pines Condominium Association recorded as Document No. 2005-046759

Plat of Whispering Pines Condominium Stage 1 recorded in June 27, 2005 as Document No. 2005-046757.

B. The purpose of this Supplemental Declaration is to submit the property described in Article 2 below to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act, and to annex the property to Whispering Pines Condominium as Stage 2.

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

**ARTICLE 1
DEFINITIONS**

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

1.1 "**Association**" means Whispering Pines Condominium Association established pursuant to Article 13 of the Stage 1 Declaration.

1.2 "**Bylaws**" means the Bylaws of the Association recorded June 27, 2005 as Document 2005-046759 in the Records of Lane County, Oregon, as they may be amended from time to time.

1.3 **"Condominium"** means the land, buildings, improvements submitted by the Stage 1 Declaration and all easements, rights, and appurtenances belonging thereto plus any additional property annexed to the project pursuant to Article 16 of the Stage 1 Declaration.

1.4 **"Declarant"** means Jerry Prater Construction, Inc., an Oregon corporation, and its successors and assigns.

1.5 **"Declaration"** means the Stage 1 Declaration and any Supplemental Declaration annexing property to the Condominium recorded in accordance with Article 16 of the Stage 1 Declaration, including without limitation, this Supplemental Declaration, and any amendment to the declarations.

1.6 **"Plat"** means the plat of Stage 2 of Whispering Pines Condominium recorded simultaneously with the recording of this Supplemental Declaration and any amendments thereto.

1.7 **"Stage 1 Declaration"** means the instrument recorded June 27, 2005, as Document No. 2005-046758, Records of Lane County, Oregon as the same may hereafter be amended.

1.8 **Incorporation By Reference**. Except as otherwise provided in this Supplemental Declaration, each of the terms used in this Supplemental Declaration that are defined in ORS 100.005, a part of the Oregon Condominium Act, shall have the meanings set forth in such section. Additional terms contained in or adopted by the Declaration shall be applicable to this Supplemental Declaration.

ARTICLE 2

DESCRIPTION OF THE PROPERTY

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

ARTICLE 3

UNITS IN STAGE 2

3.1 **General Description of Buildings**. Stage 2 consists of two buildings without basements containing four (4) units each. A portion of each building is two story and a portion is single story. The buildings contain three (3) two-level (townhouse) units and one (1) single level unit. The buildings have concrete foundations and are of wood frame construction with concrete lap siding and composition roof.

3.2 **General Description, Location, and Designation of Units in Stage 2**. Stage 2 consists of six (6) two level (townhouse) units and two (2) single level units. The dimensions,

designation, and location of each unit are shown on the Plat. The designation and area of each of the units is shown on the attached **Exhibit B** and on the Plat.

3.3 Boundaries of Units.

(a) Each unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim. The unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces 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 Condominium. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions shall be a part of the common elements. In addition, each unit shall include the following:

(1) All spaces, non-bearing interior partitions, interior doors and all other fixtures and improvements within the boundaries of the unit;

(2) The glazing and screening of windows and unit access doors; and

(3) All outlets of utility and communication service lines, including, but not limited to, power (including circuit breakers), light, gas, hot and cold water, heating, refrigeration, air conditioning, and waste disposal, security, cable television and telephone, within the boundaries of the unit, but not any part of the lines or ducts themselves.

(b) Interpretation. 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 unit or of a unit reconstructed in substantial accordance with the original Plat 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 or buildings.

ARTICLE 4

GENERAL COMMON ELEMENTS

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

4.1 The land, yards, pathways, sidewalks, walkways, driveway, fences and grounds.

4.2 Pipes, ducts, conduits, wires, and other utility installations to their outlets.

4.3 Roofs, foundations, subfloors, windows, except glazing and screening, window frames, exterior building doors and door frames, unit access doors, except glazing and screening, unit access door frames, bearing walls, perimeter walls, beams, columns and girders to the interior

surfaces thereof.

4.4 All other elements of the building and the Condominium necessary or convenient to their existence, maintenance, and safety, or normally in common use.

ARTICLE 5 **LIMITED COMMON ELEMENTS**

Patios adjacent to each unit as shown on the Plat shall constitute limited common elements, the use of which shall be restricted to the units to which it adjoins as shown on the Plat.

ARTICLE 6 **PARKING & STORAGE**

6.1 Parking Spaces.

(a) General Common Elements. All parking spaces, including numbered or designated spaces, are general common elements and intended for the use of vehicles of owners or guests subject to such rules and regulations as the Board of Directors may deem necessary.

(b) Parking Space Assignment. If the Board of Directors determines that it is in the best interest of the Association and owners, the Board may assign one numbered or designated parking space to each unit. The assignment shall be in the sole discretion of the Board of Directors; however, to the extent feasible, the parking space must be located in the stage in which the unit is located. Once a parking space is assigned, the Board may not by rule or other action prohibit, restrict or change the assignment without giving the owner of the affected unit at least thirty (30) days written notice of the intended action.

6.2 Storage Spaces.

(a) General Common Elements. The storage spaces located in general common element buildings are general common elements and intended for the use of owners subject to such rules and regulations as the Board of Directors may deem necessary.

(b) Storage Space Assignment. The Board of Directors shall assign one numbered storage space to each unit. The assignment shall be in the sole discretion of the Board of Directors; however, to the extent feasible, a unit must be assigned a storage space in the building closest to the unit. Once a storage space is assigned, the Board may not by rule or other action prohibit, restrict or change the assignment without giving the owner of the affected unit at least thirty (30) days written notice of the intended action.

(c) Responsibility for Security of Storage Spaces. Owners are responsible for providing locks to secure the storage space assigned to owner. The Association is not responsible to provide any security for individual storage spaces or to provide insurance for property located in

storage spaces.

6.3 **Master Lists of Parking Space and Storage Space Assignments.** The Board of Directors shall maintain a Master Storage Space List that lists each unit and the assigned storage space. If parking spaces are assigned pursuant to Section 6.1 above, the Board shall maintain a Master Parking List that lists each unit and the assigned parking space.

ARTICLE 7

ALLOCATION OF UNDIVIDED INTEREST IN COMMON ELEMENTS

7.1 Each unit, including the units located in Stage 1, has an equal undivided one-twelfth (1/12th) fractional ownership interest in the common elements. The equal undivided interest is allocated according to the right of each unit to use the common elements of the Condominium as provided in Section 8.1 of the Stage 1 Declaration. The allocations will change if additional stages are added to the Condominium as is more particularly described in Section 16.4 of the Stage 1 Declaration.

7.2 Each unit's interest in the common elements is inseparable from the unit and any conveyance, encumbrance, judicial sale or other transfer, voluntary or involuntary, of any undivided interest in the common elements is void unless the unit to which that interest is allocated is also transferred.

ARTICLE 8

COMMON PROFITS AND EXPENSES; VOTING

8.1 **Allocation of Common Profits and Expenses.** The common profits derived from, and the common expenses of the Condominium, shall be allocated to the owner of each unit equally. Amounts may be rounded to the nearest dollar.

8.2 **Allocation of Voting Rights.** Each unit is entitled to one vote in the affairs of the Association and for the purpose of the Declaration. The method of voting is as specified in the Bylaws.

ARTICLE 9

EASEMENTS

9.1 In General.

(a) Each unit has an easement in and through each other unit and the common elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each unit and all the common elements are specifically subject to easements as required for the electrical wiring and plumbing for each unit.

(b) Each unit owner has an unrestricted right of ingress and egress to his or her unit. This right is perpetual and passes with the ownership of the unit.

(c) The specific mention or reservation of any easement in this Supplemental Declaration does not limit or negate the general easement for common elements reserved by law.

9.2 **Right of Entry.**

(a) The Board of Directors of the Association, managing agent, manager, or any other person authorized by the Board of Directors, has the right to enter any unit and limited common element in the case of any emergency originating in or threatening the unit or other Condominium property, whether or not the owner is present at the time. The Board or other authorized person entering a unit under this subsection may not be deemed guilty of any manner of trespass.

(b) The persons specified in Subsection (a) of this section have the right to enter any unit and limited common element for the purpose of performing installations, alterations or repairs to any common element and for the purpose of inspection to verify that the unit owner is complying with the restrictions and requirements described in the Declaration and the Bylaws, provided requests for entry are made in advance and the entry is at a time convenient to the owner.

9.3 **Encroachments.**

(a) Pursuant to ORS 100.520, each unit and all common elements have an easement over all adjoining units and common elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching units and common elements so long as the encroachments exist, and except as otherwise provided in Subsection (b) of this section, the rights and obligations of owners may not be altered in any way by the encroachment.

(b) The easement described under Subsection (a) of this section does not relieve a unit owner of liability in case of willful misconduct of a unit owner or relieve the Declarant or any contractor, subcontractor, or materialman of liability for failure to adhere to the Plat.

(c) The encroachments described in subsection (a) of this section may not be construed to be encumbrances affecting the marketability of title to any unit.

(d) If structures are partially or totally destroyed and then rebuilt, the owners of the units agree that minor encroachment of parts of the common elements due to the rebuilding are allowed and an easement exists for such purpose.

9.4 **Granting of Easements and Other Interest by Association.**

(a) Pursuant to ORS 100.405(5), the Association has the authority to execute, acknowledge, deliver, and record on behalf of the unit owners, leases, easements, rights-of-way, licenses, and other similar interests affecting the common elements and to consent to vacation of roadways within and adjacent to the Condominium.

(b) Subject to Subsections (d) and (e) of this Section 9.4, the granting of a lease, easement, right of way, license or other similar interest must first be approved by at least seventy-five percent (75%) of the unit owners as required by ORS 100.405, except:

(1) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of two years or less requires only the approval of a majority of the Board of Directors.

(2) The granting of a lease, easement, right of way, license or other similar interest affecting the general common elements for a term of more than two years to a public body, as defined in ORS 174.109, or to a utility or a communications company for underground installation and maintenance of power, gas, electric, water or other utility and communication lines and services requires only the approval of a majority of the Board of Directors.

(3) The granting of an easement, right of way or other similar interest affecting the general common elements required by the City of Florence under City of Florence Planning Commission Resolution 04-07-27-21 adopted August 24, 2004 requires only the approval of a majority of the Board of Directors.

(4) The granting of a lease, easement, license or other similar interest to an owner for the exclusive use of a part of the general common elements to which the owner's unit provides primary access requires only the approval of a majority of the Board of Directors. If the approval by the board includes the right of the owner to make improvements to the general common elements to which the owner is being granted exclusive use, ORS 100.535 applies to the general common elements to the same extent that ORS 100.535 applies to a unit, including the right of the Board under ORS 100.535 to require an owner, at owner's expense, to submit an opinion of a registered architect or registered professional engineer that the proposed improvement will not impair the structural integrity or mechanical systems of the Condominium.

(5) The consent to vacation of roadways within and adjacent to the Condominium must be approved first by at least a majority of unit owners present voting in person or by proxy at a duly constituted meeting of the Association called for the purpose.

(c) No interest may be granted pursuant to this Section 9.4 with regard to a limited common element unless the owners and mortgagees of the units having the right to use the limited common element, to the extent required by the Act, consent to and join in the instrument granting the interest.

(d) The instrument granting any interest or consent pursuant to this Section 9.4

shall be executed by the chairperson and secretary of the Association, and any owners and mortgagees required by Subsection (c) of this section, and acknowledged in the manner provided for acknowledgment of such instruments by such officers, and shall state that the grant or consent was approved, if appropriate, by at least the percent of owners required by ORS 100.405(6).

(e) The approvals required under Subsection (b) of this Section 9.4 are intended to comply with ORS 100.405(6) in effect as of the recording of the Stage 1 Declaration. To the extent ORS 100.405(6) is amended to reduce any approval requirements stated in Subsection (b) of this section, ORS 100.405(6), as amended, applies to Subsection (b) of this section.

9.5 **Reservation of Easement for Additional Stages.** Until such time, if ever, that the real property described in Exhibit C of the Stage 1 Declaration has been annexed to the Condominium, Declarant hereby reserves:

(a) A nonexclusive easement for ingress and egress over all roadways and driveways within the Condominium.

(b) An easement for the use of all existing utility lines and systems within the Condominium, including without limitation water, sewer, electrical, gas, telephone and cable television systems.

ARTICLE 10

PLAN OF DEVELOPMENT

The Condominium may be developed in stages. By recording this Supplemental Declaration, Declarant submits Stage 2 to the Condominium form of ownership. Declarant reserves the right to add additional stages to the Condominium by the recording of supplemental declarations pursuant to ORS 100.120, together with a plat of the stage being annexed bearing a completion certificate as required by ORS 100.120 and 100.115.

10.1 **Maximum Number of Units.** If fully developed, the Condominium will contain not more than forty-four (44) units.

10.2 **Termination Date.** No additional stage may be added more than seven (7) years after the recording of the Stage 1 Declaration. Pursuant to ORS 100.105(3), the date may be extended for a period not to exceed two years by an amendment to the Declaration adopted under Article 19 of the Stage 1 Declaration.

10.3 **Additional Common Elements.** Declarant does not propose to include in future stages any common elements which would substantially increase the proportionate amount of the common expenses payable by owners of units in Stage 1 and Stage 2.

10.4 **Allocation of Interests in Common Elements.** The allocation of undivided interest in the common elements of units in Stages 1 and 2 will change if additional stages are annexed to the

Condominium. The allocation shall be determined as provided in Article 7 above.

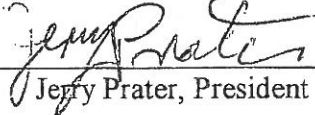
10.5 **Allocation of Common Profits and Expenses; Voting Rights.** Upon annexation of additional stages, the allocation of common revenues and expenses and voting rights shall be determined as provided in Article 8 above.

ARTICLE 11
ADOPTION BY REFERENCE

Except as otherwise expressly provided in this document, each of the provisions of the Stage 1 Declaration shall be applicable to Stage 2 of Whispering Pines Condominium.

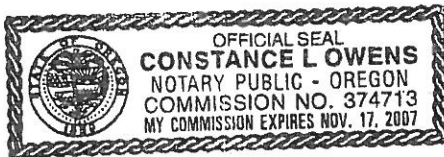
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 26th day of August, 2005.

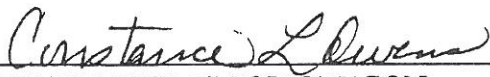
**JERRY PRATER CONSTRUCTION, INC., an
Oregon corporation**

By: 
Jerry Prater, President

STATE OF OREGON)
) ss
County of)

The foregoing instrument was acknowledged before me on August 26th, 2005, by Jerry Prater, President, of Jerry Prater Construction, Inc., an Oregon corporation, on its behalf.

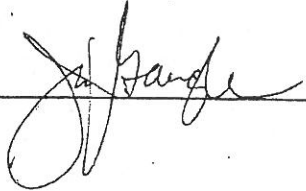



NOTARY PUBLIC FOR OREGON
My Commission Expires: 11/17/07

GOVERNMENTAL APPROVALS

The foregoing Supplemental Declaration is approved pursuant to ORS 100.110 this 20
day of OCTOBER, 2005.

**LANE COUNTY ASSESSOR AND TAX
COLLECTOR**

By: 

The foregoing Supplemental Declaration is approved pursuant to ORS 100.110 this 11
day of October, 2005 and in accordance with ORS 100.110(7), this approval
automatically expires if this Supplemental Declaration is not recorded within two (2) years from this
date.

**SCOTT W. TAYLOR
REAL ESTATE COMMISSIONER**

By: 

Brian DeMarco

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF WHISPERING PINES CONDOMINIUM STAGE 1, AS PLATTED AND RECORDED IN 6/27/2005 AT RECORDERS RECEPTION NUMBER 2005-046757, LANE COUNTY OREGON OFFICIAL RECORDS; THENCE NORTH 00° 06' 51" WEST ALONG THE EAST LINE OF SAID STAGE 1 A DISTANCE OF 112.06 FEET TO A 5/8 INCH REBAR WITH CAP; THENCE NORTH 89° 55' 36" EAST 14.00 FEET TO A 5/8 INCH REBAR WITH CAP; THENCE NORTH 00° 13' 16" WEST 23.46 FEET TO A PK NAIL WITH WASHER; THENCE NORTH 89° 40' 02" EAST 10.04 FEET TO A PK NAIL WITH WASHER; THENCE NORTH 00° 06' 12" WEST 25.96 FEET TO A 5/8 INCH REBAR WITH CAP MARKING THE NORTHEAST CORNER OF SAID STAGE 1, SAID POINT BEING ON THE SOUTH RIGHT OF WAY LINE OF 12TH STREET; THENCE NORTH 89° 51' 52" EAST ALONG SAID SOUTH LINE 35.47 FEET TO A 5/8 INCH REBAR WITH CAP MARKING THE NORTHWEST CORNER OF THE NORTH - SOUTH ALLEY IN BLOCK 7 OF THE AMENDED PLAT OF CHICAGO ADDITION TO FLORENCE, AS PLATTED AND RECORDED IN VOLUME 25, PAGES 552 AND 553, LANE COUNTY OREGON PLAT RECORDS; THENCE SOUTH 00° 08' 08" EAST ALONG THE WEST LINE OF SAID ALLEY 161.50 FEET; THENCE SOUTH 89° 51' 56" WEST 59.53 FEET; TO THE POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING AT THE SOUTHWEST CORNER OF WHISPERING PINES CONDOMINIUM STAGE 1, AS PLATTED AND RECORDED ON 6/27/2005 AT RECORDERS RECEPTION NUMBER 2005-046757, LANE COUNTY OREGON OFFICIAL RECORDS; THENCE NORTH 89° 50' 54" EAST 60.51 FEET TO A 5/8 INCH REBAR WITH CAP MARKING THE SOUTHEAST CORNER OF SAID STAGE 1; THENCE SOUTH 00° 08' 08" EAST 48.86 FEET; THENCE NORTH 89° 51' 52" EAST 14.00 FEET, THENCE SOUTH 00° 08' 08" EAST 19.00 FEET, THENCE NORTH 89° 51' 52" EAST 10.00 FEET; THENCE SOUTH 00° 08' 08" EAST 30.64 FEET TO THE NORTH RIGHT OF WAY LINE OF 11TH STREET; THENCE SOUTH 89° 51' 36" WEST ALONG SAID NORTH LINE 84.53 FEET TO A 5/8 INCH REBAR WITH CAP MARKING THE SOUTHWEST CORNER OF SAID BLOCK 7; THENCE NORTH 00° 07' 27" WEST ALONG THE WEST LINE OF SAID BLOCK 7 A DISTANCE OF 98.49 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B
UNIT AREA
(SQUARE FOOTAGE)**

UNIT NO.	UNIT DESIGN	SQUARE FOOTAGE AREA
5	Single Level	990
6	Townhouse	931
7	Townhouse	930
8	Townhouse	926
9	Single Level	990
10	Townhouse	931
11	Townhouse	930
12	Townhouse	926

NOTICE

THE SQUARE FOOTAGE OF UNITS STATED ABOVE WAS CALCULATED FROM MEASUREMENTS SHOWN ON THE PLAT. THE PLAT MEASUREMENTS ARE BASED ON THE UNIT BOUNDARIES DESCRIBED IN THIS DECLARATION. THE UNIT AREAS STATED IN THIS DECLARATION MAY VARY FROM SQUARE FOOTAGE CALCULATIONS MADE FOR ASSESSMENT, APPRAISAL AND OTHER PURPOSES, AND MAY VARY FROM THE ACTUAL LIVING AREA OF THE UNITS.

City of Florence Review Comments

City of Florence Review Comments					
Date: 9/5/14		Project Name: Whispering Pines Phase 2 and 3			
Department: Public Works		Submittal: Site Plan, Phase 2 Landscape Plan, and Utility Drawings Sheet 1 of 5			
Reviewer: August Murphy and Mike Miller				Page 1	
Item #	Dwg Sht/ Spec Paragraph	Comments	Type	Consultant Response	
1	Utility Drawings Sht 1	Storm water infrastructure appears incomplete, address how Phase 3 buildings are handling runoff To the extent most practical, the City's new stormwater regulations need to be incorporated into Phase 3. Stormwater runoff should be treated prior to discharge to the existing stormwater system and stormwater retention should be considered.	S		
2	Utility Drawings Sht 1	Phase 3 buildings- If the City is to maintain the system, provide cleanouts at sanitary sewer connection points where two builds join into the common 6" lateral	F		
3	General	Are all easements for utilities accurate and up to date on this private property?	F		
4	General	Upon completion, provide the City with complete sets of <u>surveyed</u> , as-constructed drawings for all underground utilities, (Current drawings are representative but not accurate)	F		
5	Utility Drawings Sht 1	See City of Florence Water Utilities Division for current requirements for water services sharing a common vault	F		
6					

EXHIBIT K

COMMENT TYPE:

'F' - FATAL FLAW MUST BE REVISED

'S' - SERIOUS PROBLEM, NEEDS TO BE ADDRESSED. COULD ESCALATE TO 'F' IF LEFT UNATTENDED.

'C' - COORDINATION PROBLEM. DISCIPLINE NEEDS TO TALK.

'N' - NOTE TO DESIGNER, ITEM, NOT SERIOUS, NO NEED TO INCORPORATE, BUT COULD RESULT IN A BETTER PRODUCT IN FUTURE.

From: [Mike Miller](#)
To: [Wendy Farley-Campbell](#)
Subject: Whispering Pines
Date: Tuesday, February 03, 2015 8:52:34 AM
Attachments: [Right of Way Agreement - Master.pdf](#)
[Multi-use Path Cross Section - wood chips.pdf](#)
[whispering pines parking.pdf](#)

Good morning Wendy,

After reviewing the parking plan for Whispering Pines, I believe that if they modify their striping plan for the parking stalls and eliminate the double stripe locations (see attached pdf) they will be able to avoid needing to utilize the public rights-of-way for private use. If the elimination of the double stripe on the ends of the parking area, again as indicated on the attached sketch, results in the use of the public rights-of-way it will be minimal. However, even if the impact is minimal, the property owner will need to enter into an agreement of use of public right-of-way. The agreement must be fully executed and recorded with Lane County. The document would be recorded as running with the land. The property owner/developer shall pay for all recorded costs and fees.

As far as the multi-use path, the path needs to extend from the existing 12th Street multi-use path southerly within the Ivy Street right-of way. The path surface shall be engineered wood chips 8 feet wide with 3 foot shoulders on both sides for the path, for a total cross section of 14 feet. The path shall have a rock base of 1"-0 crushed rock with a thickness of 6-inches. The rock base will be separated from the sub-base with a geotextile fabric (see attached typical cross section). Additionally, as the path enters the improved Ivy Street (paved area) of the project, there will be curb ramps installed with tactile warnings for the visually impaired. The curb ramps need to be located at the north and south curbs of the improved (paved) area.

Please let me know if you need any other information.

Mike

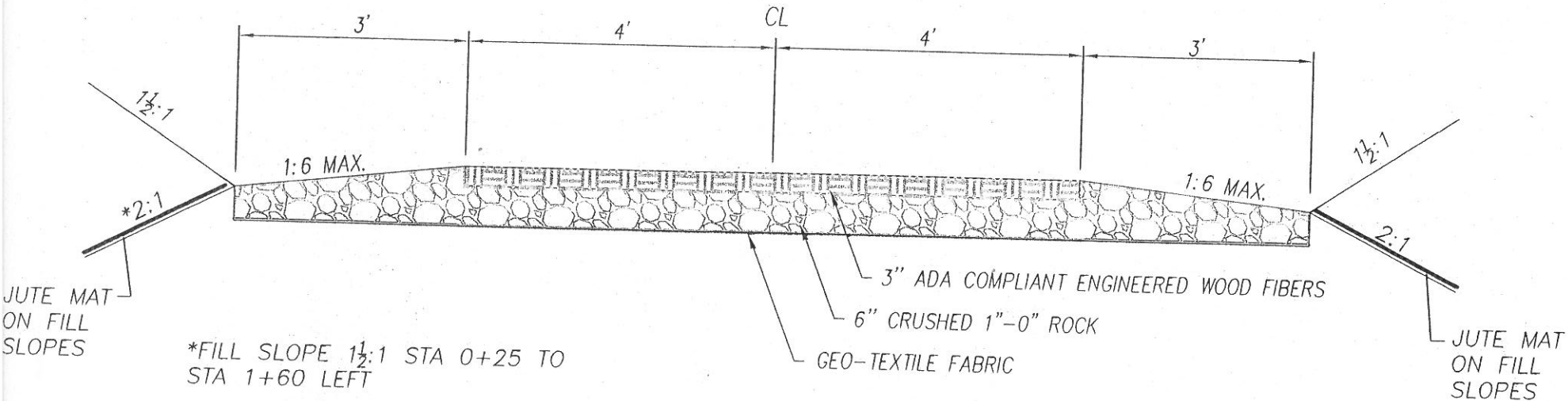
Mike Miller
Public Works Director
City of Florence
250 Hwy 101 N
Florence, OR 97439

Phone: 541-997-4106
Fax: 541-902-1333

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EXHIBIT K



TYPICAL SECTION

NTS

From: [Sean Barrett](#)
To: [Wendy Farley-Campbell](#); [Jim Langborg](#); [Mike Miller](#)
Subject: RE: Referral - PC 14 16 DR 01 Whispering Pines
Date: Friday, October 03, 2014 8:24:26 AM

Preliminary comments from fire:

1. Confirm with public works that there is enough water flow.
2. Existing fire hydrant(s) will provide enough protection, provided flows meet demand.
3. ALL of the new buildings will be required to have a minimum of a NFPA 13R sprinkler system installed. Reducing required fire flow to 1500 GPM

Sean Barrett
Fire Marshal
Siuslaw Valley Fire and Rescue
2625 Hwy 101
Florence Oregon 97439
Office (541) 997-3212
Fax (541) 997-9116
Cell (541) 999-0600

From: Wendy Farley-Campbell [mailto:wendy.farleycampbell@ci.florence.or.us]
Sent: Friday, October 03, 2014 8:10 AM
To: Mike Miller; August Murphy; Jim Langborg; Sean Barrett; Eric Rines; Lynn Lamm; Dale Dawson (ddawson@cencost.com); Hicks, Robin; Manning, Steven D (Steven.Manning@charter.com)
Cc: Glen Southerland
Subject: Referral - PC 14 16 DR 01 Whispering Pines

Greetings,

The purpose of this notice is to acquaint you with a proposed development, to gather information you may have about the project, and provide an opportunity to comment and express concerns related to the approval criteria, prior to staff's decision on the project proposal.

RESOLUTION PC 14 16 DR 01: A request by Jerry Prater Construction for approval of a Design Review application to complete Phase 2 and 3 of Whispering Pines Condominiums, located at 1150 Hemlock Street, Assessor's Map 18-12-27-42, TLs 00300, 00400, & 00500. The proposed development will revise previously approved buildings in Phase 2 and 3 which will match current buildings on the site in layout and appearance.

Please let me know if you have any questions.

Wendy FarleyCampbell
Planning Director –City of Florence
250 Highway 101, Florence, OR 97439

EXHIBIT L

541.997.8237 voice 541.997.4109 fax

www.ci.florence.or.us

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For more information please visit <http://www.symanteccloud.com>





LEGEND

TAXIWAY /TAXILANE/APRON MARKINGS (EXISTING)

TAXIWAY /TAXILANE/APRON MARKINGS (FUTURE)

PROPOSED AIRFIELD PAVEMENT (FUTURE)

PROPOSED ACCESS ROAD/VEHICLE PARKING (FUTURE)

PROPERTY LINE (EXISTING)

TIEDOWN TO BE REMOVED

FENCE (EXISTING)

FENCE (FUTURE)

FENCE TO BE REMOVED/
RELOCATED

HANGARS (EXISTING)

HANGARS (FUTURE)

TIEDOWN TO BE REMOVED

KEY FEATURES

PHASE 1

- 400-FOOT NORTH EXTENSION WITH A 200-FOOT DISPLACED THRESHOLD
- RUNWAY OBSTACLE CLEARANCE SURFACE (OCS) USED W/DISPLACED THRESHOLD TO OBTAIN 20:1 CLEAR SLOPE
- 3,400 FEET AVAILABLE FOR TAKEOFF AND LANDING ON RUNWAY 33 AND TAKEOFF ON RUNWAY 15;
- 3,200 FEET AVAILABLE FOR LANDING ON RUNWAY 15
- EXTEND THE PARALLEL TAXIWAY TO CONNECT TO THE NEW RUNWAY END
- EXTEND RUNWAY EDGE LIGHTS; ADD/REALIGN PAPI

PHASE 2


- ELIMINATE 200-FOOT DISPLACED THRESHOLD FOR RUNWAY 15 BY REMOVING MATERIAL FROM SAND DUNE TO ACCOMMODATE A VISUAL 20:1 (OCS) AT RUNWAY END
- MODIFY EXISTING RUNWAY LIGHTING AND PAPI AIMING ANGLE, AS REQUIRED
- 3,400' FEET AVAILABLE FOR ALL RUNWAY OPERATIONS

PHASE 3

- REMOVE MATERIAL FROM SAND DUNE TO ACCOMMODATE A FAR PART 77 VISUAL 20:1 APPROACH SURFACE TO RUNWAY 15
- MODIFY PAPI AIMING ANGLE, AS REQUIRED
- 3,400 FEET AVAILABLE FOR ALL RUNWAY OPERATIONS

An aerial photograph of the Florence Municipal Airport with overlaid engineering plans. The map shows the layout of Runway 15, Runway 33, and various taxiways and aprons. Key features include:

- Runway 15:** A 3000' x 60' existing runway with a 3400' x 60' future extension.
- Runway 33:** A 200' displaced threshold extension.
- Taxiways and Aprons:** Labeled with codes like APL(E), BRL(E), OFA/OFZ(E), RSA(E), and OFA/OFZ(E).
- Obstruction Clearance Surfaces (OCS):** Indicated by red and blue dashed lines.
- Runway Protection Zones (RPZ):** 250' x 450' x 1000' B-1 (SMALL) and 250' x 450' x 1000' B-1 (SMALL).
- Other Features:** Kingwood Street, 27th Street, Airport Rd, North St, and various hangars and parking areas.



CENTURY WEST
ENGINEERING CORPORATION

FLORENCE MUNICIPAL AIRPORT

PREFERRED RUNWAY OPTION

FIGURE NO. 5-7

EXHIBIT O



WEST 9TH STREET AREA LOCAL STREET NETWORK
FLORENCE, OREGON

* Could also be located at Elm St or Fir St

****Could also be straightened - but would require additional ROW**

- LEGEND**
- Proposed Street Network
 - Multi-Use Path
 - Highly erodible land
 - Not highly erodible land
 - Improved Parcel
 - Unimproved Parcel
 - Wetland

OCT 22 2014

TEST NO. : L10432
CAT. NO. : RCS-x-P40-H3

DATE: 3-16-2004

LUMINAIRE

SOCKET POS. : FIXED
REFLECTOR: ALUMINUM
SPECULAR
ENCLOSURE: CLEAR FLAT GLASS

LAMP

TYPE: 400W MET HAL
ANSI: MS400/H75/ED28PS I. D.: 3-04-V1
ENVELOPE: ED 28 L. C. L.: 5.00 INCHES
1 LAMP(S) at LUMENS/LAMP: 40000

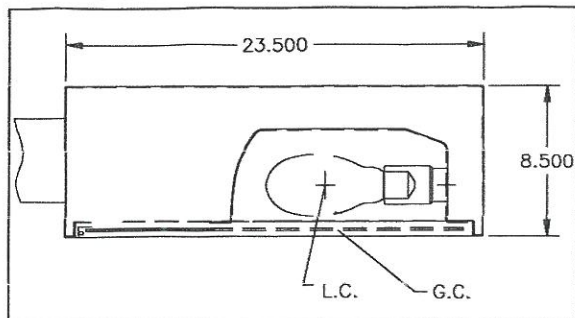
CLASSIFICATION

DISTRIBUTION: MEDIUM
TYPE: III
CONTROL: FULLCUTOFF

GENERAL

TEST DISTANCE: 41.5 FEET

To approximate performance for similar lamps with different Lumens, multiply Lumens, Lux and Footcandles by this ratio:



LIGHT FLUX VALUES		
	LUMENS	PERCENT OF LAMP
DOWNWARD STREETSIDE	16741	41.9
DOWNWARD HOUSESIDE	10683	26.7
UPWARD STREETSIDE	0	0.0
UPWARD HOUSESIDE	0	0.0
TOTAL	27424	68.6

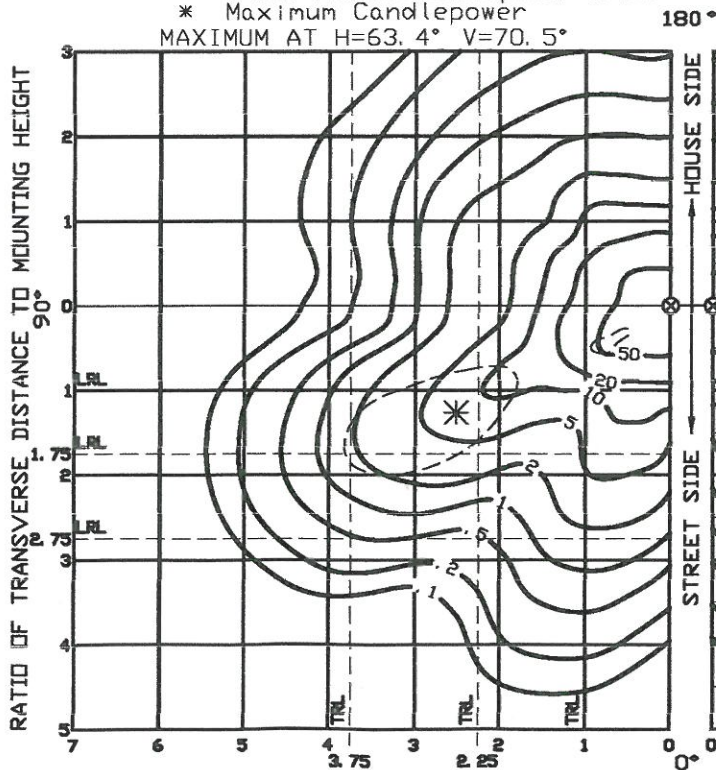
$$\text{RATIO} = \frac{\text{SELECTED LAMP LUMENS}}{40000}$$

ISOLUX DIAGRAM

MOUNTING HEIGHT: 9.14 METERS

----- Half Maximum Candlepower Trace
* Maximum Candlepower

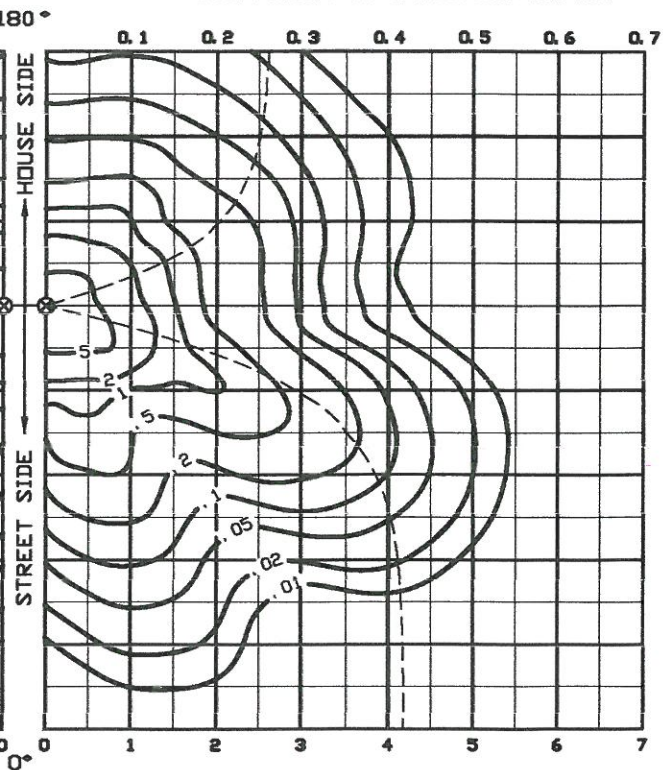
MAXIMUM AT $H=63.4^\circ$ $V=70.5^\circ$



ISOFOOTCANDLE DIAGRAM

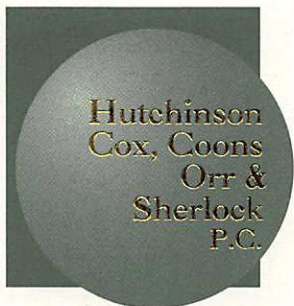
MOUNTING HEIGHT: 30 FEET

----- Coefficient of Utilization Curves



MOUNTING HEIGHT CORRECTION FACTORS							
Mounting Height - Feet	18	22	26	30	34	38	42
Mounting Height - Meters	5.49	6.71	7.92	9.14	10.36	11.58	12.80
Factor	2.78	1.86	1.33	1.00	0.78	0.62	0.51

TESTED TO CURRENT IES AND NEMA STANDARDS UNDER STABILIZED LABORATORY CONDITIONS. VARIOUS OPERATING FACTORS CAN CAUSE DIFFERENCES BETWEEN LAB DATA AND ACTUAL FIELD MEASUREMENTS.



Attorneys and
Counselors at Law

Established 1970

*Celebrating 42 years
of Excellence!*

Attorney

Zack P. Mittge

zmittge@eugenelaw.com

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Eugene, Oregon

97440

PHONE

541 686-9160

FAX

541 343-8693

www.eugenelaw.com

November 7, 2014

Sent via First Class Mail and e-mail wendy.farleycampbell@ci.florence.or.us

Florence Planning Commission
c/o Wendy Farley-Campbell
Planning Director – City of Florence
250 Highway 101
Florence, OR 97439

Re: Whispering Pines Design Review (PC 14 16 DR 01)
Our Client: Patricia Reno
Our File No. 11508 /12001

Dear Planning Commission Members:

On behalf of our client, Patricia Reno, we submit the following comments in opposition to the proposed design review for Whispering Pines Phases II (partial) and III. Please include these comments in the record of these proceedings and include our firm on the list for all future notices associated with this application.

As noted by our client, Ms. Reno, the Whispering Pines condominium may not expand under state law at this time. In particular, ORS 100.120(4) expressly provides that “as to property submitted to unit ownership after October 4, 1977, additional units may not be added within property previously submitted to unit ownership **unless all unit owners consent to an amendment to the declaration, plat and any floor plans** recorded pursuant to ORS 100.116 in order to provide for such additional units.” (Emphasis added).

The proposed application would allow “48 units in 12 buildings.” *Staff Report*, p. 2. This exceeds the maximum number of units that the state approved for condominium use in the applicant’s plan for development. As set forth in both section 16.1 of the “Declaration of Condominium Ownership for Whispering Pines Condominium”¹ and Section 10.1 of the applicant’s “Supplemental Declaration Submitting Whispering Pines Condominium Stage 2 to Condominium Ownership,”² the maximum number of units that could be permitted in the condominium is 44. As the applicant’s current proposal exceeds this maximum, and as the applicant has failed to secure the consent of all unit owners to any increase in the number of units in the Whispering Pines condominium, the proposed expansion cannot be approved under state law.

¹ **“Maximum Number of Units.** If fully developed, the Condominium will contain not more than forty-four (44) units.”

² **“Maximum Number of Units.** If fully developed, the Condominium will contain not more than forty-four (44) units.”

EXHIBIT R

In addition, the proposed expansion would also violate the Florence Comprehensive Plan and the public health and safety requirements of the City's Airport Overlay.

In particular, the proposed Phase III development incorporates 16 units of multi-family housing in an area designated by the Florence Comprehensive Plan for single-family residential use. The proposed development is located generally at the northeast corner of the area designated in the "Florence Realization 2020 Comprehensive Plan Map" as the West 9th Street Area. Much of the property is located within this area (in subarea 1) and is described by the comprehensive plan as being "suitable for medium and high density residential development," and, as noted by staff, is zoned "Professional Office/Institutional." *Comp Plan*, p. II-26; II-18.

However, Ivy Street forms the eastern boundary of this district, and Phase III of the proposal is located east of Ivy Street in an area designated by the Comprehensive Plan as "Medium Density Residential." The Comprehensive Plan reserves this area for single-family residential housing:

"The Medium Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 5,000-6,500 square feet, and for the majority of developable land remaining in the City, as well as urbanizable lands east of Highway 101. The corresponding zoning district is Single Family Residential. Single family homes and manufactured homes meeting certain minimum standards are allowed. Duplexes are a conditional use." *Comp Plan*, p. II-7 (Emphasis added).

Through an apparent error this area was misidentified on the City's zoning map as being appropriate for multi-family development. However, Multi-Family zoning is only applicable to those areas that are designated as "High Density Residential" on the comprehensive plan. In any case, the comprehensive plan map and language describing the appropriate use of this area for single-family homes and manufactured homes control.³ ORS 197.175(2)(d); *Baker v. City of Milwaukie*, 271 Or 500, 514, 533 P2d 772 (1975)(comprehensive plan is the controlling land use planning instrument for a city and zoning which "allows a more intensive use than that prescribed in the plan must fail.") Accordingly, the application should be denied as the proposed multi-family housing in Phase III violates the comprehensive plan.

³ In fact, disregarding the error in the City's zoning map, the property's zoning under the Single-Family Residential District permits only single-family dwellings without a planned unit development. See FCC 10-11-2.

In addition, although the subject property is located within the transition surface of the airport, the applicant has failed to conform to baseline minimum requirements set forth in FCC 10-26-2-6, which require an applicant to delineate its proposed development relative to airport imaginary surfaces, including the elevation of all structures "measured in feet above mean sea level." The proposed multi-family structures or associated landscaping may obstruct this transitional surface posing a risk to pilots.⁴ Accordingly, the applicant has failed to demonstrate compliance with FCC 10-21-2-5 which provides that "no structure or tree, plan or other object of natural growth shall penetrate an airport imaginary surface," and its application should be denied.

Conclusion

As the applicant is seeking approval for a condominium that violates state condominium law, in multi-family dwellings that violate the City's comprehensive plan, and without complying with the minimum public health and safety standards in the City's Public Use Airport Safety and Compatibility Overlay Zone, the application for the expansion of the Whispering Pines Condominium should be denied.

Very truly yours,

HUTCHINSON, COX, COONS,
ORR & SHERLOCK, P.C.



Zack P. Mittge

ZPM/ah
c: Client

⁴ Staff attempt to mitigate some of the impacts of the proposed development by imposing a 35-foot height restriction on structures. However, because the applicant has failed to provide baseline information concerning terrain height and does not address potential vegetation, this limitation does not conform to the City's code. While the City may allow structures up to 35-feet in height without terrain information in some areas, this does not apply in areas that are within transition surfaces like the proposed development. FCC 10-21-2-5(B). Since the applicant has failed to provide the City minimum assurance that its structures would be safe, its application should be denied.

From: [Pat](#)
To: [Wendy Farley-Campbell](#)
Subject: Whispering Pines/Jerry Prater Construction
Date: Friday, November 07, 2014 10:36:05 AM
Attachments: [Whispering Pines Reserve Study.pdf](#)

TO PLANNING COMMISSION

On Thursday, October 30, 2014, Michael Hanifin from the State of Oregon Real Estate Commission called me and told me that he had made an error when he informed me that Whispering Pines had not filed a reserve study.

I have attached the document that Michael Hanifin sent me on October 30, 2014, that he now states as qualifying for a reserve study.

Please add this email to the written testimony for the Planning Commission for Whispering Pines Design Review (PC 14 16 DR 01).

Patricia Reno

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EXHIBIT S

ATTACHMENT III-2
(Disclosure Statement)

WHISPERING PINES CONDOMINIUM ASSOCIATION

Proposed 2205-2006

Annual Budget

(Based on 44 units)

REVENUE:

Dues (44 units @ \$100/mo.)	\$ 52,800
-----------------------------	-----------

EXPENDITURES:

Accounting and tax work	\$ 1,200	
Legal	1,000	
Insurance	15,000	
Grounds Maintenance (\$900/mo)	10,800	
Gate Maintenance and Repair	1,000	
Utilities:		
Electricity (\$70/mo)	840	
Water (\$50/mo)	600	
Garbage (\$175/mo)	<u>2,100</u>	<u>32,540</u>

ESTIMATED ANNUAL CONTRIBUTION TO
REPLACEMENT RESERVE FUND

20,260

ANNUAL REPLACEMENT RESERVES ESTIMATES:

Roof (50 yr)	750	
Siding (50 yr)	750	
Parking lot/Striping (15 yr)	1,400	
Light Standards (15 yr)	400	
Gate Replacement (10 yr)	1,200	
Legal and Miscellaneous	<u>500</u>	<u>5,000</u>

ESTIMATED ANNUAL REPLACEMENT RESERVES SURPLUS

\$ 15,260
=====

ATTACHMENT III-1
(Disclosure Statement)

WHISPERING PINES CONDOMINIUM ASSOCIATION
Proposed 2005-2006
Annual Budget
(Based on 4 units)

REVENUE:

Dues (4 units @ \$100/mo.)	\$ 4,800	
Contribution by Declarant	<u>810</u>	\$ 5,610

ANNUAL REPLACEMENT RESERVES ESTIMATES:

Roof (50 year)	\$ 75	
Siding (50 year)	75	
Parking lot/Striping (15 year)	350	
Light Standards (15 year)	150	
Gate Replacement (10 year)	<u>600</u>	1,250

EXPENDITURES:

Accounting and tax work	\$ 400	
Legal	400	
Insurance	1,200	
Grounds Maintenance (\$90/mo)	1,080	
Gate Maintenance and Repair (\$8.33/mo)	100	
Utilities:		
Electricity (\$23.33/mo.)	280	
Water (\$16.67/mo.)	200	
Garbage (\$58.33/mo.)	<u>700</u>	4,360

\$ 00

=====

Glen Southerland

From: Greg Freeze <gfreeze@rhodylaw.com>
Sent: Friday, November 07, 2014 2:46 PM
To: Wendy Farley-Campbell
Cc: Glen Southerland
Subject: Resolution PC 14 16 DR 01, Request for Continuance

Hello,

My client, Jerry Prater, requests a continuance to the January 13, 2015, Planning Commission meeting. The purpose is to prepare a response to the new comments that have appeared in the record today. I am out of town on the next scheduled planning commission date (December 9, 2014), so January 13, 2015, is the next date available in my calendar.

We request that the record be kept open until January 13, 2015, so that oral comments can be an option for the Planning Commission.

My client waives the 120-day requirement set forth in ORS 227.178, with the intent to complete this entire application process before the 245-day final limit imposed by ORS 227.178(5). The applicant leaves it to the city to set a final date within this limit, but suggests two scheduled planning commission meetings out, or February 10, 2015.

Best regards,

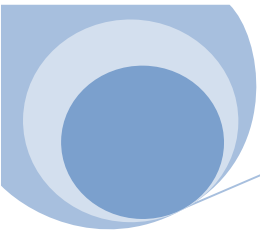
Greg Freeze
Attorney at Law
244 Maple St
PO Box 23000
Florence OR, 97439

☎ 541.997.7787

🌐 www.rhodylaw.com

✉ gfreeze@rhodylaw.com

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GREG FREEZE
Attorney at Law

244 Maple St
PO Box 23000
Florence, Oregon 97439

Admitted in California and Oregon

(541) 997-7787
gfreeze@rhodylaw.com

January 6, 2015

Florence Planning Commission
c/o Wendy Farley-Campbell
Planning Director - City of Florence
250 Highway 101
Florence, OR 97439

Re: Whispering Pines Design Review (PC 14 16 DR 01)

Dear Planning Commission Members,

I represent Jerry Prater Construction, Inc. This letter is in response to the comments by attorney Zack P. Mittge from his letter of November 7, 2014. It is my client's position that the issues raised are either off-topic, mooted, or handled.

To begin, my client will not be placing the 48 proposed units in the condominium association. The units will go into a new legal entity, Jerry Prater Apartments, Inc, thus any issues associated with complying with ORS 100.120(4) (seeking approval of the condominium owners) is moot. Also a moot issue is whether 44 or 48 units are being built because these units will not be part of the condominium association.

Approval from the FAA is forthcoming for the issue of the City's airport overlay. As for the issue of the comprehensive plan, if the City has a discrepancy between the map and the comprehensive plan, that should be corrected. Common sense would argue that the proposed development is the highest and best use of this particular piece of land that sits just to the side of the landing zone of the airport.

Of concern to my client is the requirement to put in a bicycle path that will lead to nowhere. My client has already put in about 600 feet of bicycle path on the north side of the property. Seeking another exaction at this time, for a path that will connect to nowhere seems an overkill. Perhaps just leaving the land in reserve for the bicycle path will be enough.

Best regards,

Greg Freeze

EXHIBIT U

November 19, 2014

City of Florence
Community Development
250 Hwy 101
Florence, Or. 97439

Re: Design Review Application Phase 3 and Revision of Phase 2
Whispering Pines Map #18-22-27-42 Tax Lots 00300, 00400, 00500
Additional Information

Attention: Wendy Farley Campbell
Wendy.farley.campbell@ci.florence.or.us

This letter is to provide additional information as to clearances of the highest points of the proposed structures to the Runway Protection Zone.

Enclosed with this letter is a drawing prepared by Gene Wobbe, licensed professional surveyor, which shows the airport runway closest to this development. The elevation of the end of the runway, 1929 NGVD, is shown. The Primary Surface and the Runway Protection Zone are shown. The closest building corner to the runway is shown as it will be in the Runway Protection Zone. The elevation, 71.47 feet, shown by Wobbe at this northeast corner of the building is the elevation required to be cleared at this point.

I have reviewed Mr. Wobbe's drawing and calculations and find them to be correct and in accordance with the City Ordinances.

The elevation of the building at this point will be 60.2 feet, 1929 NGVD. The required elevation at this location is 71.47 feet. The clearance is 11.27 feet.

The highest point of the building closest to the runway is the north end of the building ridge. This point is 14 feet to the west of the point mentioned in the previous paragraph. The elevation of this ridge will be 66.0 feet. The required elevation to clear is 2.0 feet higher than the 71.47 feet, or 73.47 feet. The clearance is 7.47 feet.

I hereby certify the structures for this development have been properly designed to provide the required clearances as per City Ordinances.



EXPIRES: 12/31/2014

EXHIBIT V

HEMLOCK

YAL

JUNIPER

KINGWOOD

PROPOSED
BUILDING

11th Street

15

END OF RUNWAY

EL 36.7

200.0

125.0

125.0

EL 36.7

40

80

70

60

7:1

50

EL 53.81

EL 54.25

EL 69.46

EL 71.47

109.6

120.6

20:1

60

1000.0

70

80

225.0

225.0

UNIT 8 Roof Gable in NE building
is highest point as indicated by comment
below.

EXHIBIT V

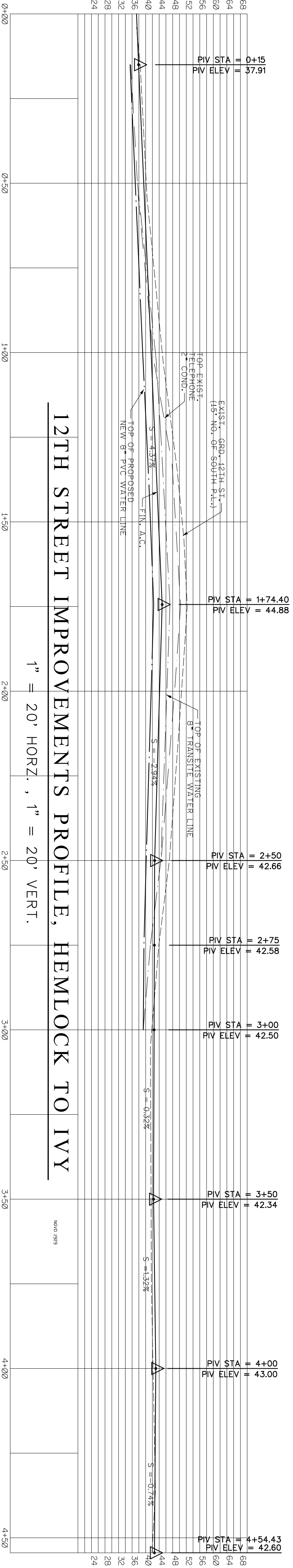
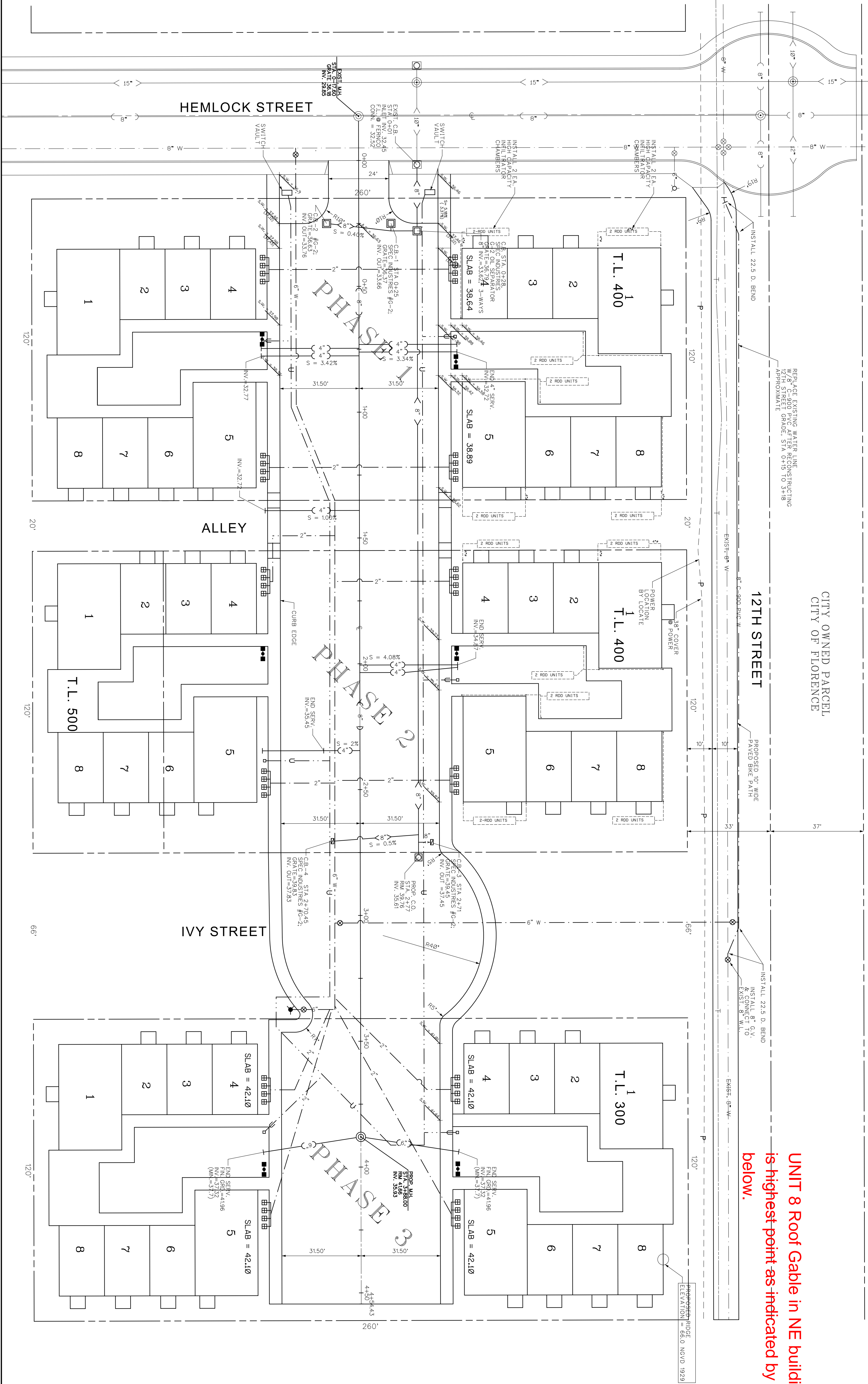
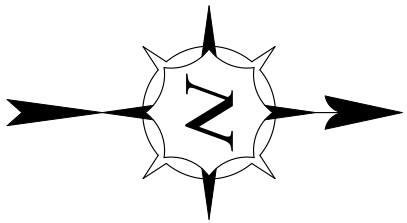
MIKE McALLISTER ENGINEERING
11301 E. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326

SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR
STREET, PARKING LOT & UTILITIES
FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

SHEET CONTENT
PLAN & PROFILE

DRAWN	W.O. NO.
J.R.M.	509
DATE	SCALE
10/5/04	1" = 20'
REVISIONS	
10/28/04	
12/15/04	
12/11/13	
11/24/14	

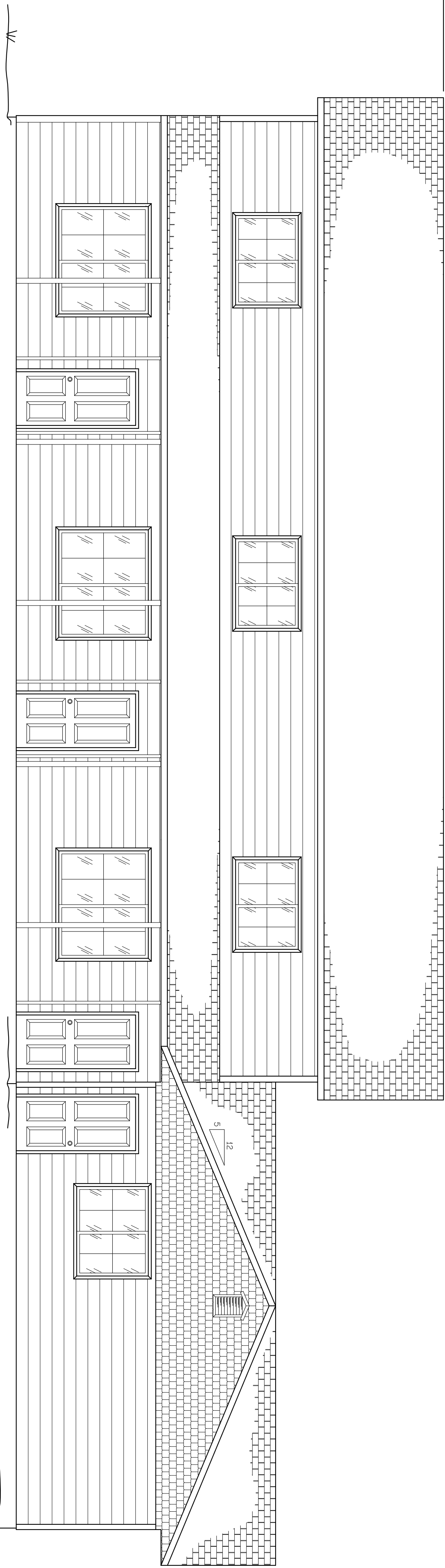
SYMBOL	DESCRIPTION
⊙	SANITARY M.H.
⊕	STORM M.H.
—C—	PROPOSED SANITARY SEWER
—<—	PROPOSED STORM SEWER
—C—>	EXISTING SANITARY SEWER
—<—>	EXISTING STORM SEWER
—W—	EXISTING WATER LINE
—W—	PROPOSED WATER LINE
—U—	PROPOSED UTILITY: POWER, TEL. & TV.
—T—	EXISTING UNDERGROUND TEL.
—P—	EXISTING UNDERGROUND POWER
▲	EXISTING FIRE HYDRANT
▲	PROPOSED FIRE HYDRANT
⊗	WATER VALVE
⊞	CATCH BASIN
⊞	CURB INLET CATCH BASIN
⊞	SEWER CLEANOUT
⊞	POWER VAULT
⊞	WATER METER



12TH STREET IMPROVEMENTS PROFILE, HEMLOCK TO IVY

1" = 20' HORZ., 1" = 20' VERT.

PHASE 3
PROPOSED RIDGE ELEVATION = 66.0

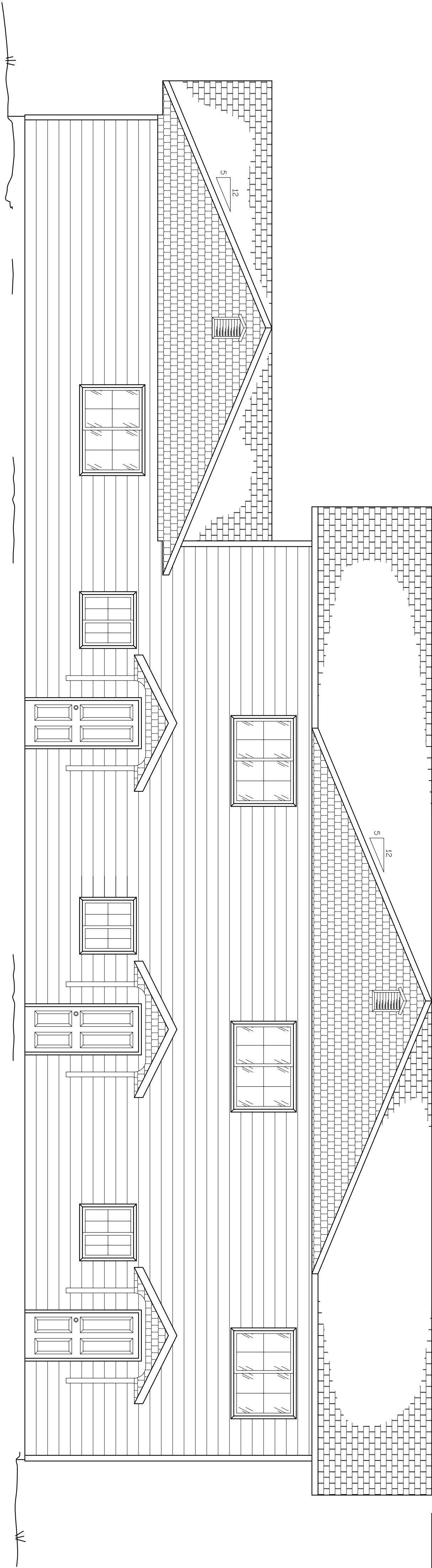


PHASE 3
PROPOSED BUILDING SLAB ELEVATION = 42.1 NGVD 1929

WEST ELEVATION, (PHASE 3)

1/4" = 1'

PHASE 3
PROPOSED RIDGE ELEVATION = 66.0



PHASE 3
PROPOSED BUILDING SLAB ELEVATION = 42.1

EAST ELEVATION (PHASE 3)

1/4" = 1'

SEE APARTMENT COMPLEX BUILDING PLANS, SHEET 9 OF 9.
LABELS HAVE BEEN ADDED IN THIS DRAWING TO SHOW ELEVATION
OF HIGHEST POINT OF BUILDING, DATUM, AND RELABEL ELEVATION
VIEW TO CORRESPOND TO SITE PLAN AT CLOSEST BUILDING TO AIRPORT.

EXHIBIT V

MIKE McALLISTER ENGINEERING
1831 F. MAPLETON ROAD
MAPLETON, OREGON 97453
PH: 541-268-4326
FAX: 541-268-4326

SITE DEVELOPMENT
TAX MAP: 18-12-27-42, TL. 300 & 400
FLORENCE, OR

APARTMENT COMPLEX

FOR
WHISPERING PINES DEVELOPMENT
87829 HWY. 101
FLORENCE, OR 97439

SHEET CONTENT	
STRUCTURAL PLANS	
DRAWN	W.O. No.
JRM.	509
DATE	SCALE
10/22/04	AS SHOWN
REVISIONS	
1/12/05	
11/24/14	

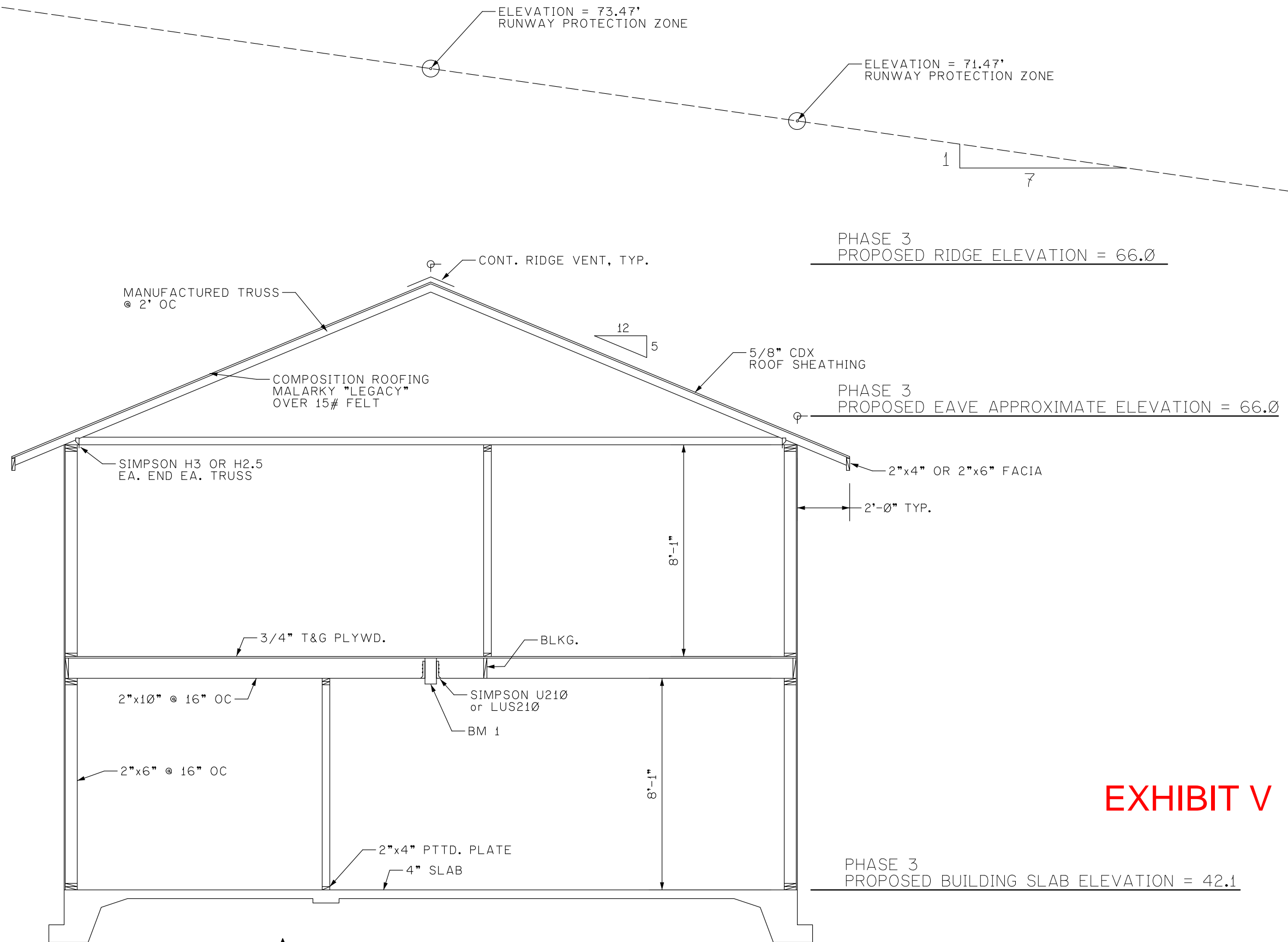


EXHIBIT V

SEE SHEET 8 OF 9 OF BUILDING PLANS
FOR THIS CROSS SECTION TYPICAL FOR BUILDINGS
IN PHASE 3

FOR ASSESSMENT AND
TAXATION ONLY

N.W. 1/4 S.E. 1/4 SEC. 27 T.18S. R.12W. W.M.
Lane County
1" = 100'

EXHIBIT W

