

DECLARATION FOR  
MODERN CONFECTIONERY LOFTS  
CONDOMINIUMS

This Declaration submits to the provisions, restrictions and limitations of the Oregon Condominium Act, land hereinafter described and all improvements now existing or to be constructed on such property, to be known as MODERN CONFECTIONERY LOFTS CONDOMINIUMS.

Recitals, Intent and Purpose

GRYPHON DEVELOPMENT, LLC (collectively, the "Declarant" or "Declarants"), are owners in fee simple of the property described in Section 2 below, and desire to submit said property to the condominium form of ownership, to be converted, handled and used in the manner provided by the Oregon Condominium Act.

NOW, THEREFORE,

Declaration

Declarants hereby declare on behalf of themselves, their successors, grantees and assigns, as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and to any part of the property as follows:

1. DEFINITIONS. Except as otherwise provided or modified by this Section, the terms herein shall have the meaning set forth in the Oregon Condominium Act, ORS 100.005 et seq. and that statute and the definitions therein are incorporated into this Declaration. As used in this Declaration and in the Bylaws, the following terms shall have the following meanings:

"Condominium" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the provisions of the Oregon Condominium Act.

After Recording Return to:  
Julian H. Berkeley  
8344 SW Mapleridge Drive  
Portland, Oregon 97225

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

88.00

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011 17 0.00 05.00 0.00 3.00 0.00

Chicago Title

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"Mortgage," "Mortgagee" and "Mortgagor" mean, respectively, a recorded mortgage, trust deed or contract of sale which creates a lien against a Unit, and the holder, beneficiary or vendor of such a mortgage, trust deed or contract of sale, and a grantor, trustor or pledgor of such a mortgage, trust deed or contract of sale.

"Unit" means the airspace encompassed by the undecorated interior surface of the perimeter walls, floors and ceilings which is owned in fee simple by each Unit Owner and which is more specifically described in Section 3.2 of this Declaration.

"Commercial unit" means a unit that is used for commerce or trade and is not used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

2. LAND DESCRIPTION. The land hereby being submitted to the Oregon Condominium Act is located in the county of Multnomah, state of Oregon and is more particularly described on Exhibit A to this Declaration.

3. NAME AND UNIT DESCRIPTION.

3.1 Name. The name by which the property submitted hereunder shall be known as Modern Confectionery Lofts Condominiums.

3.2 Boundaries of Units. The Units shall include all lath, furring, wallboard, plasterboard, tiles, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described. All other portions of the walls, floors or ceilings shall be a part of the common elements. In addition, each Unit shall include the following:

(a) All spaces, non-bearing interior partitions, windows, window frames, skylights and skylight frames, exterior doors, door frames, and all other fixtures and improvements within the boundaries of the Unit; and

(b) All outlets of utility service lines, including, but not limited to, power, gas, hot and cold water, heating and waste disposal within the boundaries of the Unit, but shall include any part of the lines within the specific boundaries of said unit.

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 plans hereof shall be conclusively presumed to be the boundaries regardless of settling, rising or lateral movement of the building

and regardless of variances between boundaries as shown on the plat and those of the actual building or buildings.

3.3 Building Description and Unit Designation. The land submitted by this Declaration has one building thereon in which Condominium Units are located. The building is a one-story unreinforced masonry, with a concrete foundation, and contains seven Units. The vertical and horizontal boundaries, number designation, location and dimension of each Unit are shown on the plat (the "plat") which is being recorded simultaneously with this Declaration.

AMENDED  
4/5/00

(a) Unit one (1) shall be for residential or commercial use with the commercial use being limited to retail professional office exclusive of restaurant service or business.

(b) Units two (2) through seven (7) shall be for residential use only.

The allocation to each Unit of an undivided interest in the common elements is expressed as a percentage which was determined by the following method:

Square Footage of the Unit Divided by the Total Square Footage of the Building. The Unit designation, approximate area and percentage ownership in common elements are as follows:

Unit No.	Approx. Sq. Ft.	Common Elements
1	2,830	24.5%
2	994	8.5%
3	796	7.0%
4	1,269	11.0%
5	1,814	16.0%
6	1,726	15.0%
7	2,109	18.0%
TOTAL:	11,538 sq ft	100

AMENDED  
4/5/00

3.4 NEW PARAGRAPH ADDED 4/5/00 (3.4 a THROUGH d)

4. GENERAL COMMON ELEMENTS:

4.1 Definition. The general common elements consist of all portions of the Condominium not part of a Unit or a limited common element, including, but not limited to the following:

(a) The land described on Exhibit A.

(b) The foundation, main walls, roofs, garage entrance/exit, parking garage and garage side of demising wall separating garage from unit 1 and areas not inclusive of designated parking spaces assigned to units.

(c) Installations of central services, such as power, light, gas, water, and waste disposal, up to the main distribution stub within any Units; and

(d) The grounds, trees, landscaped areas, exterior fixtures, walkways, and driveway.

(e) Any of the following: garbage bins and enclosures, vents, access corridors, and other areas not assigned to any Unit as a limited common element.

(f) All other elements of any building necessary or convenient to its existence, maintenance and safety, or normally in common use.

4.2 Commercial Units vs. Residential Units. All requirements for use, cost and liability shall be the same whether commercial or residential.

4.3 Maintenance, Repair and Replacement; Liability for Common Expenses. Except as otherwise specifically provided in this Declaration, the cost of maintenance, repair and replacement of the general common elements shall be a common expense, and the performance of such work shall be the responsibility of the Association of Unit Owners ("Association"), except that any damage caused by the negligence or intentional act of an owner, his invitee, guest or servant shall be repaired by the Association at such owner's sole cost and expense. Common expenses shall be assessed and apportioned among the Unit Owners as set forth in Section 10.6 below.

4.4 Income from General Common Elements. Any income derived from the common elements shall be income of the Association. The Board of Directors may, in its discretion, use such income to help meet the expense of maintaining the common elements or for such other purpose as may benefit the Association and the Unit Owners in a substantially equal manner.

## 5. LIMITED COMMON ELEMENTS.

5.1 Description. The following shall constitute limited common elements the use of which shall be restricted to the Units to which they pertain:

(a) Each of the balconies not lying within the boundaries of a unit is a limited common element appertaining to the unit which it adjoins as shown on the plat.

(b) Each of the storage cubicles not lying within the boundaries of a unit is a limited common element and are assigned as follows:

Unit 1	-	Cubicle Space 1
Unit 2	-	Cubicle Space 2
Unit 3	-	Cubicle Space 3
Unit 4	-	Cubicle Space 4
Unit 5	-	Cubicle Space 5
Unit 6	-	Cubicle Space 6
Unit 7	-	Cubicle Space 7

(c) Each of the roof decks for Units five, six and seven not lying within the boundaries of a unit is a limited common element appertaining to the unit which it adjoins as shown on the plat.

(d) The loading dock, the deck and the additional storage room for Unit 1 not lying within the boundaries of the unit is a limited common element for this unit. The loading dock is not on condominium property and is subject to a Revocable Permit to Use Dedicated Street Areas recorded in Multnomah County at 95-144114.

(e) The parking spaces assigned to Units pursuant to Section 6 of this Declaration.

*(B) NEW PARAGRAPH ADDED 4/5/00 [5.1(A)]*

5.2 Maintenance, Repair and Replacement of Limited Common Elements. The cost of Maintenance and Repair of the Limited Common Elements shall be the responsibility of the Owner(s) of the Unit(s) to which such Limited Common Element appertain. Provided, However, that the Association shall have the authority to perform such maintenance and repair if the responsible Owner(s) fail so to do, and to assess such Owner(s) for the cost thereof as more specifically set forth in Article V of the Bylaws.

6. PARKING. There are a total of seven parking spaces with one space adaptable to ADA standards for use by handicapped persons. All of the parking spaces are assigned to specific Units. The assignment of the parking spaces are to correlate with the number of their respective Units in the following manner:

Unit 1	-	Parking Space 1
Unit 2	-	Parking Space 2
Unit 3	-	Parking Space 3
Unit 4	-	Parking Space 4
Unit 5	-	Parking Space 5
Unit 6	-	Parking Space 6
Unit 7	-	Parking Space 7

7. VOTING. ~~The total voting power of all Unit Owners shall equal the number of Units in the Condominium, and each unit shall have one vote.~~ A person (including Declarant) who owns more than one Unit shall have the votes appertaining to each Unit owned. The vote for a Unit must be cast as a single vote. Fractional votes shall not be allowed. *SENTENCE DELETED NEW SENTENCE ADDED 4/5/00*

*\* AMENDED 3/5/98*

8. USE OF PROPERTY; EASEMENTS AND OTHER RIGHTS.

8.1 General. Units two (2) through seven (7) are intended for and restricted to use as residences only, on an ownership, rental, or lease basis, and for social, recreational, and other reasonable activities incident to such use. Unit one (1) is intended for residential or commercial use with the commercial use being limited to retail/professional office exclusive of restaurant service or business. ~~Unit owners shall have the right to rent units on a daily basis, subject to compliance with any local laws, ordinances or regulations.~~ Any lease or rental agreement for a Unit shall be in writing and be subject to the provisions of this Declaration, the Bylaws, and rules and regulations of the Association. The common elements shall be used for the furnishing of services and facilities for the benefit of the Unit Owners. Additional restrictions and regulations are set forth in the Bylaws and rules or regulations adopted pursuant to the provisions of the Bylaws. *NEW SENTENCE ADDED 4/5/00*

DELETED  
1/4/09

8.2 Rules and Regulations Promulgated by the Association.

The Board of Directors of the Association shall have the authority from time to time to promulgate such rules and regulations as the Board may deem in the best interest of the Association. No person shall use the common elements or any part thereof in any manner contrary to or inconsistent with such rules and regulations. *NEW SENTENCE ADDED 4/5/00*

8.3 Utility Easements. There shall exist general utility

easements over and through each of the Units as shall be reasonably necessary to provide utility services to other units. Access to easement areas shall be upon prior written request of at least five (5) days at a time and date mutually convenient. Any damage to the servient tenement shall be repaired at the cost of the holder of the dominant tenement.

8.4 Utility Meters. There shall exist easements over and

through each of the Units for the location and replacement of utility meters and for access to read such meters to determine usage of utility services.

9. CONTRACTS AND LEASES. All contracts or leases (including

any management contract) which are entered into prior to the turnover meeting shall be terminable without penalty by the Association or the Board of Directors upon not less than thirty (30) days' written notice to the other party by the Association given not later than sixty (60) days after the turnover meeting. Provided, however, any such contracting or leasing party may request the Association to affirm the continuation of any such agreement for the balance of its stated term. Affirmation by the Association after transfer of control shall extinguish all termination rights of the Association under this Section.

10. BYLAWS; ASSOCIATION; MANAGEMENT.

10.1 Adoption of Bylaws. On behalf of the Association, the Declarant hereby adopts the Bylaws attached hereto as Exhibit B to govern the administration of the Condominium. The Bylaws shall be effective upon the execution and recording of this Declaration.

10.2 Association of Unit Owners; Membership. Each owner of a Unit in the Condominium shall be a member of the Association, and membership therein shall be limited to Unit Owners only. The Association of Unit Owners, which shall be organized upon the recording of the Declaration and Bylaws, shall serve as a means through which the Unit Owners may take action with regard to the administration, management and operation of the Condominium. The Association shall operate under the name MODERN CONFECTIONERY LOFTS CONDOMINIUM ASSOCIATION OF UNIT OWNERS. If the Association is incorporated, the name of the Association shall include the complete name of the Condominium and shall be as close to the present name as is possible.

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

10.4 Interim Board and Officers. The Declarant has reserved control over the administration of the Association by reserving the right in the Bylaws to appoint an interim Board of Directors to manage the Condominium until the turnover meeting. The turnover meeting shall be held within ninety days after conveyance to persons other than the Declarant of fifty percent (50%) of the Units in the Condominium or three years from the date of conveyance of the first Unit in the Condominium, whichever is earlier. The three (3) members of the interim board shall also serve as the interim chairman, secretary and treasurer.

10.5 Powers and Duties of the Association. The Association and the Board of Directors shall have the powers and duties granted to them by this Declaration, the Bylaws, and ORS 100.405(4) together with other provisions of the Oregon Condominium Act.

10.6 Covenant to Pay Assessments; Liability for Common Expense. Each owner hereby covenants to pay to the Association annual assessments for common expenses as more fully provided in

the Bylaws. No owner may avoid liability for assessments by abandonment of his Unit or non-use of the common elements. Except as otherwise provided in this Declaration or the Bylaws, each Unit and the owner thereof will be liable for the common expense in proportion to the percentage ownership in the common elements allocated to such Unit.

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

11. 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 will be filed in accordance with ORS 100.250(1).

12. MORTGAGEES. In the event of a conflict between this Section and other provisions of this Declaration, the provisions of this Section will prevail. The terms "mortgage," "mortgagor" and "mortgagee" are defined in Section 1 of this Declaration.

12.1 Notice of Action. Upon written request to the Association identifying the name and address of the mortgagee, and the Unit number or address, any mortgagee will be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a mortgage held, insured, or guaranteed by such mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to a mortgage held, insured or guaranteed by such mortgagee, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification or any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified portion of mortgagees as set forth in this Section 12.

12.2 Mortgagee Exempt from Certain Restrictions. Any mortgagee which comes into possession of the Unit pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage,



or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged Unit, including but not limited to, restrictions on the age of Unit occupants and restrictions on the posting of signs pertaining to the sale or rental of the Unit.

12.3 Subordination of Association Lien to Mortgage: Discharge of Lien Upon Foreclosure. Subject to ORS 100.450 the lien of the Association shall be subordinate to any first mortgage. Any mortgage which comes into possession of the Unit pursuant to the remedies provided in the mortgage, by foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such mortgagee comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units, including the mortgaged Unit).

12.4 Consent of Mortgagees Required to Terminate Project. Except with respect to termination of the Condominium as a result of destruction, damage or condemnation, any termination of the Condominium shall require the approval of mortgagees holding fifty-one percent (51%) of the mortgages on Units in the Condominium. Additionally, any such terminations shall be carried out by the owners pursuant to provisions of the Declaration, any applicable Supplemental Condominium Declaration, Bylaws and the Oregon Condominium Act, and only after vote of the owners as provided therein.

12.5 Limited Right of Amendment. Except upon the approval of mortgagees who hold fifty-one percent (51%) of the mortgages on Units in the Condominium, no amendments may be made to the Declaration or Bylaws which add to or amend any material provision of the Declaration or Bylaws which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens or subordination of liens;
- (c) Reserves for maintenance, repair and replacement of the common elements (or Units, if applicable);
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the common elements;

- (f) Responsibility for maintenance and repair of the several portions of the Condominium;
- (g) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (h) Redefinition of any Unit boundaries;
- (i) Reallocation of interests in the general or limited common elements;
- (j) Convertibility of Units into common elements, or of common elements into Units;
- (k) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit;
- (l) Any provisions which are for the express benefit of mortgagees;
- (m) Hazard or fidelity insurance requirements;
- (n) Imposition of any restrictions on the leasing of Units; and
- (o) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws.

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

12.6 Request for Approval of Mortgagees. Any mortgagee who receives a written request to approve additions or amendments to the Declaration or Bylaws, or to any other action to be taken by the Board of Directors, Association of Unit Owners, shall be considered to have given such approval unless a negative response

is delivered or posted by such mortgagee within thirty (30) days after such request is received.

12.7 Proxy Held by Mortgagee in Certain Cases. A mortgagee may attend a meeting of the Association of Unit Owners and may cast the vote of the mortgagor of said Unit for the purpose of voting to paint or otherwise maintain the common elements. Provided, however, such right shall arise only in the event the mortgagee reasonably believes that the Association of Unit Owners has failed to maintain the common elements in sufficient manner to prevent excessive wear and tear.

12.8 Right to Examine Documents. The Association shall make available to Unit Owners and lenders and to mortgagees current copies of the Declaration, Bylaws, other rules concerning the Condominium, and the books, records and financial statements of the Association.

12.9 Right to Receive Written Notice of Meetings. Upon request, the Association of Unit Owners shall give all mortgagees written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings.

12.10 List of Mortgagees. The Association shall maintain at all times a list of mortgagees, their names, addresses, the Units and mortgagors affected, and the matters with respect to which such mortgagees have requested notice.

13. AMENDMENTS TO DECLARATION. Except where a larger vote is required by law, this Declaration may be amended from time to time by consent or approval of the Unit Owners holding seventy-five percent (75%) or more of the voting rights as otherwise set forth in this Declaration. Provided, however, no amendment of this Declaration reducing or eliminating the right of any mortgagees shall be made without the prior written consent of all such mortgagees.

13.1 Declarant's Approval Required. Declarant's prior written consent shall be required for any amendment so long as Declarant owns any Unit in the Condominium. Provided, however, no such consent shall be required after conveyance to owners, other than the Declarant, of seventy-five percent (75%) or more of the Units in the Condominium, or three (3) years after conveyance of the first Unit in the condominium, whichever is earlier. Provided, however, even after such time, no amendment may limit or reduce any of the Declarant's special rights whether reserved herein or otherwise provided by law. No amendment may change the percentage interest in the common elements, method of determining liability for common expenses, right to common profits or voting power of any

Unit(s) unless such amendment has been approved by the owners of the affected Unit(s) and the mortgagees of such Unit(s).

13.2 Recordation. An amendment to the Declaration shall be effective upon recordation in the Deed Records of Multnomah County certified to by the chairman and secretary of the Association and, if required by law, approved by the County Assessor and the Real Estate Commissioner.

NEW SENTENCE ADDED 4/5/00.

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

15. RELOCATION OF BOUNDARIES. The owner or owners of any two adjoining Condominium Units may apply to the Board of Directors of the Association for permission to change the sizes of their Units by adjusting the common boundary between the two Condominium Units or for permission to combine two Units into one Unit by deleting the common boundary. Any such application shall identify the Condominium Units involved, state any reallocations of the interest in the common element interests, and in the voting rights, common expense liability and right to common profits. The Board of Directors shall approve the change unless it determines that the reallocations are unreasonable or that the relocation or deletion will impair the structural integrity or mechanical systems of the Condominium. The change shall be effective upon recording in the appropriate records of Multnomah County, Oregon, of amendments to this Declaration and floor plans setting forth the change, executed by the owner and mortgagees of the affected Condominium Units and certified to by the chairman and secretary of the Association, together with any governmental approvals required by law. All costs in connection with such amendments shall be paid by the applicants.

16. AUTHORITY TO GRANT EASEMENTS, RIGHTS-OF-WAY, LICENSES AND OTHER SIMILAR INTERESTS.

16.1 General. Pursuant to ORS 100.405(5), the Association shall have the authority to execute, acknowledge, rights-of-way, licenses and other similar interests affecting the general common elements. The granting of any such interest shall first be approved by at least seventy-five percent (75%) of the Unit Owners. The instrument granting any such interest shall be executed by the chairman and secretary of the Association and acknowledged in the manner provided for acknowledgment of such instruments by such officers and shall state that such grant was approved by at least seventy-five (75%) of the Unit Owners.

16.2 Utility Easements; Dedications. Anything in this Declaration to the contrary notwithstanding, the Declarant shall have the right to execute, deliver and record on behalf of the Association and the Unit Owners such documents as may be required in order to grant easements, rights of way and licenses over the

common elements for the installation, maintenance and repair of public utilities serving the Condominium or adjacent property. The Declarant shall also have the right to execute, deliver and record other documents as may be required to convey, dedicate, or to grant such easements, rights of way or licenses over common elements, as may be required by any government or governmental agency in order to complete development of the Condominium.

17. DECLARANT'S SPECIAL RIGHTS. The Declarant shall have the following special rights:

17.1 Sales Office and Model. The Declarant shall have the right to maintain a sales or rental office and a sales or rental model in one or more of the Units which the Declarant owns. The declarant and prospective purchasers and their agents shall have the right to park automobiles in the parking area on the common elements and to use and occupy the sales office and models during reasonable hours any day of the week.

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

17.3 Common Element Maintenance by the Association. The Association shall maintain all common elements in a clean and attractive manner. Should the Association fail to do so, the Declarant may perform such maintenance at the expense of the Association.

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

17.5 Other Declarant Rights. The rights reserved to the Declarant in this Section 17 shall in no way limit other special Declarant rights the Declarant may have, whether pursuant to the Oregon Condominium Act or otherwise. Upon the expiration of any or all special Declarant rights, the Declarant will have the same rights as any other owner in the Condominium in respect to such ownership.

17.6 Assignment of Declarant's Rights. The Declarant shall have the right to assign any and all of its rights, including without limitation Declarant's special rights as set forth in Section 17 hereof, or to share such rights with one or more other persons exclusively, simultaneously, or consecutively.

17.7 Expiration of Declarant's Special Rights. Unless otherwise provided, the Declarant's special rights reserved in this Section 16 shall expire upon the conveyance by the Declarant of the last Unit owned by the Declarant or five (5) years after conveyance of the first Unit in the Condominium whichever is earlier.

## 18. GENERAL PROVISIONS.

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

18.2 Severability. Each provision of this Declaration and the Bylaws is independent and severable. The invalidity or partial invalidity of any provision thereof shall not affect any of the remaining portions of that or any other provision of this Declaration or the Bylaws.

18.3 Waiver of Rights. The failure of the Association, Board of Directors, an officer or a Unit Owner to enforce any right, provision, covenant or condition of the Declaration and Bylaws shall not constitute a waiver of the right of any such party to enforce such right, provision, covenant or condition in the future.

18.4 Legal Proceedings. Failure to comply with any of the terms of the Declaration, the Bylaws and any rules or regulations adopted thereunder shall be grounds for relief which may include, without intending to limit the same, an action to recover money due, damages or a suit for injunctive relief, to foreclose a lien, or any combination thereof. Relief may be sought by the Association, Board of Directors, an officer, a professional manager or management firm, or, if appropriate, by an aggrieved Unit Owner.

18.5 Costs and Attorneys' Fees. In any proceeding arising because of alleged default by a Unit Owner to comply with the terms and provisions of this Declaration (as may be amended or supplemented), the Bylaws (as may be amended), rules and regulations of the Association or any provisions of the Oregon Condominium Act, the prevailing party shall be entitled to recover the cost of the proceedings and such reasonable attorneys' fees as may be determined by the trial court in any trial or by the appellate court in any appeal thereof.

18.6 Compliance. Each Unit Owner shall comply with the Declaration, and the Bylaws and with the administrative rules and regulations adopted thereunder, and with all other applicable covenants, conditions and restrictions of record. Failure to comply therewith shall be grounds for suit or action, maintainable by the

Association or any Unit Owner in addition to other sanctions which may be provided by the Bylaws or by any existing administrative rules and regulations.

18.7 Conflicting Provisions. In the event of a conflict between or among the Declaration, Bylaws and any administrative rules and regulations, the provisions of the Declaration shall be paramount to the Bylaws and the rules and regulations, and the Bylaws shall be paramount to the rules and regulations. For purposes of this section, the term "Declaration" shall include all amendments and the term "Bylaws" shall include all amendments.

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

IN WITNESS WHEREOF, the undersigned Declarant of the subject property has caused this Declaration to be executed this 19<sup>th</sup> day of August, 1997.

GRYPHON DEVELOPMENT, LLC

By: Julian H. Berkeley  
JULIAN H. BERKELEY

SUBSCRIBED AND SWORN TO before me this 19 day of August, 1997.



Janice L. Schoen  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 7/27/98

The foregoing Declaration is approved pursuant to ORS-100.110 this 29<sup>th</sup> day of August, 1997.

SCOTT W TAYLOR  
Oregon Real Estate Commissioner  
Scott W. Taylor

The foregoing declaration is approved pursuant to ORS 100.110 this 3<sup>rd</sup> day of September, 1997.

County Tax Collector/Assessor  
Mona H. Widing



EXHIBIT A

SURVEYOR'S CERTIFICATE

I, JON T. FEIGION, A REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ANNEXED MAP OF "MODERN CONFECTIONERY LOFTS CONDOMINIUMS", SITUATED IN THE WEST ONE-HALF OF LOTS 6 AND 7, BLOCK 87, "COUCH'S ADDITION TO THE CITY OF PORTLAND", ALSO BEING LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS THE INITIAL POINT OF SAID SURVEY I FOUND AND HELD A 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ALPHA ENG., INC." AT THE SOUTHEAST CORNER OF SAID WEST ONE-HALF OF LOT 6, SAID INITIAL POINT BEARS NORTH 00° 00' 00" WEST, 200.81 FEET, AND SOUTH 00° 00' 00" WEST, 100.00 FEET, FROM THE NORTHWEST CORNER OF LOT 7, BLOCK 78, "COUCH'S ADDITION TO THE CITY OF PORTLAND" (SAID CORNER IS WITNESSED BY A BRASS PIN IN LEAD WHICH BEARS NORTH 4.00 FEET AND WEST 4.00 FEET); THENCE FROM SAID INITIAL POINT, SOUTH 90° 00' 00" WEST, ON THE SOUTH LINE OF SAID LOT 6, BLOCK 87, A DISTANCE OF 50.00 FEET TO THE WEST LINE OF SAID BLOCK 87; THENCE ALONG SAID WEST LINE, NORTH 00° 00' 00" EAST, 100.00 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 87; THENCE NORTH 90° 00' 00" EAST, ON THE NORTH LINE OF SAID BLOCK 87, A DISTANCE OF 80.00 FEET, TO THE EAST LINE OF THAT TRACT OF LAND DESCRIBED IN DOCUMENT NO. 95-128903, MULTNOMAH COUNTY DEED RECORDS; THENCE ON SAID LINE, SOUTH 00° 00' 00" WEST, 100.00 FEET TO THE INITIAL POINT.

CONTAINING 5,000 SQUARE FEET, OR 0.11 ACRES

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Jon J. Feigion*  
OREGON  
JANUARY 16, 1997  
JON T. FEIGION  
2252

VALID UNTIL 12-31-97

I HEREBY CERTIFY THAT THIS TRACING IS A TRUE AND EXACT COPY OF THE PLAT OF "MODERN CONFECTIONERY LOFTS CONDOMINIUMS"

*Jon J. Feigion*  
JON T. FEIGION P.L.S. 2252

SURVEYOR'S CERTIFICATE OF COMPLETION

I, JON T. FEIGION, A REGISTERED PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY...



## Real Estate Agency

CONDOMINIUM DISCLOSURE STATEMENT

FOR

MODERN CONFECTIONERY LOFTS CONDOMINIUMS  
(AN OREGON CONDOMINIUM)

DECLARANT

GRYPHON DEVELOPMENT LLC  
8344 SW MAPLERIDGE DR  
PORTLAND, OR 97225

THIS CONDOMINIUM HAS BEEN FILED WITH THE REAL ESTATE COMMISSIONER OF THE STATE OF OREGON IN ACCORDANCE WITH THE OREGON CONDOMINIUM ACT (ORS 100.905 TO 100.910 AND 100.990). ISSUANCE OF THE ATTACHED DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE CONDOMINIUM BY THE COMMISSIONER.

THE SIZE OF THE INDIVIDUAL UNIT, THE DRAINAGE, SANITATION, DOMESTIC WATER SUPPLIES, IMPROVEMENTS AND THE PHYSICAL DEVELOPMENT AND THE OPERATION OF THE UNIT OWNERS ASSOCIATION OF THE CONDOMINIUM PROJECT ARE NOT REGULATED BY THE REAL ESTATE COMMISSIONER. THIS DISCLOSURE STATEMENT DOES NOT RELIEVE ANY PERSON FROM THE RESPONSIBILITY OF COMPLYING WITH THE REQUIREMENTS OF ANY FEDERAL, STATE, COUNTY OR MUNICIPAL AGENCY WITHIN WHOSE JURISDICTION THE CONDOMINIUM IS LOCATED.

THE REAL ESTATE AGENCY HAS NOT PHYSICALLY INSPECTED THE CONDOMINIUM AND THE INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT WAS PREPARED BY AND IS A REPRESENTATION OF THE DECLARANT.

THIS DISCLOSURE STATEMENT MUST BE GIVEN TO EACH PURCHASER NOT LATER THAN THE DATE THE UNIT SALES AGREEMENT IS FULLY EXECUTED BY ALL PARTIES AND RECEIPT THEREFORE MUST BE TAKEN.

**PROSPECTIVE PURCHASERS SHOULD READ THIS DISCLOSURE STATEMENT BEFORE BUYING**

**CONDOMINIUM DISCLOSURE STATEMENT**  
**FOR**  
**MODERN CONFECTIONERY LOFTS CONDOMINIUMS**  
**(AN OREGON CONDOMINIUM)**

**DECLARANT**

GRYPHON DEVELOPMENT, LLC  
JULIAN BERKELEY, JAMES BERKELEY  
EDWARD BERKELEY, REINHARDT OLSEN  
8344 SW MAPLERIDGE DRIVE  
PORTLAND OREGON 97225  
(503)314-7791

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THE SIZE OF THE INDIVIDUAL UNIT, THE DRAINAGE, SANITATION, DOMESTIC WATER SUPPLIES, IMPROVEMENTS AND THE PHYSICAL DEVELOPMENT AND THE OPERATION OF THE UNIT OWNERS ASSOCIATION OF THE CONDOMINIUM PROJECT ARE NOT REGULATED BY THE REAL ESTATE COMMISSIONER. THIS DISCLOSURE STATEMENT DOES NOT RELIEVE ANY PERSON FROM THE RESPONSIBILITY OF COMPLYING WITH THE REQUIREMENTS OF ANY FEDERAL, STATE, COUNTY OR MUNICIPAL AGENCY WITHIN WHOSE JURISDICTION THE CONDOMINIUM IS LOCATED.

THE REAL ESTATE AGENCY HAS NOT PHYSICALLY INSPECTED THE CONDOMINIUM AND THE INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT WAS PREPARED BY AND IS A REPRESENTATION OF THE DECLARANT.

THIS DISCLOSURE STATEMENT MUST BE GIVEN TO EACH PURCHASER NOT LATER THAN THE DATE THE UNIT SALES AGREEMENT IS FULLY EXECUTED BY ALL PARTIES AND THEREFORE MUST BE TAKEN.

PROSPECTIVE PURCHASERS SHOULD READ THIS DISCLOSURE STATEMENT

**CONDOMINIUM DISCLOSURE STATEMENT  
FOR  
MODERN CONFECTIONERY LOFTS CONDOMINIUMS**

This Disclosure Statement discloses certain pertinent information about Modern Confectionery Lofts Condominiums ("Condominium"), located at 1240 NW Hoyt Street, Portland, Multnomah County, Oregon. This Disclosure Statement has been prepared by Gryphon Development, LLC, together referred to as "Declarant" herein. Declarant's address and telephone number are 8344 SW Mapleridge Drive, Portland, Oregon 97225, (503) 291-1782.

Declarant has fee simple interest in the property. Declarant has recorded a Declaration submitting Modern Confectionery Lofts Condominiums to the Oregon Condominium Act, and Bylaws of the Association of Unit Owners of the Condominium. All references in this Disclosure Statement to the "Declaration" and the "Bylaws" refer to the Declaration and Bylaws described in this paragraph.

**GENERAL DESCRIPTION OF THE CONDOMINIUM**

The Condominium consists of one building containing seven (7) condominium units. The building has three stories. All Units contain a kitchen, a living area, and two baths.

(a) Unit one (1) shall be for residential or commercial use with the commercial use being limited to retail\professional office exclusive of restaurant service or business.

(b) Units two (2) through seven (7) shall be for residential use only.

Declarant is offering a fee simple ownership interest in the units to be sold to prospective purchasers. The owner of a unit also receives an undivided percentage interest in common with other unit owners, in the "common elements" as described in Section 4 of the Declaration and receives the exclusive right to use certain "limited common elements" as described in Section 5 of the Declaration. The undivided interest in the common elements is inseparable from the ownership of the individual unit.

**COMPLETION OF CONSTRUCTION**

Construction has been completed. There are no recreational facilities or improvements.

### WARRANTIES

Seller warrants that Seller is the owner of good and marketable title to the Property free of all liens and encumbrances except those referred to in the preliminary title report, and any liens, encumbrances or judgments suffered by or placed on the Property by Purchaser.

The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

Seller expressly warrants against defects in the electrical, mechanical, structural, and all other components of the newly constructed units for one year from delivery of the unit to someone other than the Declarant. The Seller warrants against defects on the common elements one year from the initial conveyance of title to a unit or completion of the general common element, whichever is later. (ORS.185).

### FINANCING

The Condominium is encumbered by one trust deed which secures the one existing loan. This loan is a "blanket encumbrance" inasmuch as it currently encumbers all units. The loan allows for partial releases which would enable individual units to be conveyed to unit purchasers free of the existing trust deed and loan.

### PROJECTED BUDGET

NOTICE TO PROSPECTIVE PURCHASERS. THE PROJECTION OF THE BUDGET OF THE ASSOCIATION OF UNIT OWNERS FOR THE OPERATION AND MAINTENANCE AND OTHER COMMON EXPENSES OF THE CONDOMINIUM IS ONLY AN ESTIMATE, PREPARED WITH DUE CARE.

The Declarant has prepared an initial projected budget of the Association and estimated assessment for the operation and maintenance and other common expenses of the condominium. A copy of the projected budget is attached to this Disclosure Statement.

Each unit owner's liability for common expenses and right to common profits is equal to that unit owner's percentage ownership interest in the common elements; however, no such profits shall be distributed among the unit owners but shall be used solely for purposes of maintaining, repairing and replacing the common elements or other expenses of the Association. This method of allocation is based upon each unit's square footage. Unit owners may be assessed additional amounts individually for common expenses incurred through such unit owner's fault or direction or through his tenant's fault or direction. Further, unit owners may be assessed additional amounts individually for fines, charges and

expenses in the process of collection of assessments and enforcement of the Declaration, Bylaws and rules and regulations pursuant to Article VI of the Bylaws and as otherwise provided in the Bylaws.

Provisions have been made in the projected budget for a reserve account for replacement of those common elements in the Condominium which would normally require replacement in more than three (3) and less than thirty (30) years. Specific provisions for this reserve account are set forth in Article VI, Section 1, of the Bylaws.

In the case of any duly authorized capital improvements to the common elements, the Board of Directors may establish separate assessments for the same and maintain the proceeds from such assessments in separate accounts.

#### OPERATION AND MANAGEMENT OF THE CONDOMINIUM

Prospective purchasers should carefully review all sections of the Declaration and Bylaws, including those identified below which relate to the method of apportionment of voting rights to members of the Association, the general power and authority of the Board of Directors, and the nature and extent of Declarant's initial control of the Board of Directors.

As provided in Section 10 of the Declaration, an Association of Unit Owners has been formed and Bylaws have been adopted to govern the operation and management of the Condominium.

Upon becoming the legal owner or contract purchaser of a unit, said owner shall automatically be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason. A unit owner's participation in the operation and management of the Condominium is generally limited to the right to vote at meetings of the Association. As provided in Section 7 of the Declaration and in Article II of the Bylaws, the owners of each unit shall have one vote.

Article III, Section 3, of the Bylaws provide that the initial meeting of the Association shall be the turnover meeting. Prior to such meeting, the Declarant may call meetings of the unit owners, formally or informally, for such purposes as Declarant deems necessary or appropriate.

Section 10.4 of the Declaration and Article III, Section 3, of the Bylaws state that the Declarant has appointed an interim board of three (3) directors for the Association to serve until replaced by Declarant or until the turnover meeting is held. In this manner, the Declarant has reserved the right to control the Association until the earlier of (a) the date ninety days following

the date of conveyance to persons other than Declarant of fifty percent (50%) of the units, or (b) three (3) years from the date the first unit is conveyed. At the turnover meeting, the unit owners will elect directors as provided in Article III, Section 3, of the Bylaws.

Article IV of the Bylaws sets forth the responsibilities of the Association and the powers and duties of its Board of Directors. Article I Section 4, of the Bylaws provides that the Board of Directors, including the interim Board of Directors, has the right to contract with a professional manager or management firm to manage the affairs of the Association. As of the date of this Disclosure, no such management contract exists.

Article VI of the Bylaws provides for the manner in which common expenses will be determined and assessed to the unit owners and the authority of the Board of Directors to collect assessments and otherwise enforce the provisions of the Declaration, Bylaws and rules and regulations of the Association.

Article VII of the Bylaws sets forth the obligations of the unit owners with respect to maintenance and use of the units and common elements. In addition, Section 1 of Article VII sets forth use and occupancy restrictions such as limitations on commercial activities. Section 9 of that Article provides for additional rules and regulations that may be adopted by the Board of Directors from time to time.

#### DOCUMENTS BY WHICH PURCHASERS WILL BE BOUND

Prospective purchasers should carefully read all documents, by which they will be bound, pertaining to the Condominium. These documents include the following:

(1) Declaration Submitting Modern Confectionery lofts condominiums to the Oregon Condominium Act. This document contains, among other things, provisions describing the units, common elements, rights of mortgagees, easements, and Declarant's rights.

(2) Bylaws of the Association of Unit Owners of Modern Confectionery Lofts Condominiums. This document contains, among other things, provisions on the management and operation of the Association and the rights and obligations of the unit owners.

(3) Escrow Instructions between Declarant and Chicago Title. This document provides for deposit of funds into escrow and outlines a general procedure for closing the unit sale transactions.

(4) Unit Sales Agreement. This document sets forth rights and obligations of purchaser and seller, and includes a notice to

purchaser of his statutory right to cancel the transaction within five (5) business days.

(5) Revocable Permit to Use Dedicated Street Areas recorded in Multnomah County at 95-144114. This document sets forth a revocable permit that allows a part of the condominium building to encroach on the adjoining property.

(6) In addition, purchasers may be bound by financing instruments, escrow instructions and provisions of the Oregon Condominium Act; prospective purchasers should also inquire regarding management contracts and rules and regulations, if any, that may have been adopted by the Board of Directors since the date of this Disclosure.

DATED: 8/19/97

DECLARANT

GRYPHON DEVELOPMENT, LLC

By: Julian H. Berkeley

Julian H. Berkeley



Modern Confectionery Lofts Condominiums

7 Units

ESTIMATED OPERATING BUDGET  
and  
MONTHLY ASSESSMENT

<u>ESTIMATED BUDGET ITEM COST</u>	<u>ANNUAL</u>
Water and Sewer	\$1,200.00
Insurance	950.00
Maintenance and Repair/Common Elements	1,000.00
Administrative and Miscellaneous Expense	600.00
Electricity for Common Element Lighting	1,000.00
Trash Removal	1,100.00
Reserve for Replacement of Common Elements	2,550.00
Parking Facility Maintenance	1,200.00
ESTIMATED TOTAL ANNUAL BUDGET	9,600.00
ESTIMATED MONTHLY BUDGET	800.00
ESTIMATED MONTHLY ASSESSMENT FOR ALL UNITS	<u>115.00</u>

These projections are subject to increase or decrease to reflect the changes in operating policies, and/or level of service, inflation or other causes.