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Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR AVENUE ONE  
OMAHA, DOUGLAS COUNTY, NEBRASKA**

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**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR AVENUE ONE**

THIS MASTER DECLARATION of Covenants, Conditions, Restrictions and Easements for Avenue One (hereinafter termed the "Declaration") is made this 25th day of November, 2020, by **Jasper Stone 192<sup>nd</sup> and Dodge, LLC**, a Delaware limited liability company (hereinafter sometimes termed "Declarant").

**RECITALS**

WHEREAS, Declarant is the owner and developer of approximately One hundred fifty (150) acres of land in Omaha, Douglas County, Nebraska, known as Avenue One and legally described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Avenue One Property"); and

WHEREAS, in connection with the development of the Avenue One Property, Declarant may, without obligation, record various subdivision plats; dedicate portions of the Avenue One Property to the public for streets, roadways, drainage, flood control, and general public use; and set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to portions of the Avenue One Property; and

WHEREAS, Declarant desires to form the Association for the mutual benefit of Avenue One Owners (as said terms are defined herein below), which Association will: (1) own, construct, operate, manage and/or maintain a variety of Common Areas within Avenue One; (2) establish, levy, collect and disburse assessments and other charges imposed hereunder; and (3) as the agent and representative of the members of the Association, administer and enforce all provisions, covenants, conditions, and restrictions hereof; and

WHEREAS, Declarant desires to subject all of the Avenue One Property to the Declaration as hereinafter set forth.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

**ARTICLE I  
DEFINITIONS**

The following words, phrases or terms used in this Declaration shall have the following meanings:

- 1.1. "Access Drive Lighting" shall mean the street lighting in the Street Frontage Area and Feature and Signage Area.
- 1.2. "Access Drive Lighting Charges" shall mean the electricity charges, maintenance, repair and replacement charges for the Access Drive Lighting.



- 1.3. “Affiliate” shall mean any entity that controls, is controlled by, or under common control with such other entity.
- 1.4. “Annual Assessment” shall mean the charge levied and assessed each year against each Lot and/or Zone pursuant to Article IX, Section 9.2 hereof.
- 1.5. “ARC” shall mean the architectural review committee appointed pursuant to review all Improvement Plans prior to start of construction, addition, modification or installation in accordance with the Design Guidelines, including without limitation the design standards and criteria set forth therein, with respect to the Avenue One Property.
- 1.6. “ARC Relinquishment Declaration” shall mean a declaration or other similar document stating that Declarant no longer desires to exercise any further controls over appointing members to the ARC and is relinquishing its rights under the Declaration.
- 1.7. “Articles” shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.
- 1.8. “Assessable Property” shall mean any Lot and/or Zone, except such part or parts thereof as may from time to time constitute Exempt Property.
- 1.9. “Assessment” shall mean an Annual Assessment, Special Assessment, and/or Penalty Assessment.
- 1.10. “Assessment Lien” shall mean the lien created and imposed by Article IX, Section 9.1 hereof.
- 1.11. “Assessment Period” shall mean the time period set forth in Article IX, Section 9.5 hereof.
- 1.12. “Association” shall mean the Avenue One Master Owners Association, a Nebraska not-for-profit corporation, which has been organized by Declarant to administer and enforce the Declaration and to exercise the rights, powers and duties set forth in this Declaration, its predecessors or successors, whether incorporated or unincorporated and assigns.
- 1.13. “Association Land” shall mean such part or parts of the Avenue One Property, together with any Buildings, structures and Improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

- 1.14. "Avenue One" shall mean the development encompassed within the Avenue One Property.
- 1.15. "Avenue One Property" shall have the meaning ascribed in the Recitals of this Declaration.
- 1.16. "Avenue One Rules" shall mean the rules and regulations for Avenue One adopted by the Board pursuant to Article VI, Section 6.3 hereof.
- 1.17. "Board" shall mean the Board of Directors of the Association.
- 1.18. "Building" shall mean any building, structure intended for shelter, housing, or enclosure of persons, animals or chattel, garage, utility shed or building, or similar structure.
- 1.19. "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday in the State of Nebraska. When any period of time stated in this Declaration would end on a day that is not a Business Day, such period shall be deemed to end on the next Business Day.
- 1.20. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.
- 1.21. "City" shall mean the City of Omaha, Nebraska.
- 1.22. "City Agreements" shall mean the Development Agreement, the Subdivision Agreement, the Streetscape Maintenance Agreement, the EEA Development Agreement, and the PCSMP Maintenance Agreement, as such agreements may be modified or amended from time to time, and any additional maintenance agreements, easements or other agreements required by the City or any other governmental entity in connection with the Avenue One Property.
- 1.23. "Commercial Zone" shall mean the Lots and Outlots encompassed within the Commercial Zone Area depicted on the Zone Plan.
- 1.24. "Common Area" shall mean (a) all Association Land and the Improvements thereon; (b) all land within the Avenue One Property which Declarant by the Subdivision Agreement, this Declaration, City Agreements or other Recorded instrument, makes or is required to make available for common use by Members of the Association; (c) all land and Improvements within or outside of the Avenue One Property which by Final Plat or Recorded instrument or as designated in the Common Area Plat is to be used for signage, vehicular or pedestrian ingress and egress, sewers, landscaping, water retainage, drainage, and/or flood control for the common benefit of the Avenue One Members and/or the general public; and (d) all

land within or outside of Avenue One which is owned privately or by a governmental agency for which the Association has accepted responsibility for operation or maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the general benefit of the Members.

- 1.25. “Common Area Plat” shall mean the Common Area Plat affixed hereto as Exhibit “B”, as amended from time to time.
- 1.26. “Core East Zone” shall mean the Lots and Outlots encompassed within the Core East Zone Area depicted on the Zone Plan.
- 1.27. “Core West Zone” shall mean the Lots and Outlots encompassed within the Core West Zone Area depicted on the Zone Plan.
- 1.28. “County” shall mean and refer to the County of Douglas, State of Nebraska.
- 1.29. “Declarant” shall mean Jasper Stone 192<sup>nd</sup> and Dodge, LLC, a Delaware limited liability company, and the successors and assigns of Declarant’s rights and powers hereunder.
- 1.30. “Declaration” shall mean this Master Declaration of Covenants, Conditions, Restrictions and Easements for Avenue One, as amended or supplemented from time to time.
- 1.31. “Deed” shall mean a deed or other instrument conveying the fee title in a Lot, Outlot, Zone, or other parcel of land.
- 1.32. “Design Guidelines” shall mean that certain Design Guidelines which shall contain design standards and criteria, development plan, Zone Plan, and such other development matters relating to and affecting the development of the Avenue One Property.
- 1.33. “Detention Pond Area” shall mean those portions of the Avenue One Property designated as Detention Pond Area on the Common Area Plat.
- 1.34. “Developer” shall mean a person or entity who is engaged in residential or commercial real estate development and who purchases one or more Lots or Zones from the Declarant for the purpose of constructing Improvements thereon for sale or lease, but shall not include a purchase by an Affiliate of Declarant.
- 1.35. “Development Agreement” shall mean the Development Agreement between the City and Declarant dated June 16, 2019, as the same may be amended from time to time.
- 1.36. “Director” shall mean a member of the Board.

- 1.37. "Drainage Way" shall mean those portions of the Avenue One Property designated as Drainage Way on the Common Area Plat.
- 1.38. "Dwelling Unit" shall mean any individual residential unit situated in a Building or Improvement within the Avenue One Property designed and intended for use and occupancy as a residence.
- 1.39. "EEA" or "EEA District" shall mean the Enhanced Employment Area and the EEA Development Agreement established pursuant to Neb. Rev. Stat. § 18-2142.04 encompassing the Avenue One Property, as such Enhanced Employment Area may be amended or modified from time to time.
- 1.40. "EEA Assessments" shall mean the EEA assessments or taxes to be paid under, and as described in the documents creating the EEA.
- 1.41. "EEA Development Agreement" shall mean the Development Agreement for Occupation Tax in an Enhanced Employment Area between Declarant and the City approved on July 16, 2019.
- 1.42. "Exempt Property" shall mean the following parts of Avenue One:

All land and Improvements owned by or dedicated to the United States or the State of Nebraska; all Association Land, for as long as the Association is the owner thereof; Outlots; or Lots designated for and classified as Building Types "ESMT/Park" or "Parking Garages" as set forth in the Development Agreement, as may be amended from time to time.
- 1.43. "Expenses" shall mean the entire cost and expense incurred by the Association or the Board to perform its rights and obligations of this Declaration, including, without limitation, (i) the cost of maintaining the Common Areas; (ii) real and personal property taxes and assessments levied against land and/or improvements owned by the Association; (iii) insurance premiums for insurance maintained by the Board; (iv) management fees associated with the management of the Common Areas; (v) reserves, as reasonably determined by the Board; and (vi) any other fees or costs incurred to perform the obligations of the Association under this Declaration.
- 1.44. "First Board Expansion Date" shall mean the date Declarant has sold ninety-five percent (95%) or more of the total Lot acreage in any one Zone to Developer(s).
- 1.45. "Green Space Area" shall mean those portions of the Avenue One Property designated as Green Space Area on the Common Area Plat.

- 1.46. "Feature and Signage Area" shall mean those portions of the Avenue One Property designated as Feature and Signage Area on the Common Area Plat.
- 1.47. "Final Plat" shall mean the final plats for Avenue One Lots 1 through 8 and Outlots A and B inclusive, a subdivision in Douglas County, Nebraska, and Avenue One Lots 9 through 11 and Outlot C inclusive, a subdivision in Douglas County, Nebraska copies of which are attached hereto as Exhibit "C", and any subsequently approved final plat of the Avenue One Property.
- 1.48. "Improvement" shall mean, but not be limited to, Buildings, sheds, utility structures, roads, drives, dams, channels, basins, parking areas, fences, hedges, landscaping, mass plantings, walls, poles, signs, antennas, dish antennas, planted trees, and all other structures or landscaping improvements of every type and kind.
- 1.49. "Improvement Plan Approval Request" shall mean written Notice from an Owner to the ARC of its desire to construct an Improvement.
- 1.50. "Improvement Plans" shall mean the site plans, grading and utility plans, landscaping plans, sign and sign allocation plans, floor plans and building elevations, and materials plans, demolition plans and such other plans and specifications as required in the Design Guidelines.
- 1.51. "Land Use Restriction" shall mean any land use restrictions imposed on the Lots Outlots, and/or Zones pursuant to Article V.
- 1.52. "Lessee" shall mean the Lessee under a lease of a Lot or Improvements constructed on a Lot.
- 1.53. "Lot" shall mean any area of real property within the Avenue One Property designated as a lot on any Plat.
- 1.54. "Maintenance Charges" shall mean any and all costs assessed against a Lot or Zone pursuant to Article XII, Section 12.9 hereof.
- 1.55. "Member" shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.
- 1.56. "Membership" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to Article VII hereof.
- 1.57. "Notice" shall mean actual or constructive notice of any fact. Notice with respect to receipt of any document shall mean delivery of the document in person, by posting in accordance with Nebraska law delivery by or regular or certified mail. If delivery is by regular or certified mail, the document shall be deemed to have

been delivered seventy-two (72) hours after a copy of the document has been deposited in the United States Mail.

- 1.58. "Occupation Tax Ordinance" shall mean City of Omaha Ordinance No. 41890 passed and approved on July 16, 2019.
- 1.59. "Outlot" shall mean any area of real property within the Avenue One Property designated as an Outlot on any Plat.
- 1.60. "Owner" shall mean the person or persons holding the beneficial ownership of the fee title to a Lot or Outlot as shown on the records of the Douglas County, Nebraska, Register of Deeds, but shall not include persons holding only a security interest or a Lessee.
- 1.61. "Park Commons Area" shall mean those portions of the Avenue One Property designated as Park Commons Area on the Common Area Plat.
- 1.62. "PCSMP Maintenance Agreement" shall mean the Post Construction Stormwater Management Plan Maintenance Agreement between the City and Declarant as may be entered into the future and required by the City for Avenue One.
- 1.63. "Penalty Assessments" shall mean assessments imposed for violation of the Declaration, Articles, Bylaws or Avenue One Rules, pursuant to the procedures established from time to time by the Board. Such assessments shall be punitive in nature and may be imposed without regard to whether or not monies have been expended by the Association as a result of such violation.
- 1.64. "Period of Declarant Control" shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the earlier of: (a) the date, following final platting of all Zones, that ninety-five (95%) or more of the Lots and ninety-five (95%) or more of the acres within the Avenue One Property are conveyed to an Owner other than Declarant ; or (b) any earlier date specified by Declarant in a written and Recorded Notice to the Association that the Period of Declarant Control is to terminate on that Date.
- 1.65. "Permittee" shall mean all Owners, their Lessees or licensees, and their respective officers, directors, partners, members, employees, agents, contractors, subcontractors, customers, visitors, invitees, tenants, subtenants, licensees and concessionaires.
- 1.66. "Plat" shall mean the Final Plat, Preliminary Plat, and any subsequent Recorded plats or replats of all or part of Avenue One Property.

- 1.67. “Preliminary Plat” shall mean the preliminary plat of Avenue One, a subdivision in Douglas County, Nebraska, a copy of which is attached hereto as Exhibit “D”.
- 1.68. “Purchased Zone(s)” shall mean a Zone or Zones of which more than ninety-five percent (95%) of the total Lot acreage in a Zone has been acquired by Developer(s) from Declarant for the purpose of construction of Improvements.
- 1.69. “Recording” shall mean placing an instrument of public record in the office of the Register of Deeds of Douglas County, Nebraska, and “Recorded” shall mean having been so placed on public record.
- 1.70. “Relinquishment Effective Date” shall mean the date that is thirty (30) days after recordation of the ARC Relinquishment Declaration.
- 1.71. “Resident” shall mean each natural person residing in a Dwelling Unit.
- 1.72. “Residential East Zone” shall mean the Lots and Outlots encompassed within the Residential East Zone Area depicted in the Zone Plan.
- 1.73. “Residential West Zone” shall mean the Lots and Outlots encompassed within the Residential West Zone Area depicted in the Zone Plan.
- 1.74. “Retail Zone” shall mean the Lots and Outlots encompassed within the Retail Zone Area depicted in the Zone Plan.
- 1.75. “Second Board Expansion Date” shall mean the date Declarant has sold ninety-five percent (95%) or more of the total Lot acreage of two Zones to Developer(s) within the Avenue One Property.
- 1.76. “Special Assessments” shall mean any assessment levied and assessed pursuant to Article IX, Section 9.3 hereof.
- 1.77. “Street Frontage Share Area” shall be the area designated as the Street Frontage Share Area on the Common Area Plat.
- 1.78. “Street Frontage Area” shall be the area designated as the Street Frontage Area on the Common Area Plat.
- 1.79. “Streetscape Maintenance Agreement” shall mean the Streetscape and Entrance Sign Maintenance Agreement between Declarant, the Association and the City for the maintenance of certain Avenue One improvements constructed within public right-of-way.

- 1.80. “Sub-Association” shall mean an owner’s association created by a Supplemental Declaration within Avenue One other than the Master Association, as contemplated by Article VI, Section 6.5 hereof.
- 1.81. “Subdivision Agreement(s)” shall mean the Avenue One Lots 1-8 Subdivision Agreement and Avenue One Lots 9-11 Subdivision Agreement by and between the City and Declarant dated July 19, 2019, as the same may be amended from time to time, together with any subsequent Subdivision Agreements between the City and Declarant that may entered into from time to time in conjunction with a Final Plat.
- 1.82. “Supplemental Declaration” shall mean any declaration of covenants, conditions, restrictions and easements or similar document Recorded against a Zone or other part of Avenue One.
- 1.83. “Third Board Expansion Date” shall mean the date Declarant has sold ninety-five percent (95%) or more of the total Lot acreage of five Zones within the Avenue One Property.
- 1.84. “Trail Area” shall mean those portions of the Avenue One Property designated as Trail Area on the Common Area Plat.
- 1.85. “Wetlands Mitigation” shall mean any requirements imposed on Declarant, or its successors in interest, to perform wetlands mitigation within the scope of the Avenue One East NOW-2017-00136-WEH Department of Army Permit No. 39, verification date August 23, 2017 and the Avenue One West NOW-2017-01686-WEH Department of Army Permit No. 39, verification date April 24, 2017.
- 1.86. “Zone” shall mean a portion of the land within Avenue One depicted as a zone on the Zone Plan; initially the Residential West Zone, Residential East Zone, Commercial Zone, Core East Zone, Core West Zone, and Retail Zone as depicted on the Zone Plan.
- 1.87. “Zone Plan” shall mean the plan illustrating the Zones attached hereto as Exhibit “E”.

ARTICLE II  
GENERAL PURPOSES

This Declaration is for the mutual benefit and protection of the Owners of Avenue One and is intended to assure (i) the most desirable and appropriate development and improvement of each Lot of Avenue One; (ii) the development and maintenance of Avenue One as an attractive, park-like setting for offices, retail, residential, and other uses; (iii) a pleasant environment, attractive to people with ample landscaped open areas; (iv) that structures and other improvements in Avenue One will be of high quality; and (v) the enhancement of each Owner’s investment.



ARTICLE III  
PROPERTY SUBJECT TO THE AVENUE ONE DECLARATION

Declarant intends to develop Avenue One and to develop, improve, lease, sell and/or convey Lots. Declarant hereby declares that all of the real property within Avenue One is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Plats applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot or an Outlot and which is dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of Avenue One and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of Avenue One and every part thereof. This Declaration shall run with the Avenue One Property and with all Lots, Outlots, Zones and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent Declarant from modifying the Development Agreement or Subdivision Agreement as may apply to any portion of Avenue One owned by Declarant, from replatting Lots, Outlots or Zones or from dedicating or conveying portions of Avenue One owned by Declarant, including streets or roadways, for uses other than as a Lot, Outlot, Zone or Association Land.

ARTICLE IV  
COMMON AREA EASEMENTS

Section 4.1. Easements of Enjoyment. Every Owner and Permittee shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights and right to use of the Common Areas by any Member (i) for any period during which any Assessment against such Member's Lot remains delinquent, or (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Avenue One Rules, and for successive suspension periods if any such infraction is not corrected during any prior suspension period. The Member's obligation to continue to pay Assessments shall continue even though voting rights and the right to use the Common Areas have been suspended.
- (b) The Association, upon approval of the Board, shall have the right to grant easements, dedicate or transfer all or any part of the Common Areas owned by the Association to any public agency, authority, or private or public utility company for such purposes and subject to such conditions as may be agreed to by the Association.
- (c) The right of the Association to regulate the use of the Common Areas through the Avenue One Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way and signage areas, not intended for use by the Members.

The Avenue One Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

Section 4.2. Delegation of Use. Any Member may, in accordance with the Avenue One Rules and the limitations therein contained and this Declaration, delegate the right of enjoyment in the Common Areas to Permittees subject to the doctrine of respondeat superior.

ARTICLE V  
LAND USE RESTRICTIONS AND PERMITTED USES

Section 5.1. Zoning Land Use Restrictions. No Owner of a Lot or Zone shall use such Lot or Zone for uses other than permitted uses for such Lot or Zone under the City approved zoning for Avenue One or, as applicable, the Development Agreement without the prior written approval of Declarant, which approval may be withheld in Declarant's sole discretion.

Section 5.2. Restrictions Applicable to Avenue One Property. The following uses shall not be permitted on any of the Avenue One Property, unless otherwise approved by Declarant:

- (a) Any public or private nuisance.
- (b) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of Avenue One, including the storage, display or sale of explosives or fireworks.
- (c) A gas station or car wash.
- (d) A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.
- (e) Any pawn shop or flea market, swap meet or second hand or surplus store.
- (f) Any store selling discounted tobacco products or tobacco-smoking paraphernalia.
- (g) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located within the Avenue One Property.
- (h) Pay-day or title loan facilities.
- (i) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (j) Any central laundry, or laundromat; provided, however, that this prohibition shall not be applicable to the operation of a laundry within a multi-family or senior living approved residence within the Residential East Zone, Residential West Zone, Core

East Zone and Core West Zone and, if applicable, complies with federal and state laws, rules and regulations.

- (k) Any automobile, truck, trailer or recreational vehicle retailer with outside sales, leasing or display.
- (l) Any body shop repair operation, engine repair or motor vehicle repair facility for all vehicles, including motorcycles.
- (m) Any establishment selling or exhibiting sexually oriented materials, including any adult book shop, adult movie house, or other establishment principally selling or exhibiting pornographic materials, or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.
- (n) Any precious metals facilities except jewelry stores.
- (o) Any mobile home or trailer court, auction house (other than the auction of unique, high quality items, such as fine jewelry or antiques), junkyard, mortuary, funeral home, stock yard or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance).
- (p) Any drilling for and/or removal of subsurface substances.
- (q) Any massage parlor (other than massage services incidental to a spa or salon) or tattoo parlor.
- (r) Any residential use except in the Residential East Zone, Residential West Zone, Core East Zone or Core West Zone, or as otherwise permitted by Declarant.
- (s) Any abortion clinic or drug rehabilitation clinic.
- (t) Any bowling alley, pool or billiard hall; provided, however, this prohibition shall not be applicable to: a gym or clubhouse incidental to a multi-family or senior living approved residence within the Residential East Zone or Residential West Zone, or any bowling alley, pool or billiard hall operating as part of a bar or restaurant.
- (u) Any amusement or video arcade center, provided, however, the foregoing shall not prohibit such operation as a part of any restaurant or bar being operated within the Core East Zone and Core West Zone.
- (v) Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall.

Notwithstanding the foregoing, the foregoing restrictions shall not prohibit the Owners from engaging in the foregoing uses as may be incidental to their primary business as long as such uses are not being offered to the general public for commercial gain. By way of example, an office building may contain a fitness center solely for the use and benefit of the building tenants.

Section 5.3. Restrictions Applicable to Residential East Zone and Residential West Zone. The Lots within the Residential East Zone and Residential West Zone shall be used for purposes consistent with and in compliance with the Development Agreement.

Section 5.4. Restrictions Applicable to Commercial Zone. The Lots within the Commercial Zone shall be used for purposes consistent with and in compliance with the Development Agreement.

Section 5.5. Restrictions Applicable to Retail Zone. The Lots within the Retail Zone shall be used for purposes consistent with and in compliance with the Development Agreement.

Section 5.6. Restrictions Applicable to Core East Zone and Core West Zone. The Lots within the Core East Zone and Core West Zone shall be used for purposes consistent with and in compliance with the Development Agreement.

Section 5.7. Landscaping and Vegetation. Until the redevelopment of a Lot or Zone in accordance with the Design Guidelines, the Owner of any Lot or Zone within the Development shall cause the vegetation located on such Lot or Zone to be of a similar quality and nature as the vegetation established on such Lots by Declarant. Upon the redevelopment of a Lot or a Zone within the Development in accordance with the Design Guidelines, the Owner of such Lot or Zone shall cause the landscaping and vegetation located on such Lot or Zone to be as required and approved pursuant to the Design Guidelines.

Section 5.8. Temporary Buildings. Except as otherwise provided herein, no temporary buildings, trailers, manufactured homes or other structures, mobile homes or structures, modular facilities or other similar structures shall be allowed upon any property within the Avenue One Property, except that, with the prior approval of the ARC in connection with an approved construction plan, retail and restaurant container structures may be permitted and container or shelter structures for seasonal activities (i.e. ice skating). Construction trailers and related temporary facilities may be permitted as reasonably required by construction contractors then engaged in constructing improvements within the Avenue One Property. Notwithstanding the foregoing, a Lot owner may be allowed to construct, place and use a temporary facility, including a trailer and/or modular facility, for its use if such Lot owner's permanent facility is destroyed in whole or in part by tornado or any other natural disaster (i.e. fire, wind, hail, etc.). Plans for any temporary facilities must be approved by Declarant prior to construction or placement, which approval shall not be unreasonably withheld.

Section 5.9. Signage. No stand-alone outdoor advertising signs or billboards shall be permitted upon any Lot within the Avenue One Property. No exterior signs incorporating flashing, pulsating or rotating lights shall be permitted, and no exterior walking or message signs (except time and temperature) shall be permitted. No pole signs or roof signs shall be permitted, provided that the foregoing shall not prohibit any Owner from constructing, installing or placing monument signage consistent with sign criteria for the Design Guidelines and applicable law with Declarant's approval, and from placing temporary signage on its Lot for purposes of advertising pending construction and development provided such signage is consistent with applicable law.

Section 5.10. Loading Areas; Trash Receptacles; Mechanical Equipment. All loading areas and loading docks, trash receptacles, antennae, satellite dishes and mechanical equipment shall be off-street and screened from adjacent streets and sidewalks.

Section 5.11. Exterior Lighting. Owners shall install or cause to be installed sufficient exterior lighting so as to properly illuminate drives, parking facilities, streets and sidewalks. Where appropriate, decorative lighting will be employed in accordance with the requirements of the Design Guidelines.

Section 5.12. Condition of Premises. Each Owner of a Lot in Avenue One shall maintain, or cause to be maintained, its building site and all structures, buildings, appurtenances, screening fences, parking areas and drives, drainage channels, signs, landscaping, including all street trees adjacent to their Lot, and other improvements of whatever nature thereon in a safe, clean and wholesome manner and in first-class condition and repair (and make replacements if necessary) at all times, and shall plow and clear snow from the separate parking areas on the Lot. In the event any such Owner fails to comply with this provision within thirty (30) days after written Notice from the Board (or within such additional period of time as may be required because of the nature of the work to be performed, provided that such Owner shall commence to effect such compliance within said thirty (30) day period and shall continue thereafter with due diligence and dispatch to effect compliance), the Board shall have the right to enter upon the Lot in question (but not any buildings or improvements located therein) and perform such maintenance or repairs at the expense of the Owner of said building site. The Board shall give written Notice of the cost of such maintenance or repairs to the Owner by certified mail. Such cost shall be reimbursed by said Owner and shall be due and payable within ten (10) days after the mailing of said Notice.

Section 5.13. Parking. Employee, customer, owner or tenant parking shall be the responsibility of the Lot Owners. The Lot Owners shall provide all necessary parking facilities entirely on their Lot, subject to any future easement rights or agreements, unless specifically designated and approved otherwise by the Declarant. Parking on private or public streets within Avenue One is expressly prohibited unless otherwise designated. All parking areas and drives and access shall be paved with concrete and maintained by the Lot Owner in a well-kept condition. Each parking space provided shall be designated by white lines painted on the paved surfaces and shall be adequate in area.

## ARTICLE VI ORGANIZATION OF ASSOCIATION

Section 6.1. Formation of Association. The Association is a Nebraska not-for-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 6.2. Board and Officers – Governing Structure.

- (a) The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as

the same may be amended from time to time. The Board may also appoint various committees and appoint a manager or management company who shall, subject to the direction and supervision of the Board, be responsible for the day to day operation of duties and responsibilities assigned to the Association by this Declaration. The Board shall determine the commercially reasonable compensation to be paid to officers or any employee, manager or management company. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

- (b) The initial Board shall consist of three (3) Directors appointed by Declarant. Upon the First Board Expansion Date, the Board shall consist of four (4) Directors of which three (3) shall be appointed by Declarant and one (1) shall be appointed by a vote of the Members of the Purchased Zone. Upon the Second Board Expansion Date, the Directors for the Board shall consist of five (5) Directors of which three (3) shall be appointed by Declarant and two (2) shall be appointed by a vote of the Members of the Purchased Zones. Each Purchased Zone shall receive one (1) appointment to the Board. Upon the Third Board Expansion Date, the Directors for the Board shall consist of nine (9) Directors of which three (3) shall be appointed by Declarant until expiration of the Period of Declarant Control and six (6) shall be appointed by a vote of the Members of the Zones. Each Zone shall appoint one (1) Director.
- (c) After the Period of Declarant Control, Declarant appointed Director positions shall be appointed by a vote of the Members of the Association.
- (d) All non-Declarant appointed Directors must be an Owner or an owner, director, officer, or employee of an Owner. Directors may be replaced at any time by the party with the power, from time to time, to appoint such Director pursuant to this Section. If a Director hereunder resigns or is no longer capable or qualified to serve as a Director, the party with the power to appoint such Director hereunder at such time shall appoint the replacement for such Director.

Section 6.3. Avenue One Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Common Areas; (ii) minimum standards for any maintenance of Lots and Zones; or (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Avenue One Rules, the provisions of this Declaration shall prevail. The Avenue One Rules shall be enforceable by the Association in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 6.4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided,

however, the limitations set forth in this Section 6.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 6.5. Sub-Association. In the event any owners or similar association is to be formed by a Developer (other than Declarant) of a Zone or subdivision of Avenue One, the Supplemental Declaration and the articles of incorporation and bylaws or other governing documents for such Sub-Association shall not be effective unless the contents thereof have been approved by Declarant in writing, and in all events such Supplemental Declaration and Sub-Association and the rights of its members shall be subject and subordinate to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of the Avenue One Rules. Each Supplemental Declaration and Sub-Association may establish additional use restrictions, design standards, voting procedures, which voting procedures may be different from that of the Association, or performance standards as long as they do not diminish the standards set forth in this Declaration.

## ARTICLE VII MEMBERSHIP AND VOTING

Section 7.1. Membership and Voting. Each Owner of a Lot within the Avenue One Property shall be a Member of the Association. Except as otherwise set forth in this Declaration, the Articles or Bylaws, or as otherwise required by Nebraska law, the decisions of the Association shall be determined by a majority of the total number of votes of the Board of Directors.

The total number of votes allocated to the Lots, except for those Lots classified as Exempt Property, shall be based on a formula (more fully set forth below) taking into account either the lot square footage of each Lot or the square footage of the Improvements thereon as further set forth herein. For this purpose, each Member is allocated the number of votes, as follows:

Commencing on the date of the Recording of this Declaration through December 31, 2025, the Board of Directors shall allocate each Owner of a Lot votes equal to 0.001 vote per each square foot of the Lot owned as of January 1, as designated by the Douglas County Assessor, from time to time.

After December 31, 2025, the Board of Directors shall allocate each Owner of a Lot votes equal to the greater of:

- (a) 0.001 vote per each square foot of the Lot, as designated by the Douglas County Assessor, from time to time, or
- (b) 0.005 votes per each square foot of the Improvements, excluding any parking or parking related Improvements, contained on each Lot as of January 1, as designated by the Douglas County Assessor, from time to time.

Exempt Property shall be allocated zero Member votes. Member votes will be reset on an annual basis.

In the event the Douglas County Assessor fails for any reason to assign a square footage to a Lot or any Improvements thereon, or to any portion thereof, the Association shall determine the square foot of the Lot or Improvement by engaging an independent surveyor or contractor to establish as of December 31st of the year preceding any Assessments the square footage of the Lot(s) or any Improvements thereon. If the Owner feels the square footage assigned by the Association's surveyor or contractor is incorrect, the Owner may, at his or her own expense, engage an alternative surveyor or contractor to determine the square footage of the Lot(s) or any Improvements thereon. If the Owner's appraiser and the Association's appraiser cannot mutually agree on the square footage, they shall select a third surveyor or contractor who shall be a member of good standing of a recognized real estate organization to make a final determination which shall then establish the square footage and be binding upon both the Owner and the Association. Expenses of the third surveyor or contractor, if needed, shall be paid by the Association and be reimbursed to the Association by the Owner concerned. In any event, the initial Assessment levied by the Association shall be valid and binding upon each owner and due and payable by the Owner as provided herein while the above procedure for resolution of disputed square footage is in process. Should this procedure result in a lower Assessment against the Lot(s), the Association shall make a prompt adjustment with the Owner. If the method or formula used by the Office of the Douglas County Assessor to determine square footage is materially changed, suspended or amended from that used as of the Effective Date of this Declaration, then, in order to determine the Assessments pursuant to this Section, the Association shall be empowered to either: adopt the changed or amended method of determining the square footage, which changed or amended method shall be binding upon all Owners; determine the square footage of the Lot(s) and Improvements thereon as provided above; or change the method used to levy Assessments under this Declaration by filing an amendment or supplement to the Declaration as provided in this Declaration, so as to perpetuate the general intent of this Section, which changed or amended method shall be binding upon all Owners. Parking and parking related Improvements shall be excluded from the square footage of the Improvements for purposes of calculating number of allocated votes.

Notwithstanding anything in the foregoing provisions of this Section 7.1 to the contrary, the Association shall have the right at any time, if it determines in its discretion that the square footage assigned to a Lot or the Improvements thereon by the Douglas County Assessor has not been updated by the Douglas County Assessor for a period of at least two (2) consecutive calendar years, to determine if the square footage of a Lot or the Improvements thereon by engaging an independent surveyor and proceeding in the same manner as set forth in the preceding paragraph of this Section 7.1 as if the Douglas County Assessor had failed to assign an updated square footage to the particular Lot or the Improvements thereon. The square footage determined in accordance with the foregoing provisions shall be final and binding upon the Owner concerned.

In the event that a Lot or Lots are replatted or combined, then the Member votes allocated to the subdivided or combined Lots shall be reallocated to the replatted Lots proportionately using the formula set forth above. Furthermore, in the event that there is an amendment to the Development Agreement or a conveyance of a Lot such that the Lot is no longer classified as Exempt Property under this Declaration, then the Member votes shall be allocated to the Lots using the formula set forth above.



Section 7.2. Sub-Association Exercise of Voting Rights. In the event that Sub-Associations are created for one or more Zones, if and to the extent provided for in a Supplemental Declaration Recorded against such Zone, all, but not less than all, of, the votes allocated to the Lots within such Zone may be cast by the Sub-Association as representative of the Owners of such Zone. In the event that the Association voting rights are delegated to a Sub-Association for a Zone, such votes shall be cast by the president of the Sub-Association or other officer of the Sub-Association as authorized by the Sub-Association.

Section 7.3. Right to Vote. In all events, the Board may require reasonable proof of authority of a person casting votes and may refuse to accept a vote if such proof is not provided to the Board. The votes for each Lot must be cast as a unit and may not be split.

Section 7.4. Suspension of Voting Rights. Any Member who fails to pay the Annual Assessments, Special Assessments or Penalty Assessments provided herein within thirty (30) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full. In addition, the Board may suspend an Owner's voting rights for violations of the Declaration or the Avenue One Rules.

#### ARTICLE VIII ARCHITECTURAL REVIEW COMMITTEE

Section 8.1. Composition and Appointment of ARC. The ARC may be appointed and/or removed only by Declarant until the Relinquishment Effective Date. Thereafter, the Board shall have the right to appoint the ARC. The ARC shall consist of three (3) individuals. One seat on the ARC may be an outside consultant with design, architecture, construction or related expertise. Members of the ARC shall serve for a term of one (1) year or until their successors are elected and qualified. Any vacancy in the membership of the ARC shall be filled by Declarant during the period it has the exclusive right to appoint the ARC and by the Board thereafter. If any vacancy shall occur, the remaining members of the ARC may continue to act until the vacancy has been filled. Except for members who have been designated by Declarant during the period it has the exclusive right to appoint the ARC, any member may be removed with or without cause by the Board. In the event that Declarant shall fail to designate an ARC member within sixty (60) days during the period it has the exclusive right to appoint the vacant ARC position, the Board shall fill the vacant ARC seat.

Section 8.2. Powers and Duties.

(a) The ARC shall serve as an architectural review committee and shall have the right and authority with Declarant to promulgate, amend, or modify the Design Guidelines and to otherwise regulate the external design, appearance, and location of the Lots and Improvements within the Avenue One Property so as to enforce the architectural provisions of this Declaration and Design Guidelines, enforce the requirements of the recorded subdivision plats and deeds of subdivision, and to preserve and enhance values and to maintain a harmonious relationship among Improvements and the Avenue One Property.

(b) The ARC shall serve in such other capacities as may be determined, from time to

time, by Declarant or the Board in enforcing the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association.

(c) The ARC shall adopt rules of procedure and regulations pertaining to its authorized duties and activities under this Declaration, subject to the prior approval and adoption of the Board of Directors of the Association.

Section 8.3. Approval Required. Before commencing the construction, addition, installation, modification, demolition or alteration of any Building, enclosure, landscaping, fence, parking facility, sign, light pole or fixture, or any other structure or temporary or permanent improvements within the Avenue One Property (except for interior construction or remodeling), the Owner of the Lot upon which such development is located shall provide to the ARC for its approval the Improvement Plans. The Improvement Plans shall be in such form and shall contain such information as may be required by the ARC and shall be consistent with the Design Guidelines and this Declaration, including, without limitation, the design standards and criteria set forth therein. All Improvements must be erected, placed, altered, constructed and maintained in conformance with the Design Guidelines, including, without limitation, the design standards and criteria set forth therein.

Section 8.4. Procedure and Review. For each project, the ARC review procedure may consist of a multiphase review and approval process. An Owner proposing to construct any Improvements within the Avenue One Property shall submit an Improvement Plan Approval Request and shall abide by the rules and processes set forth in the Design Guidelines.

Section 8.5. Approval and Disapproval. The ARC shall have the right to approve and disapprove any plans, specifications or uses submitted pursuant to the terms of this Declaration, any Design Guidelines then in effect and in relation to the type and exterior of Improvements which have been constructed, or approved for construction, on the Lots. The decision to approve or deny a proposed Improvement shall be exercised by ARC in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Avenue One Property and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. Any approval or disapproval of a requested action by the ARC shall be in writing. In denying any application, the ARC shall specify the reasons for such denial.

Section 8.6. Waiver. By a majority vote, the ARC may grant a waiver of the Design Guidelines, in its exclusive discretion. Any such waiver shall not be deemed a general waiver of any aspect of the Design Guidelines or the required procedures and approvals specified thereunder. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized representative of the ARC and Notice delivered to the party claiming the benefit of such waiver.

Section 8.7. Declarant's ARC Control. At such time as (a) Declarant no longer desires to exercise the architectural, landscaping, signing and lighting controls over the Development, or (b) Declarant does not own any Lot subject to this Declaration, Declarant shall cause to be

Recorded in the official records of Douglas County, Nebraska, an ARC Relinquishment Declaration effective as of the Relinquishment Effective Date. Recordation of the ARC Relinquishment Declaration shall, as of the Relinquishment Effective Date, formally terminate Declarant's rights of architectural controls, as well as any and all other obligations or duties of Declarant under this Article VIII.

Section 8.8. Outside Consultants. The ARC may retain outside consultants to assist in its activities and may charge reasonable fees for plan review. The ARC may consult with other Lot Owners as part of its review process.

Section 8.9. Majority Action. Except as otherwise provided herein, a majority of the members of the ARC shall have the power to act on behalf of the ARC without the necessity of a meeting and without the necessity of consulting or notifying the remaining members of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

Section 8.10. Liability. The scope of the ARC's review is not intended to include any review or analysis of structural, geophysical, engineering, building or zoning code compliance, or other similar considerations. Neither Declarant, the Association, nor the ARC or any member thereof shall be liable to any Owner, occupant, builder, or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that Declarant or the ARC has, or the member has, in accordance with the actual knowledge possessed by the ARC or by such member, acted in good faith.

Unless arising from the willful misconduct of the ARC, the ARC shall not be liable for damages to anyone so submitting plans for approval or making any other request of the members of the ARC, or to any Member by reason of mistake in judgment, negligence or non-feasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval of, or failure to approve any plans or other request. Likewise, anyone so submitting plans or a request to the ARC for approval, by the submitting of such plans or request, and any Member, by so acquiring title to any of the property in Avenue One, agrees not to bring action or suit to recover for any such damages against the ARC, unless arising from the willful misconduct of the ARC.

## ARTICLE IX COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 9.1. Creation of Lien and Personal Obligations of Assessments and Maintenance Charges. Declarant, for each Lot and Zone established within Avenue One hereby covenants and agrees, and each Owner, by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed), is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article IX, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article IX, and (3) Penalty Assessments as set forth by this Article IX, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Penalty Assessments, together with interest, incidental and taxable costs, and reasonable attorney's fees, and all other sums which may become due and payable to the Association by an Owner, shall be a charge on the Lot or Zone and shall be a continuing lien upon the Lot or Zone

against which each such Assessment is made. The Annual Assessments and Special Assessments against each Lot or Zone shall be levied and assessed in the same proportion as the votes apportioned to the Lot to the total number of Association votes. Each such Annual Assessment, Special Assessment and Penalty Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Zone at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration or the Avenue One Rules; however, the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure.

Section 9.2. Annual Assessments. From and after the date hereof, the Board shall estimate the costs and Expenses to be incurred by the Association during the fiscal year in performing its functions (including a reasonable provision for contingencies, reserves, replacements, filing fees and organizational expenses) and shall subtract from such estimate an amount equal to other projected revenues and surplus balances not needed for reserves and contingencies. The sum or net estimate shall be assessed on a monthly, quarterly, semi-annual or annual basis as determined by the Board to all Members in shares proportionate to their voting rights as set forth more fully herein, unless otherwise provided by a Supplemental Declaration. If at any time, and from time to time during any fiscal year, the Annual Assessment proves or appears likely to be inadequate, for any reason, including nonpayment of any Member's share, the Board may levy a supplemental Annual Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to Members in the same proportion as the initial Annual Assessment. Notwithstanding anything contained herein to the contrary, in all events each Annual Assessment and such Special Assessments shall be set in an amount reasonably necessary for the Association to perform its functions hereunder, including, without limitation, to maintain the Common Area in good condition and repair in compliance with all laws and the City Agreements and Recorded instruments.

Section 9.3. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 9.4. Penalty Assessments. Penalty Assessments may be imposed for violation of the Declaration, the Articles, Bylaws, or Avenue One Rules, pursuant to the notice provisions and procedures established by the Board.

Section 9.5. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon written Notice to the Members by Declarant and ending December 31<sup>st</sup> of the calendar year in which such Notice was provided. The Board, in

its sole discretion, from time to time may change the Assessment Period by giving Notice thereof to the Members.

Section 9.6. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual Assessments, Special Assessments and Penalty Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written Notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such Notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period, provided successor Owners of Lots or Zones shall be given credit for prepayments, on a prorated basis, made by prior Owners. Members must notify the Association of a change of mailing address when applicable. Notice of any past due Assessment or of any lien may, at the Association's discretion, be given to any mortgagee, and each Member shall, upon demand, provide the Association with the name, address and telephone number of such mortgagee.

Section 9.7. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate of twelve percent (12%) per annum, and the Member shall be liable for all taxable and incidental costs, including attorney's fees, which may be incurred by the Association in collecting the same. Late fees may also be established by the Board to be adjusted from time to time. The Board may also Record a Notice of Delinquent Assessment against any Lot or Zone as to which any such amount is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's costs in Recording such Notice, processing the delinquency and Recording a Notice of Payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 9.8. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such member or other person a written certificate stating (a) that all Annual, Special and Penalty Assessments (including interest, costs, and attorney's fees, if any, as provided in Section 9.7 above) have been paid with respect to any specified Lot or Zone as of the date of such certificates, or (b) if all Annual Assessment, Special Assessment and Penalty Assessments have not been paid, the amount of such Annual Assessment, Special Assessment and Penalty Assessment (including interest, costs, and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates (not to exceed \$250.00), which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Zone in question.

Section 9.9. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall have no Member votes and shall be exempted from the assessment of the Annual and Special Assessments, provided, however, that in the event any change of the ownership or designation of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the Assessments shall be prorated to the date of the change in designation of Exempt Property.

ARTICLE X  
ENFORCEMENT OF PAYMENT OF ANNUAL, SPECIAL AND PENALTY ASSESSMENTS  
AND OF ASSESSMENT LIEN.

Section 10.1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions of this Declaration by any appropriate action, whether by law or in equity.

Section 10.2. Association's Remedies to Enforce Payment of Assessments. If any Member fails to pay the Assessments when due, the Association may enforce the payment of the Assessments by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its rights to exercise the other remedy):

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Special or Penalty Assessments.
- (b) Foreclose the Assessment Lien against the Lot or Zone in accordance with the then prevailing Nebraska law relating to the foreclosure of real estate mortgages (including the right to recover any deficiency), and the Lot or Zone may be redeemed after foreclosure sale as provided by law. The Association shall have the right to bid at any foreclosure sale.

Section 10.3. Subordination of Assessment Lien to First Mortgage or Deed of Trust, Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with the Lot or Zone as security, or held by the lender's successors and assigns, and shall also be subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which in any manner may arise or be imposed upon each Lot or Zone after the date this Declaration is Recorded. Sale or transfer of any Lot or Zone shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Zone free of the Assessment Lien for all Assessments that have been accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of trustee's deed or deed in lieu of foreclosure. Such mortgage or

deed of trust foreclosure sale purchaser or grantee shall take the Lot or Zone subject to all Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure. The Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior).

Section 10.4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments. In any action taken pursuant to Section 10.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments, together with interest and the Association's incidental and taxable costs, including collection costs and attorney's fees. The Assessment Lien shall also secure payment of any other sums which may become payable to the Association by an Owner pursuant to this Declaration.

## ARTICLE XI USE OF FUNDS; BORROWING POWER

Section 11.1. Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments and Penalty Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Avenue One and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of Common Areas and any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Avenue One which may be necessary, desirable or beneficial to the general common interests of Avenue One, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for the common benefit of the Owners: maintenance of landscaping on Common Areas, public rights-of-way, and drainage areas within Avenue One, recreation, liability insurance, communications, education, transportation, health, utilities, public services, and safety and indemnification of officers and directors of the Association. The Association also may expend its funds for any purposes for which any municipality may expend its funds under the laws of the State of Nebraska or such municipality's charter.

Section 11.2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate and upon commercially reasonable terms with the affirmative vote of a majority of the Board.

Section 11.3. Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual Assessments or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion

may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 11.4. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas with minimum bodily injury limits of \$1,000,000 per occurrence and a minimum aggregate limit of \$2,000,000. The Association may obtain and maintain director or officer's liability insurance, fidelity bond coverage, errors and omissions insurance and such other insurance coverage as may be deemed reasonable and necessary by the Board. The costs for the insurance coverage obtained shall be included in the Annual Assessment. All such coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefited parties.

## ARTICLE XII MAINTENANCE

Section 12.1. Common Areas and Public Right of Way. The Association, or its duly delegated representatives, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, Trail Areas, paths, sprinklers, irrigation, drives, Green Space Area, and Improvements; provided, however, the Association shall not be responsible for providing or maintaining the landscaping, structures or other improvements on any Common Areas which are part of Lots unless (i) such landscaping, structures or other improvements are available for the benefit or use by all Owners and Permittees or are within easements intended for the general benefit of Avenue One, and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in this Declaration, the Subdivision Agreement or a Recorded instrument. Specific areas to be maintained by the Association may be identified in the Streetscape Maintenance Agreement, Plats, or Recorded Easements approved by Declarant. Failure to so identify such specific areas to be maintained by the Association shall not affect the Association's rights and responsibilities. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. It is expressly contemplated that Declarant and Association may make arrangements with the Owners of certain Lots to provide enhanced improvements to and maintain areas within and on the Avenue One Property.

Section 12.2. Detention Pond Areas. Declarant, or a designee, shall construct and install the permanent storm water detention ponds and dry detention ponds in the Detention Pond Areas in a good and workmanlike manner. After completion of the construction and installation of the permanent storm water detention ponds and dry detention ponds, the Association shall maintain the Detention Pond Areas.

Section 12.3. Feature and Signage Areas. Declarant, or a designee, shall construct, install and landscape within the Feature and Signage Areas, which may include, but is not limited to, development signage, associated lighting and amenities. After completion of the construction, installation and landscaping of the Feature and Signage Areas, the Association shall maintain the Feature and Signage Areas.



Section 12.4. Access Drive Lighting. Declarant, or a designee, shall install the Access Drive Lighting. The Access Drive Lighting Charges, to the extent not paid for by the City, shall be an expense of the Association.

Section 12.5. Street Frontage Share Area. The Association may enter into an agreement with the property owners and the associated political subdivision for the ongoing maintenance of the Street Frontage Share Area. Any agreed upon proportional maintenance cost to the Association shall be included within the Annual Assessment.

Section 12.6. Park Commons Area and Trail Areas. The Association, to the extent not maintained by the City and as otherwise required by City Agreements, shall maintain the Park Common Areas and Trail Areas.

Section 12.7. Wetlands Mitigation. Declarant shall construct, install, and perform the Wetlands Mitigation on the Lots and Outlots as contemplated by the Avenue One East NOW-2017-00136-WEH Department of Army Permit No. 39, verification date August 23, 2017 and the Avenue One West NOW-2017-01686-WEH Department of Army Permit No. 39, verification date April 24, 2017, and perform the requirements to establish wetlands according to the approved Wetlands Mitigation plan. Following completion of the initial construction, installation and performance of the Wetlands Mitigation according to the Wetlands Mitigation plan, except for conditions resulting from the failure of Declarant to accomplish the initial construction, installation and performance of the Wetlands Mitigation according to the Wetlands Mitigation plan in a good and workmanlike manner, the Association shall be responsible for maintaining the Wetlands Mitigation area within the Lots and Outlots.

Section 12.8. Building Sites. Until construction of Improvements on a Lot, the Owner of each Lot shall keep the Lot mowed, free of debris and trash, and in a condition that will not detract from the presentation and appearance of the remainder of the Avenue One Property, as determined by the Declarant. After Improvements on a Lot, the Owner shall at all times maintain the Lot, and all Improvements thereto, in good condition and appearance, except to the extent the Association is responsible for maintenance under the terms of this Declaration.

Section 12.9. Improper Maintenance and Use of Lots and Zones. In the event any portion of any Lot or Zone is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Zones or other areas of Avenue One which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Zone is being used in a manner which violates this Declaration or the Avenue One Rules, or in the event the Owner or Lessee of any Lot or Zone is failing to perform any of its obligations under this Declaration with respect to the maintenance, repair or replacement of the Improvements located on such Lot or Zone, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written Notice thereof to the Owner and make demand that corrective action be taken within fourteen (14) calendar days of the date of the Notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not completed, or if reasonable and diligent efforts are not being undertaken to effect completion, the Board shall be authorized and empowered to cause such action to be taken, including, but not limited to, the hiring of any attorney to take action on behalf of the Board,

whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including, but not limited to, incidental and taxable costs, attorney's fees and any fines assessed against said Owner or his family, guests, invitees, licensees, employees or Permittees shall be added to and become part of the Assessment to which the offending Owner and the Owner's Lot or Zone is subject and shall be secured by the Assessment Lien.

ARTICLE XIII  
EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, easements on, upon, over, across, through and under the Avenue One Property as described in this Article XIII. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Avenue One Property owned by Declarant as deemed to be in the best interests of and proper for Avenue One, including, but not limited to, easements in favor of Declarant, the Association, the Owners, Permittees, and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified. Unless otherwise specified in this Article XIII, all easements reserved and granted herein shall be non-exclusive and shall be perpetual in duration notwithstanding the termination or expiration of the term of this Declaration.

Section 13.1. Use of Common Areas. Subject to any rules, regulations and restrictions on use as set forth in this Declaration or any rules and regulations hereafter imposed by the Association, Declarant grants and reserves an easement in favor of Declarant, the Association, the Owners and Permittees for ingress and egress and to otherwise travel across and use the Common Areas on a non-exclusive basis.

Section 13.2. Right of the Association and Declarant to Enter Upon the Common Areas. Declarant hereby reserves for the benefit of itself, and grants to the Association and all agents, contractors, employees or other designees of Declarant or the Association, an easement for ingress, egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of the Common Areas. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas, now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited.

Section 13.3. Temporary Construction Easement. Declarant hereby reserves unto itself a temporary construction easement over all of the Avenue One Property for the purpose of the original construction required to be taken by Declarant under this Declaration, including improvements to the Common Areas. Such temporary construction easement shall terminate at such time as the construction is complete.

Section 13.4. Easements Regarding Trail Area. Declarant hereby reserves, for the benefit of itself, its agents, contractors and employees, and grants to the Association, its agents, employees, and contractors, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, an easement to travel on and across by pedestrian (unless otherwise noted), any and all portions of the Trail Area, including those portions of the Trail Area which intersect or cross any portion of any Lot located within the Avenue One Property.

Section 13.5. Maintenance Easement. Declarant hereby reserves, for the benefit of itself, its agents, contractors and employees, and grants to the Association, its agents, contractors and employees, easements as follows:

- (a) A non-exclusive easement to travel across each Lot and Outlot as reasonably necessary for the Association to perform Association maintenance obligations on the Common Areas as set forth in this Declaration.
- (b) An easement for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for Avenue One, including the right to erect and maintain entrance monument(s) thereon bearing the name of Avenue One, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other Improvements typically used for entryways.
- (c) An easement for the installation, maintenance, repair and removal of Improvements in easement areas within of the Common Areas.
- (d) An easement for the installation, maintenance, repair or removal of any portion of the Trail Area to the extent not maintained by the City.

Section 13.6. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are and will be shown on Plats and other Recorded instruments. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may damage, interfere with, or change the direction of flow of drainage facilities in the easements, except as may be required or approved by the City. No Building or other structure of any kind shall be built, erected or maintained on any such easement, reservation, or right-of-way, except as required or approved by the City, and such easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations and their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights-of-way are reserved. The utility, drainage or similar easement area of each Lot, and all Improvements therein, shall be continuously maintained by the Owner of such Lot, except as otherwise specifically directed in this Declaration, and except for improvements or maintenance of which a public authority or utility company is responsible. The Board, through its duly authorized employees and contractors, shall have the right, after reasonable Notice to the Owner thereof, to enter upon any Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein.

Section 13.7. Declarant's Right to Assign Easements, Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Avenue One Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Avenue One Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

Section 13.8. Easement Reserved for the Association and Declarant. An easement for access, ingress and egress over, upon and across the Lots is hereby reserved by Declarant for itself and granted to the Association to perform their respective rights, duties and obligations under this Declaration.

Section 13.9. Other Easements. Other easements are provided for in the Final Plats of Avenue One which are filed in the Register of Deeds of Douglas County, Nebraska.

#### ARTICLE XIV RIGHTS AND POWERS OF ASSOCIATION

Section 14.1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws or as provided by Nebraska common law or statute. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection by Members at the office of the Association during reasonable business hours. In addition to all other rights and remedies granted to the Association by this Declaration, the Association shall have the power to impose fines (in conformance with a reasonable and uniform fine schedule adopted by the Board) against an Owner for any violation of this Declaration or the Avenue One Rules by the Owner, a Lessee of the Owner or by any Resident or occupant of the Owner's Lot or Zone.

Section 14.2. Association's Right of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in this Declaration. All of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and

the exercise of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

Section 14.3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and an Affiliate of Declarant, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or an Affiliate of Declarant, provided that the fact of such interest shall be disclosed or known to the other Directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board acting upon such contract and such Director may vote to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

Section 14.4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners and (b) the approval of such resolution by a majority vote of Members who are voting in person or by proxy at a meeting duly called for such purposes, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the Buildings, structures and other Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners.

#### ARTICLE XV ENHANCED EMPLOYMENT AREA

Each Owner and prospective Owner is hereby given Notice that the Avenue One Property is encumbered by the EEA. The EEA authorized the City to levy and collect a general business occupation tax upon business and users of space within the Avenue One Property pursuant to Neb. Rev. Stat. §§ 18-2101, et seq. and Neb. Rev. Stat. § 18-2142.04 (reissue 2012) and Omaha Municipal Code Sections 19-900 through 19-912. Pursuant to the terms of the EEA Development Agreement, each Owner, to the extent required under Neb. Rev. Stat. § 18-2142.04, the EEA Development Agreement and associated documents, and/or any other applicable law, shall (i) collect any sales tax or EEA Assessments levied by or associated with the EEA, (ii) submit to the City of Omaha finance department such information as the City may require of Owner from time to time in connection with the EEA and EEA Development Agreement, (iii) pay all occupation and property taxes imposed under the Occupation Tax Ordinance and EEA Development Agreement, and (iv) take any other actions required by the City in order to comply with the EEA Development Agreement.

Each Owner acknowledges that Declarant has entered into the EEA Development Agreement with the City related to the EEA, and may make changes to the EEA and EEA Development Agreement, including, without limitation, amending all or any districts, ordinances, resolutions, petitions and/or related documents without such Owner's consent, and that the Owners shall not object thereto, and if required by Declarant, shall consent thereto and shall execute any documents reasonably required or desired by Declarant to effect or confirm the creation, change

or the implementation of the EEA Development Agreement, the EEA or the improvements or financing associated with the EEA.

ARTICLE XVI  
TERM; AMENDMENTS, TERMINATION

Section 16.1. Term; Method of Termination. This Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect in perpetuity, unless there is an affirmative vote to terminate this Declaration by Members holding at least ninety percent (90%) of the total Member votes. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the Register of Deeds of Douglas County, Omaha, Nebraska, a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration and the covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 16.2. Amendments.

- (a) During the Period of Declarant Control, an amendment or modification of this Declaration shall require an affirmative vote of two-thirds (2/3) of the total Member votes and Declarant approval; provided that any amendments to Article X, Section 10.3 affecting lien holder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby. Any amendment or modification shall be duly signed and acknowledged and Recorded with the Register of Deeds of Douglas County, Omaha, Nebraska.
- (b) Notwithstanding anything in this Declaration to the contrary, after the Period of Declarant Control, as long as Declarant owns or occupies any portion of the Avenue One Property, the following portions of this Declaration shall not be waived, varied, modified, amended, or terminated, and no such attempted waiver, variance, modification, amendment, or termination shall be effective, without the prior written consent of Declarant:
  - 1. Any of the provisions of the governing structure of the Board;
  - 2. Any of the Land Use Restrictions and Permitted Uses provisions as set forth in Article V and any provision affecting the application thereof;
  - 3. Any of the architectural control provisions and any provision affecting the application thereof;
  - 4. Any amendment to the Zone Plan or Development Agreement; and
  - 5. Any provision of this Declaration if the effect of such waiver, variance, modification, amendment, or termination would be to limit or eliminate any right or benefit in favor of Declarant.

(c) Declarant hereby reserves the right to unilaterally amend this Declaration:

1. To meet the requirements, standards, or recommended guidelines of an underwriting lender to enable an institutional or governmental lender to make or purchase mortgage loans of the Lots;
2. To correct any defects in the execution of this Declaration or other associated documents;
3. To add real property to the Avenue One Property;
4. To create Common Areas;
5. To revise the Declaration to update or modify terms to be consistent with the intent of the development, so long as such amendment does not have a material adverse impact on the Owners, including, but not limited to, voting rights, prior approved uses, and amount of Assessment.
6. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in this Declaration.

An amendment that may be executed by Declarant alone is not required to name to the Association or to be signed by an officer of the Association.

## ARTICLE XVII GENERAL PROVISIONS

Section 17.1. Interpretation of the Declaration. The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. The Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Declaration and provisions hereof.

Section 17.2. Applicable Law and Severability. This Declaration shall be construed and interpreted in accordance with the laws of the State of Nebraska. Time is of the essence for purposes hereof. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 17.3. Change in Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 17.4. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 17.5. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Final Plat or other instrument Recorded in the Register of Deeds of Douglas County, Nebraska, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Avenue One can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 17.6. Termination of Status. Declarant, or its successor or assigns, may terminate its status as Declarant upon this Declaration, at any time, by filing a "Notice of termination of its status" as Declarant with the Douglas County Nebraska Register of Deeds. Upon and with such filing, Declarant may appoint a successor, or in the absence of such appointment, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

Section 17.7. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder.

Section 17.8. Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural, and words in the plural shall include the singular.

Section 17.9. Captions and Titles. All captions, titles or headings of the Articles and Sections in the Declaration are for the purposes of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 17.10. Notices. All Notices, demands, statements and requests permitted or required to be given to Owners under this Declaration, resolution of the Board or applicable law must be in writing and shall be deemed to have been properly given or served if Notice of such action or meeting is personally delivered or mailed to the Owners by deposit in the United States Mail, prepaid and addressed to the Owner by name and address as shown on the real property tax rolls of Douglas County, Nebraska. This Section shall not be construed to prohibit satisfaction of any notice requirement in a manner otherwise specified in this Declaration or in a resolution of the Board, and shall not require that any notice be given if not otherwise required.

Section 17.11. Attorney's Fees. In addition to any other remedies set forth in the Declaration regarding costs and attorney's fees, in the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Declaration, Articles or Bylaws, the offending Owner or other



person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by an Assessment Lien.

Section 17.12. Remedies Cumulative. Each remedy afforded to the Association herein is cumulative and not exclusive.

Section 17.13. Reasonableness Standard. When this Declaration either expressly or impliedly under law requires a person or entity to act “reasonably” or to exercise “reasonable discretion”, then in such circumstances the person or entity shall take such action or exercise such discretion in a manner that, given the facts and circumstances and taking into account business or industry standards that might be applicable to such facts and circumstances, a person or entity of ordinary prudence would take or exercise given the same facts and circumstances. Unless otherwise specifically provided in this Declaration, no consent or approval herein required may be unreasonably withheld, conditioned or delayed.

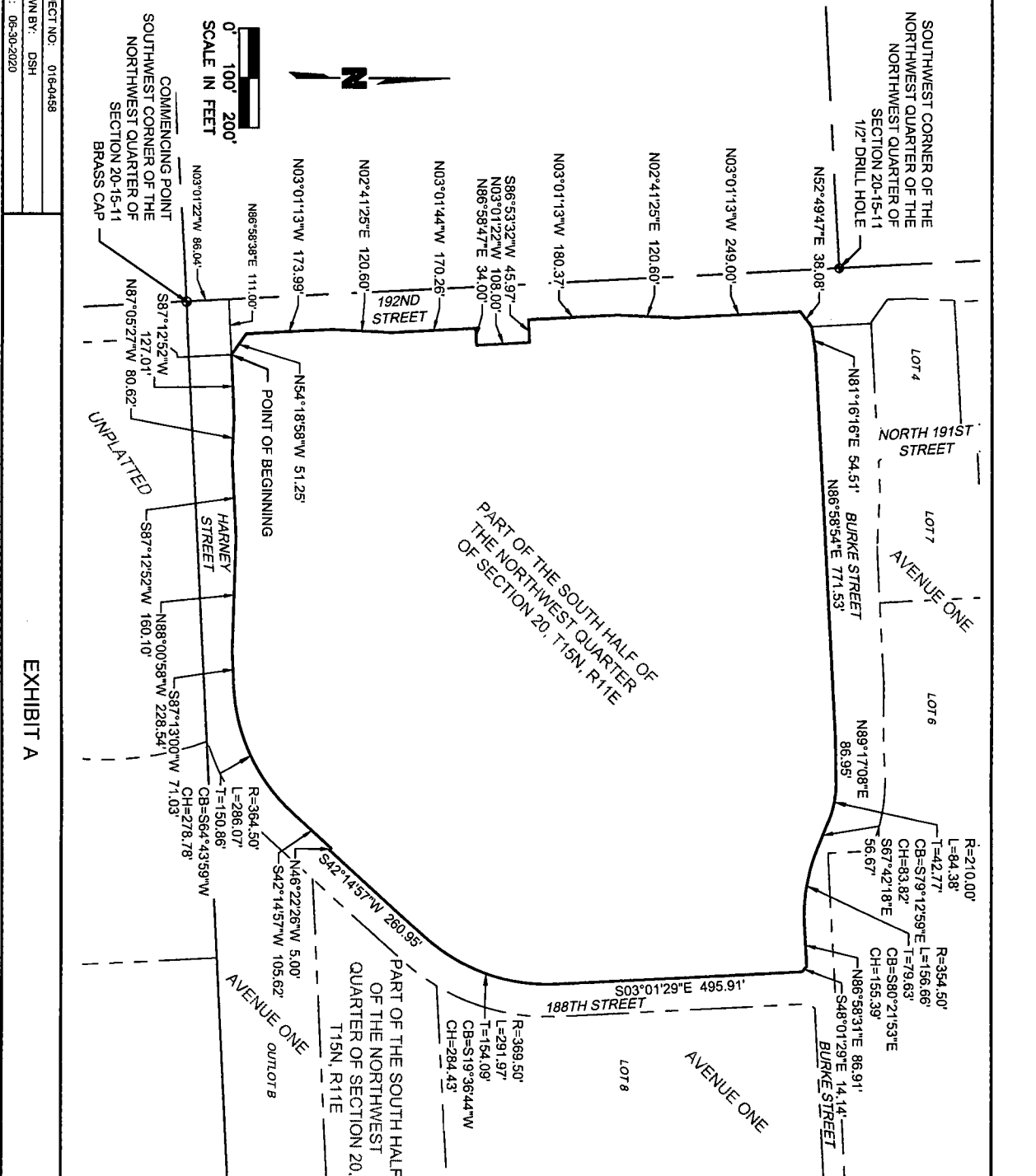
**[Remainder of Page Intentionally Left Blank – Signature Page to Follow]**



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

[See attached]

DWG: \\oa.ad.oaconsulting.com\mnts-nsl\projects\2016\0001-0500\016-0458\40-Design\Survey\SRV\Exhibits\V\_P\_BNDY\_EXHIBIT2\_06-30-2020-016-0458.dwg  
 DATE: Jun 30, 2020 3:33pm XREFS:



**LEGAL DESCRIPTION**  
 A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 20; THENCE ON THE WEST LINE OF SAID NORTHWEST QUARTER OF SECTION 20 ON AN ASSUMED BEARING OF N03°01'22\"

**EXHIBIT A**

PROJECT NO: 016-0458  
 DRAWN BY: DSH  
 DATE: 06-30-2020

1111 South 67th Street  
 Suite 200  
 Omaha, NE 68106  
 TEL: 402.241.1116

**olsson**

DWG: \\oa.ad.oocconsulting.com\mnts-jns1\projects\2016\0001-0500\016-0458\40-Design\Survey\SRVY\Exhibits\V\_P\_BNDY\_EXHIBIT2\_06-30-2020-016-04  
 DATE: JUN 30, 2020 5:07pm XREFS:

SAID TRACT OF LAND CONTAINS A CALCULATED AREA OF 1,295,948.41 SQUARE FEET OR 6.794 ACRES, MORE OR LESS.

PROJECT NO: 016-0458

DRAWN BY: DSH

DATE: 06-30-2020

EXHIBIT A



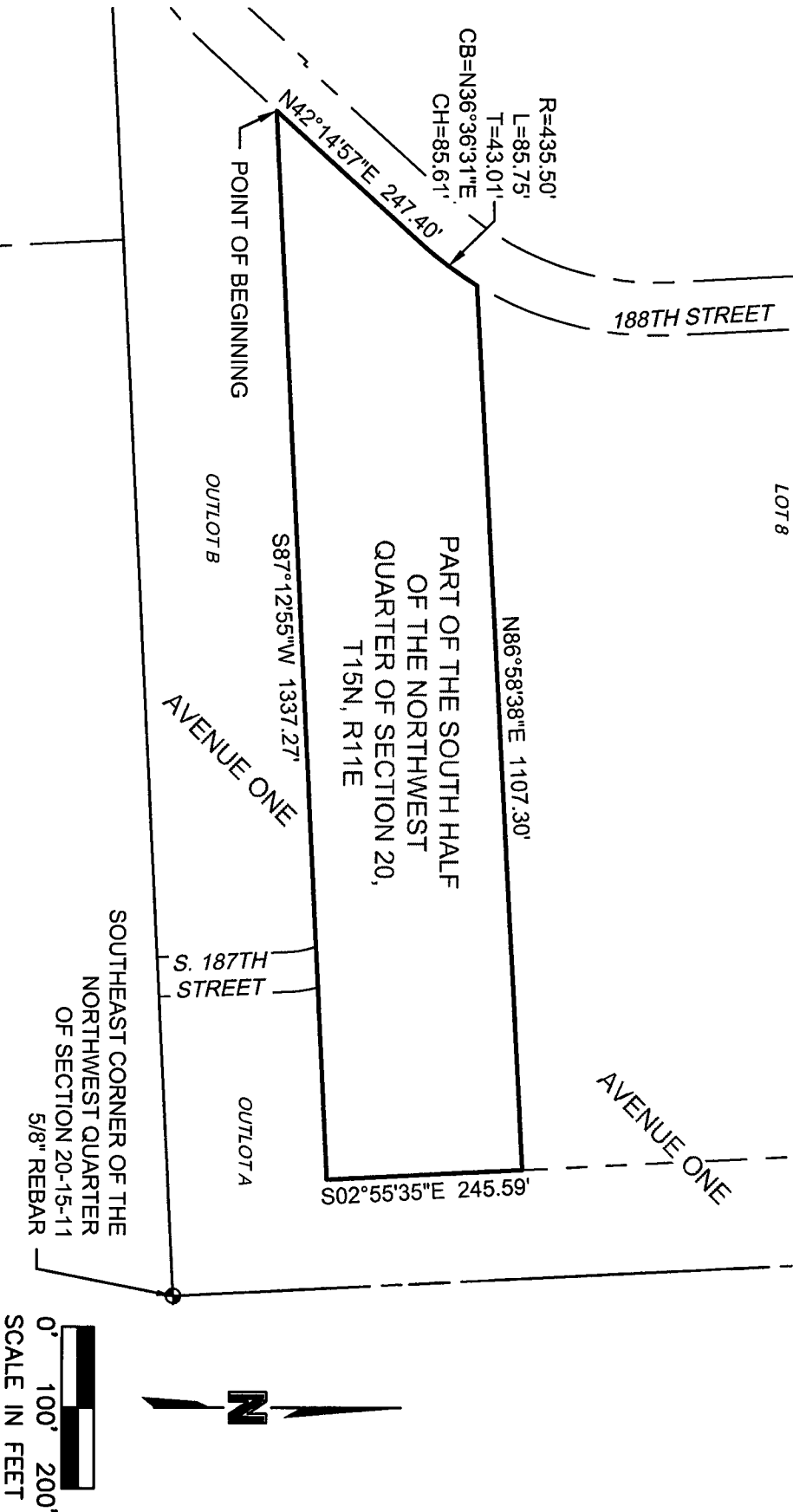
2111 South 67th Street,  
 Suite 200  
 Omaha, NE 68106  
 TEL 402.341.1116

EXHIBIT

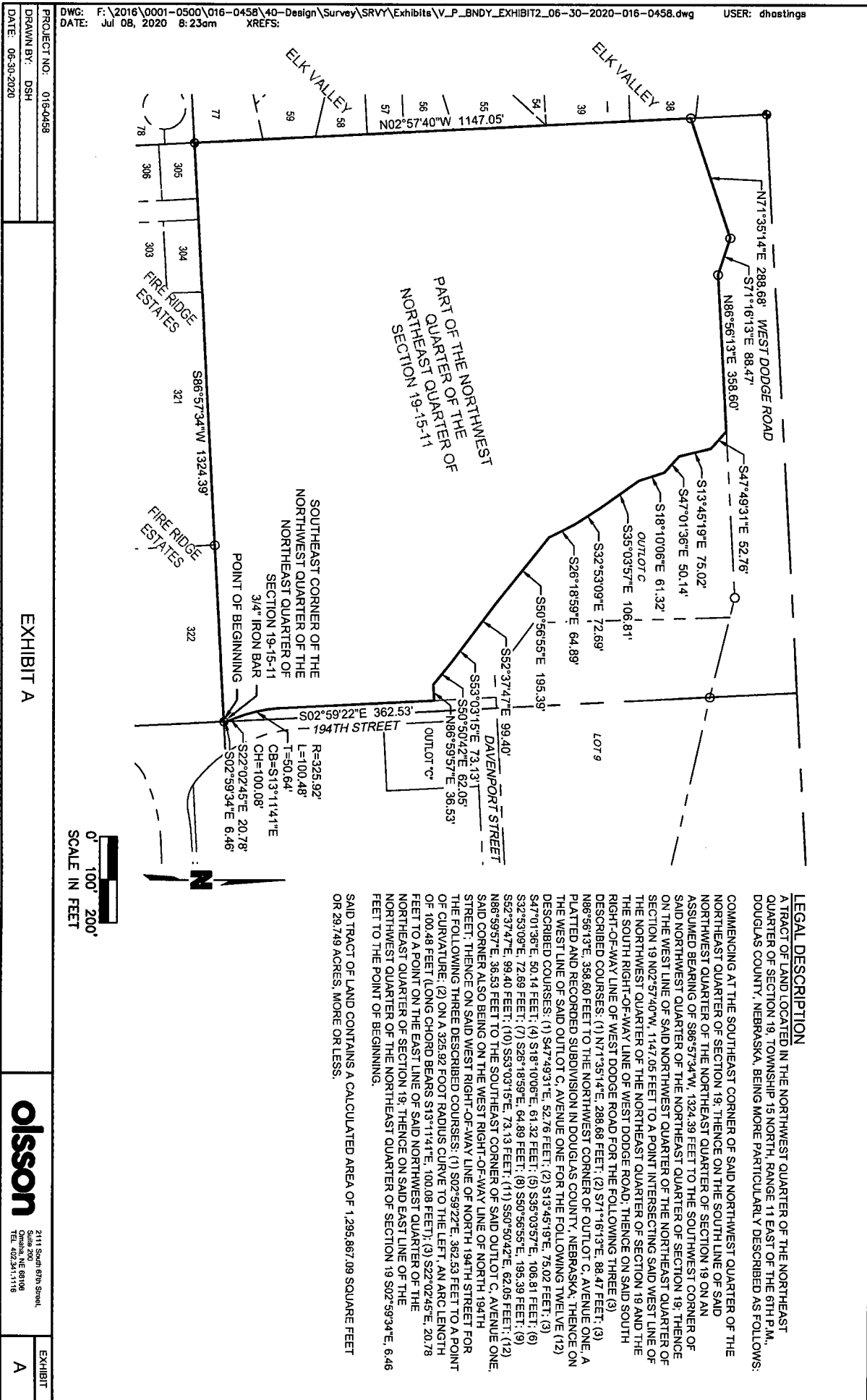
A

**LEGAL DESCRIPTION**  
 A TRACT OF LAND LOCATED IN THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 15 NORTH, RANGE 11 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF OUTLOT B, AVENUE ONE, A PLATTED AND RECORDED SUBDIVISION IN SAID DOUGLAS COUNTY, NEBRASKA, SAID CORNER ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF 188TH STREET; THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 188TH STREET FOR THE FOLLOWING TWO (2) DESCRIBED COURSES: (1) ON AN ASSUMED BEARING OF N42°14'57"E, 247.40 FEET TO A POINT OF CURVATURE; (2) ON A 435.50 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 85.75 FEET (LONG CHORD BEARS N36°36'31"E, 85.61 FEET) TO THE SOUTHWEST CORNER OF LOT 8, SAID AVENUE ONE; THENCE ON THE SOUTH LINE OF SAID LOT 8, AVENUE ONE N86°58'38"E, 1107.30 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8, AVENUE ONE; SAID CORNER ALSO BEING ON THE WEST LINE OF OUTLOT A, SAID AVENUE ONE; THENCE ON SAID WEST LINE OF OUTLOT A, AVENUE ONE S02°55'35"E, 245.59 FEET TO A CORNER OF SAID OUTLOT A, AVENUE ONE; THENCE CONTINUING ON SAID EAST LINE OF OUTLOT A, AVENUE ONE AND THE NORTH LINE OF SAID OUTLOT B, AVENUE ONE S87°12'55"W, 1337.27 FEET TO THE POINT OF BEGINNING.







**EXHIBIT "B"**  
**COMMON AREA PLAT**

[See attached]





**EXHIBIT "C"**  
**FINAL PLAT**

[See attached]



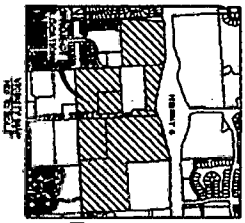
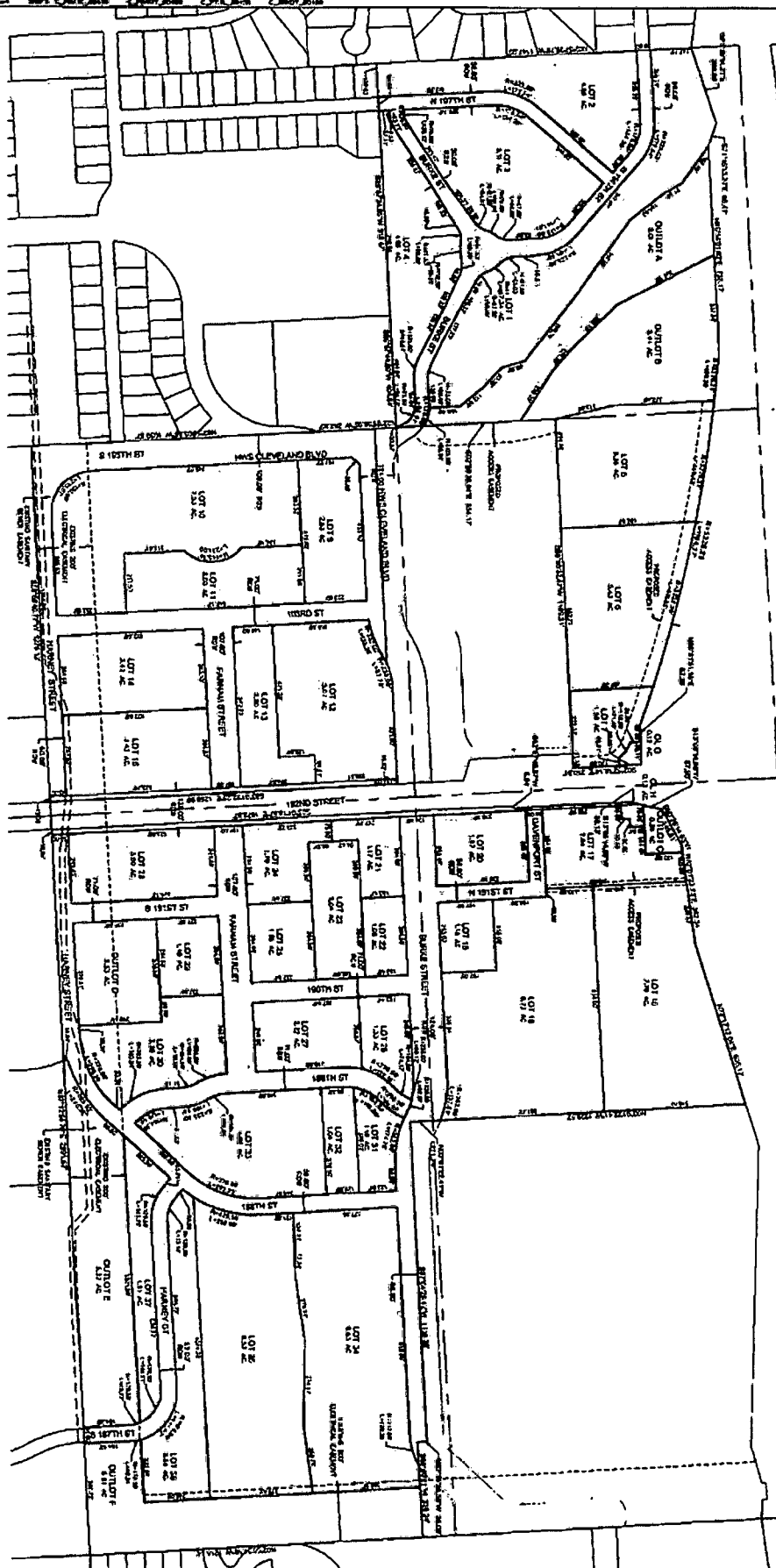




**EXHIBIT "D"**  
**PRELIMINARY PLAT**

[See attached]

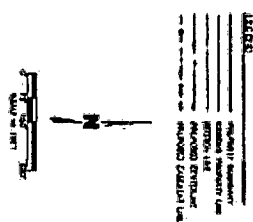
EXHIBIT A



Lot No.	Acres	Owner
1	0.11	...
2	0.12	...
3	0.13	...
4	0.14	...
5	0.15	...
6	0.16	...
7	0.17	...
8	0.18	...
9	0.19	...
10	0.20	...
11	0.21	...
12	0.22	...
13	0.23	...
14	0.24	...
15	0.25	...
16	0.26	...
17	0.27	...
18	0.28	...
19	0.29	...
20	0.30	...
21	0.31	...
22	0.32	...
23	0.33	...
24	0.34	...
25	0.35	...
26	0.36	...
27	0.37	...

**AVENUE ONE**  
**LOTS 1 THRU 37 AND OUTLOTS A THRU H**  
**PRELIMINARY PLAT**  
 PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 15, NORTH,  
 RANGE 11 EAST OF THE 8TH P.M., IN DOUGLAS COUNTY, NEBRASKA  
 AND  
 NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 15, NORTH, RANGE 11 EAST  
 OF THE 8TH P.M., IN DOUGLAS COUNTY, NEBRASKA

Lot No.	Acres	Owner
1	0.11	...
2	0.12	...
3	0.13	...
4	0.14	...
5	0.15	...
6	0.16	...
7	0.17	...
8	0.18	...
9	0.19	...
10	0.20	...
11	0.21	...
12	0.22	...
13	0.23	...
14	0.24	...
15	0.25	...
16	0.26	...
17	0.27	...
18	0.28	...
19	0.29	...
20	0.30	...
21	0.31	...
22	0.32	...
23	0.33	...
24	0.34	...
25	0.35	...
26	0.36	...
27	0.37	...



**EXHIBIT A**  
**AVENUE ONE**  
**PRELIMINARY PLAT**

**MOLSSON ASSOCIATES**

1102 SHEET 011

**EXHIBIT "E"**  
**ZONE PLAN**

[See attached]



DWG: F:\2016\0001-0500\018-0456\40-Design\AutoCAD\Exhibits\Covenants\Exhibit A - Zone Map.dwg  
DATE: May 08, 2020 1:47pm KREFS: C\_PENDY\_ALT 2\_EXHIBIT\_50456 USER: bschweis

PROJECT NO: 016-0458  
DRAWN BY: BTS  
DATE: 04/21/20

AVENUE ONE - ZONE MAP



**olsson**

2111 South 67th Street, Suite 200  
Omaha, NE 68106  
TEL: 402.341.1116  
FAX: 402.341.5885

EXHIBIT  
A

**EXHIBIT "F"**  
**ANNUAL ASSESSMENT ALLOCATION EXAMPLE**

[See attached]

**Exhibit F**

**Membership Votes Calculation Example**

**Lot 5 (Before 12/31/2025)**

Lot Area (Sq.Ft.)	325,496
Multiplier	0.001
<b>Member Votes</b>	<b>325</b>

**Lot 5 (After 12/31/2025)**

	Lot Area	Building Area*
Area (Sq.Ft.)	325,496	80,000
Multiplier	0.001	0.005
<b>Member Votes</b>	<b>325</b>	<b>400</b>
<b>Greater of Land or Building Member Votes</b>		<b>400</b>

\*If a building has not been constructed, the building area will be 0 Sq.Ft. and the Member votes will be based on Land Area multiplied by 0.001.