

(b) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements (except in areas designed for such purpose, in areas which are Limited Common Elements serving exclusively the Unit of the Unit Owner obstructing same and in areas made part of a Unit in accordance with Section 7.01(a) hereof) without the prior consent of the Board, or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair such Unit Owner's own Unit.

(c) Nothing shall be done or kept in any Unit or in the Common Elements serving the Units which will increase the rate of insurance on any of the Building or contents thereof without the prior written consent of the Board. In any case, the Unit Owner shall be responsible for payment of any such increase. No Unit Owner shall permit anything to be done or kept in such Unit Owner's Unit or in the Common Elements which will result in the cancellation of insurance on any of the Building or contents thereof or which would be in violation of any law. No waste shall be committed in the Common Elements.

(d) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Residential Units shall meet the minimum standard as may be specified by rules and regulations of the Residential Committee or Board and by Section 4.05(b)(ii) hereof; provided, however, that the floor covering existing in any Unit as of the date of the recording of this Declaration shall be deemed in compliance with any such rules and regulations.

(e) No animals, reptiles, livestock or poultry of any kind shall be raised, bred or kept in any Unit or the Common Elements, except each Unit Owner of a Residential Unit shall be entitled to keep two (2) domesticated pets in any Residential Unit (or any two or more adjoining Residential Units used together), that are not kept or bred for any commercial purpose, are not of a dangerous or violent nature, are not allowed to run loose on the Property, are kept in strict accordance with such other rules and regulations relating to household pets as may be from time to time adopted or approved by the Board (which rules and regulations may prohibit certain types or species of pets and may provide for limits on the size and the weight of permitted pets), and do not, in the judgment of the Board, constitute a nuisance to others. Each Unit Owner and each Occupant shall be responsible for picking up after any animal kept in such Unit Owner's or Occupant's respective Residential Unit, including, without limitation, removing any waste deposited by such animal anywhere on the Common Elements or anywhere on the Property.

(f) No nuisance, noxious, unlawful or offensive activity shall be carried on in any Unit or in the Common Elements (including, without limitation, discharge of firearms), nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

(g) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building, which would structurally change the Building, except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the managing agent, acting in accordance with the Board's direction. No Unit Owner shall overload the floors of any Unit. Any furnishings which may cause floor overloads shall not be placed, kept or used in any Unit except only in accordance with advance written Board approval.

(h) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles, or any signage (including, without limitation, any "For Sale," "For Rent" or similar signage, or any other signage), billboards or any other unsightly objects, outside such Unit Owner's Unit, or which may be visible from the outside of such Unit Owner's Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board and the Committees), or paint or decorate or adorn the outside of such Unit Owner's Unit, or install outside such Unit Owner's Unit any canopy or awning, outside radio or television antenna, dish or other receptive or transmitting device, window screens, flower pots, bird feeders, or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the managing agent, acting in accordance with the Board's direction; provided, however, that the foregoing shall not apply to the Declarant.

(i) Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in any area constituting part of the Common Elements.

(j) No use of a Unit shall be conducted, maintained or permitted to the extent same is in violation of the uses permitted hereunder or under any applicable laws, statutes, codes, regulations or ordinances governing the Property from time to time (including, without limitation, the relevant provisions of the City of Omaha zoning ordinances).

(k) During the period that the Declarant, or its respective agents, successors or assigns, is engaged in the marketing, sales or leasing of Units or the sales or leasing of any portion of the Property, or performing work in or about the Property, Declarant and its agents, employees, successors, assigns, contractors, subcontractors, brokers, licensees and invitees (and each of them) shall be entitled to (i) have access, ingress and egress to and from the Building and Common Elements and use such portion of the Building and Common Elements as may be necessary or desirable in connection with such marketing, sales, leasing of Residential Units or Commercial Units and other property within the Property or the performance of work in or about the Property; (ii) use or show one or more unsold and unconveyed Units or portion or portions of the Common Elements as a model Unit or Units (for sale or lease), sales office, construction or refurbishment office

or administrative or management office or for such other purposes deemed necessary or desirable in connection with such construction, refurbishment, administration, marketing, sales or leasing of Residential Units or Commercial Units or the performance of work in or about the Property; (iii) post and maintain such signs, banners and flags or other advertising material in, on or about the Building and Common Elements in such form as deemed desirable by Declarant, and as may be deemed necessary or desirable in connection with the marketing, sales, leasing or management of Residential Units or Commercial Units, or the performance of work in or about the Property or in connection with (i) and (ii) above; and (iv) complete or correct construction of, or make alterations of and additions and improvements to, the Units or the Common Elements in connection with any of the Declarant's activities in connection with the construction, promotion, marketing, sales or leasing of the Residential Units, Commercial Units or the performance of work in or about the Property. The foregoing are in addition to and not in limitation of the rights granted under Section 4.03(c) hereof. The foregoing and the rights granted under Section 4.03(c) hereof shall not be amended or modified in any manner without the express written consent of the Declarant, or its successors or assigns.

(l) The Unit restrictions in paragraph (a) of Section 7.01 shall not, however, be construed in such a manner as to prohibit a Unit Owner of a Residential Unit from: (i) maintaining his or her personal professional library therein; (ii) keeping his or her personal business or professional records or accounts therein; (iii) handling his or her personal business or professional telephone calls or correspondence therefrom; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing secretarial help and having occasional business visitors. Such uses are expressly declared customarily incident to the principal resident use and not in violation of paragraph (a) of this Section 7.01. Notwithstanding the foregoing, no Unit Owner other than a Commercial Owner shall suffer or permit the regular or consistent entry of customers or clients.

(m) Each Unit Owner shall have the right to lease such Unit Owner's Unit in accordance with the requirements of this Section 7.01(m) of this Declaration. Every lease of a Unit shall be in writing, for a term of no more than one (1) year, and shall be made expressly subject to the requirements, rights, covenants, conditions, restrictions and easements of this Declaration, the By-Laws and the rules and regulations of the Association and the Unit Owner making such lease, and the failure of the lessee to comply therewith shall constitute a default under the lease. In such an event, the Association may elect to pursue any remedy as may be available against such lessee at law or in equity. The Unit Owner making such lease shall not be relieved thereby from any of said obligations. The provisions of the Act, this Declaration, the By-Laws and rules and regulations that relate to the use of the individual Unit or the Common Elements shall be applicable to any person leasing a Unit Ownership and shall be deemed to be incorporated in any lease executed in connection with a Unit Ownership. The Association may prohibit a tenant from occupying a Unit Ownership until the Unit Owner complies with the leasing requirements prescribed in this Declaration or as may be adopted by the Association. In addition to any other remedies provided for in this Declaration, by filing an action jointly against the tenant and the Unit Owner, the

Association may seek to enjoin such tenant from occupying a Unit or seek to evict such tenant under the provisions of Nebraska law for failure of the Unit Owner to comply with the leasing requirements prescribed by this Section or elsewhere in this Declaration, the By-Laws or the rules and regulations of the Association. The Board may proceed directly against such tenant, in law or in equity, or under the provisions of Nebraska law, for any other breach by such tenant of the provisions of this Declaration, the By-Laws or the rules and regulations of the Association.

(n) Each Unit Owner shall deposit with the Board duplicate keys for all locks required for entry to his or her Residential Unit or Commercial Unit.

(o) No Unit Owner shall do or permit to be done in such Unit Owner's Unit or anywhere else in the Property any act or thing which will impair any easement or hereditament granted to any other party, nor shall any Unit Owner create or permit to exist in such Unit Owner's Unit or anywhere else in the Property any condition which will adversely affect the use or enjoyment of the Property or any part or portion thereof by any party entitled to such use or enjoyment.

(p) All rubbish, trash and garbage shall be kept on the Property so as not to be seen from neighboring property and shall be regularly removed from the Property and shall not be allowed to accumulate thereon. In addition to the foregoing, all rubbish, trash and garbage shall be stored and removed in accordance with the rules and regulations adopted by the Board and City laws, codes and ordinances.

(q) In addition to the restrictions set forth in this Declaration, the Association may from time to time adopt such rules and regulations governing the use or enjoyment of the Units and the Common Elements as the Board, in its reasonable discretion, deems desirable, appropriate or necessary.

(r) Notwithstanding any provision in this Declaration to the contrary: (i) the Unit Owner, Occupant(s), and tenant(s) of the Commercial Units and their customers, employees, and invitees may use the Commercial Units in conformity with state and local law and their use of the Common Elements (including the lobby areas, halls, corridors, and other facilities) in the ordinary course of the commercial activities for which the Commercial Units are used; (ii) the Declarant reserves to itself and to the Unit Owner of the Commercial Units the right to make such improvements or alterations to the Commercial Units and to locate and relocate Common Elements from time to time as the Declarant or the Unit Owners of the Commercial Units may deem desirable for the purpose of improving the operation of and access to the Commercial Units and the Declarant reserves to itself and to the Unit Owners of the Commercial Units the right to install such utility lines in the Common Elements for the purpose of providing utility service to the Commercial Units as the Declarant or the Unit Owner of the Commercial Units may deem desirable; (iii) the Unit Owners of the Commercial Units may make alterations and improvements to the Limited Common Elements appurtenant to the Commercial Units without the consent or prior approval of the Board, provided such work does not affect the structure of the Common Elements or increase the cost of

insurance required to be carried by the Board hereunder; (iv) the Board shall not permit the obstruction of any lobby entrances, passageways, corridors, or other portions of the Common Elements or Limited Common Elements which serve the Commercial Units; (v) the Unit Owner of the Commercial Units shall have the right to install and maintain signs within the Commercial Units and exterior signs, awnings, and canopies in and on the Building, which signage, awnings and canopies may be installed only with the prior written approval of the Board (which approval shall not be unreasonably withheld, conditioned or delayed) and shall be subject to reasonable rules and regulations promulgated by the Board from time to time, shall not affect the structure of the Common Elements and shall not increase the cost of insurance required to be carried by the Board hereunder; (vi) the Unit Owner of the Commercial Units shall be eligible to be a Director, and no residency requirement for Board membership shall be applicable to the Commercial Owner; and (vii) notwithstanding any other provision of this Declaration, the By-Laws or any rules and regulations of the Board, all or any portion or portions of the Commercial Units may be leased by the Unit Owner of the Commercial Units in any manner and pursuant to any terms as such Unit Owner deems appropriate, in its sole and absolute discretion, all without the prior approval or consent of the Board or the Association, provided the proposed use of the Commercial Units is in accordance with all applicable laws, ordinances, rules and regulations, the terms and provisions of this Declaration. As provided in Section 6.09 above, the Board, or the Declarant, acting pursuant to Section 13.01 hereof, may establish user charges to defray the expense of providing services, facilities, or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. As the Commercial Units may require the provision of services, facilities or benefits that exceed the amount of such services, facilities or benefits required for Residential Units (taking into account the relative percentage interests in the Common Elements allocable to such Commercial Units as it relates to the Residential Units), the Board, or the Declarant, acting pursuant to Section 13.01 hereof, may establish user charges allocable to one or more of the Commercial Units to account for the provision of additional services, facilities or benefits to such Commercial Units. Such expenses may include such services and facilities provided to Unit Owners of the Commercial Units which the Board determines should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner of a Commercial Unit benefited thereby, or may be added to such Commercial Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges attributable to one or more Commercial Units, and the Board or the Declarant may elect to treat all or any portion thereof as Common Expenses. Neither this Section 7.01(r) nor Section 7.01(a) or any other provision of this Declaration or the By-Laws as it applies to the Commercial Units shall be amended or rescinded without the approval of all of the Commercial Owners.

(s) Each Unit Owner shall be obligated to pay any and all charges and assessments for electricity, other utilities, and taxes levied against its Unit. For reasons of efficiency in the Condominium and to avoid confusion and an unnecessary number of cables and lines in the Condominium, the Board shall have the right to designate specific

providers of utility services such as (but without limitation) electricity, gas, telephone, internet connection, fiber optic wiring, cable television and/or satellite television service. After the identity of such providers is approved by the Board (together with any changes which may be made from time to time), all Unit Owners shall utilize only the approved providers of such utility services. Any utility charges to the Association shall be assessed against all Unit Owners in accordance with this Declaration.

## ARTICLE VIII

### DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDINGS

**Section 8.01. Sufficient Insurance.** In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Capital Reserves, shall be sufficient to pay the cost of repair, restoration or reconstruction, then such restoration, repair, replacement or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Capital Reserve shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one hundred eighty (180) days after such damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article IX hereof or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act as therein provided, then such restoration, repair, replacement or reconstruction shall not be undertaken. In the event such restoration, repair, replacement or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit C, after first paying from the share of each Unit Owner the amount of any unpaid liens on such Unit Owner's Unit, in the order of the priority of such liens.

**Section 8.02. Insufficient Insurance.**

(a) If the insurance proceeds and the Capital Reserve are insufficient to reconstruct the affected Building or Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within one-hundred eighty (180) days from the date of damage or destruction, then the provisions of the Act and this Section 8.02 shall apply.

(b) In the case of damage or other destruction in which fewer than one-half (½) of the Residential Units and Commercial Units are rendered uninhabitable, upon the affirmative vote of eighty percent (80%) of the Voting Members at a meeting called for that purpose, the affected Building or Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the occurrence of the damage or other destruction. At such meeting the Board or its representatives shall present to the members present an estimate of the

cost of repair or reconstruction and the estimated amount of necessary assessments against each Unit Owner.

(c) In the case of damage or other destruction, upon the unanimous affirmative vote of the Voting Members at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation or the allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

**Section 8.03. Eminent Domain.** In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portions so taken from the provisions of the Act may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion so withdrawn shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board, and the other Unit Owners' percentages shall be correspondingly increased. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof, and the Association is hereby appointed as attorney-in-fact for each Unit Owner to represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority relating to such acquisitions of the Common Elements or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the

Association among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit C, after first paying from the share of each Unit Owner the amount of any unpaid liens on such Unit Owner's Unit, in the order of the priority of such liens.

**Section 8.04. Repair, Restoration or Reconstruction of the Improvements.** As used in this Article, "restoration, repair, replacement or reconstruction" of improvements means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by Unit Owners and their respective Eligible Mortgagees representing at least eighty percent (80%) of the votes in the Association (by percentage interest in the Common Elements). Any repair, restoration or reconstruction shall be in accordance with law and this Declaration and shall be made subject to the rights of the Eligible Mortgagees.

## ARTICLE IX

### SALE OF THE PROPERTY

Subject to the requirements of this Declaration, at a meeting duly called for such purpose and attended by all Unit Owners, the Unit Owners by affirmative vote of Unit Owners who own eighty percent (80%) or more in the aggregate of the entire percentage ownership interest in the Common Elements may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale is approved, the Board shall give written notice of such action to each Eligible Mortgagee. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale.

## ARTICLE X

### REMEDIES

**Section 10.01. Violations.** Upon the occurrence of any one or more of the following events, the Board shall have the rights and remedies set forth in Section 10.02 of this Declaration:

(a) Failure by a Unit Owner to pay when due any sums required to be paid by such Unit Owner pursuant to the provisions of this Declaration, for thirty (30) days after written notice of such nonpayment shall have been given such Unit Owner, provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to cure such failure if such Unit Owner has been given two (2) or more notices pursuant to this Section 10.01(a) during the twelve (12) month period immediately preceding the first day of such failure. If the assessment is not paid within thirty (30) days after the due date, then (i) the amount of the assessment shall bear interest from the date of delinquency at a rate reasonably determined by the Board, and (ii) in addition to such interest, the Association shall charge a delinquent Unit Owner a late fee of five percent (5%) of the



assessment for each month or portion thereof that such amount remains delinquent, such late charge to cover the Association's administrative costs in monitoring and collecting such amount. Such assessments, interest, late charges and all costs of collection shall be a continuing lien upon the Unit against each such assessment was made.

(b) Violation or breach by a Unit Owner or an Occupant of any provision, covenant or restriction of the Act, this Declaration, the By-Laws, contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and continuation of such violation or breach for thirty (30) days after written notice thereof shall have been given such Unit Owner, provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to correct such violation or breach if such Unit Owner has been given two (2) or more notices pursuant to this Section 10.01(b) during the twelve (12) month period immediately preceding the first day of such violation or breach.

**Section 10.02. Remedies.** Upon the occurrence of any one or more of the events described in Section 10.01, the Board shall have the following rights and remedies:

(a) For a violation or breach described in Section 10.01(b) hereof, the Board shall have the right: (i) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the defaulting Unit Owner, any such violation or breach or the cause of such violation or breach, and the Declarant or its successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass, or (ii) to enjoin, abate or remedy by a proceeding at law or in equity the continuance of any such violation or breach; provided, however, that no summary abatement shall be undertaken in connection with any alteration or demolition of improvements until judicial proceedings are instituted.

(b) Upon the occurrence of one of the events described in Section 10.01(a) hereof, including, without limitation, failure by a Unit Owner to pay such Unit Owner's percentage share of Common Expenses or user charges, the Board shall have a lien on the interest of the defaulting Unit Owner in such Unit Owner's Unit Ownership in the amount of any sums due from such Unit Owner; provided, however, that such lien shall be subordinate to the lien of any recorded mortgage encumbering the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 10.02(b) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien described in this Section 10.02(b) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit Ownership, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for such Unit Owner's share of any sums with respect to which a lien against such Unit Owner's Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual revised or special assessment, and nonpayment thereof by

such transferee shall result in a lien against the transferee's Unit Ownership as provided in this Section 10.02(b).

(c) The Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of such defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control such Unit Owner's Unit Ownership and thereupon an action may be filed by the Board against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him and, subject to the limitations of applicable law, ordering that all the right, title and interest of such defaulting Unit Owner in the Property shall be sold at a judicial sale, upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring such Unit Owner's interest in the Unit Ownership at such judicial sale. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in such decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or other sums due hereunder or any liens, shall be paid to the defaulting Unit Owner. Upon the confirmation of such sale, the purchaser at such sale shall be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession.

(d) In addition to or in conjunction with the remedies set forth above, the Board or its agents shall have the right to bring an action at law or in equity against the Unit Owner or Occupant as permitted by law, including, without limitation, an action (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in the Act, this Declaration, the By-Laws, any contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to exercise any such rights or remedies to enforce any provisions of this Declaration, the By-Laws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

(e) All expenses incurred by the Board in connection with any actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including, without limitation, court costs, reasonable attorneys' fees and all other fees and expenses, and all damages, together with interest thereon at the rate of eighteen percent (18%) per annum (or such lesser rate charged by law should eighteen percent (18%) be held to be in excess of the maximum legal rate allowable by law), shall be charged to and assessed against the defaulting Unit Owner, and shall be added to and

deemed part of such Unit Owner's respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of such Unit Owner's additions and improvements thereto.

**Section 10.03. Enforcement by Unit Owners.** Any aggrieved Unit Owner (including Declarant) may enforce the provisions of this Declaration, the By-Laws or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Association or against the defaulting Unit Owner or Occupant upon a violation or breach described in Section 10.01(b) hereof against any person or persons either to restrain such violation or breach or to recover damages.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 11.01. Miscellaneous Provisions Respecting Mortgages.** The following provisions are intended for the benefit of Eligible Mortgagees, and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) upon request in writing to the Association identifying the name and address of the Eligible Mortgagee and the Unit number, the Association shall furnish each Eligible Mortgagee a written notice of any default by the Unit Owner whose Unit is subject to the lien of such Eligible Mortgagee of that Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any Eligible Mortgagee of a Unit, as well as any other holder of a prior recorded mortgage on a Unit Ownership, who comes into possession of the Unit Ownership pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit Ownership which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Unit Ownership, whichever occurs first (except for any sums which are reallocated among the Unit Owners pursuant to the last sentence of Section 10.02(c) hereof);

(b) no provision of this Declaration, the By-Laws or the Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the Eligible Mortgagees pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, or the Common Elements, or any portion thereof or interest therein. In such event, the Eligible Mortgagees of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss;

(c) upon specific written request to the Association, each Eligible Mortgagee of a Unit Ownership shall be furnished notice in writing by the Association of any

damage to or destruction or taking of the Common Elements or the Unit Ownership that is subject to such Eligible Mortgagee's mortgage. In no event will the provisions of any document entitle a Unit Owner or other party to priority over such Eligible Mortgagee with respect to distribution to such Unit Ownership of the Proceeds of any award or settlement;

(d) if any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Eligible Mortgagee of the Unit Ownership involved will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle the owner of a Unit Ownership or other party to priority over such Eligible Mortgagee with respect to the distribution of the proceeds of any award or settlement;

(e) whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the Eligible Mortgagee within thirty (30) days after making the request for consent, provided such request was delivered by certified or registered mail, return receipt requested; and

(f) Unless at least sixty-seven percent (67%) of the Unit Ownerships (by percentage interest in the Common Elements), and their respective Eligible Mortgagees, have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(i) by act or omission seek to abandon or terminate the Condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units or the Common Elements;

(ii) change the pro rata interest or obligations of any Unit Owner for (A) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and (B) determining the pro rata share of ownership of each Unit Owner in the Common Elements or rights to their use, except as provided in Sections 8.02 and 8.03 and Article XII hereof; or

(iii) use hazard insurance proceeds for losses to any portion of the Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such improvements, except as provided by the Act in case of substantial loss to the Units or the Common Elements.

## ARTICLE XII

### TRANSFER OF A UNIT

**Section 12.01. Transfers.** Subject the terms hereof, a Unit Owner may, without restriction under this Declaration, sell, give, devise, convey, mortgage, lease or otherwise

transfer such Unit Owner's entire Unit. Notice of such transfer shall be given to the Board, in the manner provided herein for the giving of notices, within five (5) days following consummation of such transfer.

**Section 12.02. Financing of Purchase by Association.** The Board shall have authority to make such mortgage arrangements and other financing arrangements, and to authorize such special assessments proportionately among the respective Unit Owners, as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit Ownership, or interest therein, by the Association.

**Section 12.03. Effect of Noncompliance.** If any sale, assignment, lease or sublease of a Unit Ownership is attempted or consummated without complying with the provisions of this Article XII, such sale, assignment, lease or sublease shall be subject to the rights and options of the Board, and remedies available to the Board, hereunder or otherwise, including, without limitation, denial or termination of possession of the Unit.

**Section 12.04. Miscellaneous.**

(a) The Association shall hold title to any Unit Ownership, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, mortgage, lease or sublease such Unit Ownership on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold (other than pursuant to a foreclosure or deed in lieu of foreclosure) for less than the amount paid by the Association to purchase such Unit Ownership unless Unit Owners owning not less than eighty percent (80%) of the total ownership of the Common Elements (by percentage interest in the Common Elements) first authorize the sale for such lesser amount. All of the net proceeds from such a sale, mortgage, lease or sublease shall be applied in such manner as the Board shall determine.

(b) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Article XII, for the purpose of implementing and effectuating such provisions.

**ARTICLE XIII**

**GENERAL PROVISIONS**

**Section 13.01. Certain Rights of the Declarant.**

(a) Until the earlier of the Transfer Date or the initial meeting of the Unit Owners described in Section 5.04(b) of the Declaration, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant, which may be exercised by the designation of an initial Board in accordance with the terms hereof. If the initial Board shall not be elected by the Unit Owners at the time established by this

Declaration, the Declarant shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's interest in the subject matter of any transaction; provided, however, that any such transaction shall have been entered into in good faith.

(b) Prior to the Transfer Date, notwithstanding any provision herein to the contrary, the Declarant shall have the following rights and privileges, which are hereby reserved only to itself and to its successors and assigns and their respective agents:

(i) The Declarant may exercise any of the "development rights" or "special declarant rights" described in Section 76-827 of the Act (collectively, the "Special Declarant Rights").

(ii) The Declarant may (i) relocate the boundaries of any Unit or Units, and (ii) further subdivide any one or more of the Units into additional Units, Common Elements or both, shall be exercisable by the Declarant, its successors and assigns, who shall have the unilateral right to reallocate percentages of undivided interests in the Common Elements, liability for payment of Common Expenses, allocation of Limited Common Elements, and allocation of votes in the Association, as to be done in accordance with this Declaration and the Act. The Declarant shall cause such relocation or subdivision by its adoption, execution or recordation of an amendment to this Declaration by recording such certificates and plans as required by the Act. Such amendment shall be adopted by the Declarant pursuant to the terms hereof without the consent of any Unit Owners. From time to time, as the Declarant shall file permitted amendments to this Declaration, each then owner and each Person or entity thereafter becoming a Unit Owner and its successors in title shall, upon the reallocation of such Common Elements or Limited Common Elements automatically be vested with the appropriate undivided percentage interest in such Common Elements and Limited Common Elements.

**Section 13.02. Notices.** All notices shall be in writing. Notices provided for in this Declaration and in the Act to be given to the Board or Association shall be addressed to the Residential Unit or Commercial Unit address of each Director or at such other address as otherwise provided herein. Notices provided for in this Declaration and in the Act to be given to any Unit Owner shall be addressed to the address such Unit Owner's Residential Unit or Commercial Unit, or at such other address as otherwise provided herein.

Any Unit Owner or other notice recipient may designate a different address or addresses for notices to it by giving written notice of its change of address to the Board or Association. Notices shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to a Unit Owner, when deposited in such Unit Owner's mailbox at such Residential Unit or

Commercial Unit address as is designated pursuant hereto. Notices sent by nationally recognized overnight courier service (such as FedEx) shall be deemed delivered one (1) day after being sent by such courier service.

**Section 13.03. Notice to Mortgagees.** Upon written request to the Board, notices shall be given to an Eligible Mortgagee as required under Article XI.

**Section 13.04. Notices of Estate or Representatives.** Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his, her or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

**Section 13.05. Conveyance and Leases.** Each grantee of the Declarant, each subsequent grantee by the acceptance of a deed of conveyance, each purchaser under Articles of Agreement for Deed and each tenant under a lease for a Unit Ownership accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

**Section 13.06. No Waivers.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 13.07. Change, Modification or Rescission.** No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without the Declarant's prior written consent. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission signed and acknowledged by the President or a Vice-President of the Board, and approved by the Unit Owners having, in the aggregate, at least sixty-seven percent (67%) of the votes of the Association (by percentage interest in the Common Elements), at a meeting called for that purpose; provided, however, that (a) all Eligible Mortgagees have been notified by certified mail of any change, modification or rescission, (b) an affidavit by the Secretary of the Board certifying to such mailing is made a part of such instrument and (c) any provisions herein which specifically grant rights to Eligible Mortgagees may be amended only with the written consent of all such Eligible Mortgagees except in those instances in which the approval of less than all Eligible Mortgagees is required. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Register of Deeds of Douglas County, Nebraska.

**Section 13.08. Partial Invalidity.** Invalidation by judgment or court of any one of the covenants, restrictions, terms, provisions, etc. in this Declaration or the application thereof to any

particular person or circumstance shall in no way affect any other covenant, restriction, term, provision, etc. or the application of such covenant, restriction, term, provision, etc. to other persons or circumstances, and this Declaration in all such other respects shall remain in full force and effect.

**Section 13.09. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development.

**Section 13.10. Amendment.** Except in connection with the exercise of Special Declarant Rights or as specifically provided otherwise in this Declaration or the Act, this Declaration may be amended only by an instrument in writing signed and acknowledged by Unit Owners representing sixty-seven percent (67%) of the votes of all Voting Members (by percentage interest in the Common Elements) in the Association. Any such amendment shall be effective upon its recording in the office of the Register of Deeds in Douglas County, Nebraska.

(a) Notwithstanding anything herein to the contrary, prior to the Transfer Date, the Declarant (subject to the rights of Eligible Mortgagees) shall have the right to amend this Declaration at any time, without notice to or the approval of any other Unit Owner, by recording the amendment in the office of the Register of Deeds in Douglas County, Nebraska.

(b) Except in connection with the exercise of Special Declarant Rights hereunder or as expressly permitted in the Act, no amendment may increase the number of Units, or change the boundaries of any Unit, the Common Element Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(c) All amendments to the Declaration required by the Act to be recorded by the Association shall be prepared, executed, and certified on behalf of the Association by the president of the Association.

**Section 13.11. Special Amendment.** Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time to amend the Condominium Map or to amend this Declaration (a) to correct clerical or typographical or similar errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (b) to exercise any of the Special Declarant Rights or (c) to relocate boundary lines of Units, subdivide or combines Unit(s) owned by Declarant pursuant to Section 2.01(d) of this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Unit Ownership, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights



reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to a Unit Ownership.

**Section 13.12. Assignments by Declarant.** All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**Section 13.13. Consent.** If any consent is required under the provisions of this Declaration, the By-Laws or the rules and regulations of the Association, a consent shall be deemed granted if such a request for consent includes a notice that such consent shall be deemed granted if the person or entity required to provide the consent fails to respond within thirty (30) days of the date of the notice, and no response is received during such thirty (30) day period. Except as otherwise specified herein, any request for consent pursuant to or as otherwise contemplated by this Declaration shall not be unreasonably withheld, conditioned or delayed by any party from whom such consent is requested.

#### ARTICLE XIV

#### CONDOMINIUM REQUIREMENTS

**Section 14.01. Background.** The provisions of this Article are intended to comply with the provisions of the Act. The condominium created by this Declaration is a condominium under the Act. Declarant holds fee simple to the Property. Declarant as the fee simple owner of the Property expressly intends to, and by recording this Declaration, does hereby submit and subject the Property as a condominium to the provisions of the Act and to this Declaration.

**Section 14.02. Association Representative of Unit Owners.** The Association shall be the representative of the Unit Owners in all matters regarding the Condominium.

#### ARTICLE XV

#### ADDITIONAL REQUIREMENTS REGARDING IMPROVEMENTS

**Section 15.01. Development Guidelines.** In addition to any architectural and development standards set forth herein, the Residential Committee and the Commercial Committee may, from time to time, and in their reasonable discretion, draft, propose, adopt and amend their respective Development Guidelines. Such Development Guidelines, and any amendments thereto, shall supplement, interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Committee review, and (b) guidelines for improvements which shall include, but not be limited to, guidelines for architectural design of improvements, floor plans, landscape plans, color schemes, signage, exterior lighting, finishes

and materials for use in each portion of the Condominium. The Development Guidelines shall initially be adopted by the Declarant. After the Transfer Date, any amendment to the Development Guidelines must be approved by a majority vote of (x) the Residential Owners with respect to any Development Guidelines established for the Residential Units or (y) Commercial Owners with respect to any Development Guidelines established for the Commercial Units. The Committees shall, without further act or deed of the Declarant, exercise all rights of Declarant to enforce and implement the Development Guidelines and to perform Declarant's obligations under this Article XV.

**Section 15.02. Approval of Plans.** Except for any improvements constructed and installed by Declarant, no improvement shall be constructed, erected, placed, expanded, added to, maintained or permitted to remain within the Property (excluding the interior of any Unit), and no alterations or other work which alters the exterior appearance of any Unit, Limited Common Element or Common Elements, until the plans and specifications and other documentation as may be required by Development Guidelines for said improvements and alterations, which may include without limitation floor plans, materials, colors, signage, exterior lighting and any other information needed to accurately describe the exterior appearance or functional characteristics of such improvements (the "Application"), have been submitted to and approved in writing by the Residential Committee (for improvements to Residential Units or Limited Common Elements related thereto or the Commercial Committee for improvements to the Commercial Units or the Limited Common Elements related thereto). Three sets of the Application shall be filed with such Committee. Improvements approved in writing by Declarant prior to the recording of this Declaration shall be deemed to have been approved by the Committee.

(a) As a means of defraying its expenses, each Committee may institute and require a reasonable filing fee to accompany the Application for each building or other construction project submitted. If resubmission of an Application is necessary, the Committee may require an additional filing fee.

(b) All Applications for improvements submitted to each Committee hereunder shall comply with any and all laws, rules, regulations or ordinances applicable to the Property which have been promulgated by any local, state, federal or other governmental agency or authority.

(c) Each respective Committee shall have the right to disapprove the Application submitted to it, whether a preliminary or final submittal, if any part of it is:

(i) not in accordance with this Declaration or the Development Guidelines or the Plans;

(ii) incomplete;

(iii) not in compliance with relevant approval requirements or regulations of local, state, federal or other governmental agencies;

(iv) deemed by the Committee to be contrary to the best interests of the Condominium or the Owners; or

(v) incompatible with the architectural style, quality or aesthetics of existing improvements or development plans for proposed improvements.

(d) No Committee shall unreasonably withhold its approval of an Application submitted to such Committee. In this connection and in addition to Section 15.02(c), each Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) conformity and harmony of external design with neighboring Units or structures; (ii) effect of location of proposed improvements on the other Units within the Condominium; (iii) adequacy of screening of trash facilities, storage areas, mechanical and heating and air conditioning facilities and rooftop installations; and (iv) conformity of the Application to the purpose and general plan and intent of this Declaration. Any decision of the applicable Committee made after the Transfer Date, may be appealed to the Board. The decision of the Board shall be final. Prior to the Transfer Date, any decision of the Committee shall be final.

(e) Each respective Committee shall approve or disapprove each Application, whether a preliminary or final submittal, within thirty (30) days from the receipt thereof. If the Committee fails either to approve or disapprove the Application within said thirty (30) day period, then it shall be irrevocably deemed that the Committee has approved the Application. At least one set of the Application shall, with the approval or disapproval endorsed thereon, be returned to the submitting person and one set shall be retained by the Committee for its permanent files. Notwithstanding, no application or notice shall be deemed filed with the Committee until it is actually received by at least one Committee member by certified mail (return receipt requested).

(f) Upon receipt of approval from each Committee pursuant to this Section and upon receipt of approvals from the City, the Unit Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction, refinishing, and alterations. In all cases, work shall be commenced within twelve (12) months of the date of such approval, or the approval given or deemed given pursuant to this Article shall be deemed revoked unless the Committee, upon request made prior to the expiration of said twelve (12) month period, extends the time for commencing work by written notice to the Owner, which may be withheld or conditioned in the Committee's discretion.

(g) All construction, refinishing, alteration or excavation of any improvements by Unit Owners other than the Declarant that are approved under this Section shall be undertaken and pursued diligently to completion, but in any event shall be completed within two (2) years after the date of approval by the Committee. However, the time for completion shall be extended for any period such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, natural calamities or other similar supervening forces beyond the control of the Owner or its lessees. Failure to comply with this Subsection 15.02(g) shall constitute a breach of this

Declaration and subject the defaulting party or parties to all enforcement procedures set forth herein or any other remedies provided by law or in equity.

(h) Neither Declarant, the Committees nor any member thereof, nor any agents, officers or employees of Declarant or of the Committees, shall be liable in any way for any damage, loss or prejudice suffered or claimed by an Owner, Lessee or any other Person who submits an Application; except to the extent of actual damages arising directly from the bad faith acts or intentional misconduct thereof. Any person or entity who submits an Application shall forever defend, indemnify and hold the Declarant, the Committees, the members thereof, and the employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by any third party on account of (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application, whether or not defective; or (iii) the construction or performance of any work, whether or not pursuant to an approved Application, except to the extent of actual damages arising directly from the bad faith acts or intentional misconduct of the Declarant, a Committee or any Committee Member thereof, any agents, officers or employees of Declarant or of the Committee.

(i) In no event shall an approval by a Committee of any Application, or any written or oral statements made by the Board or any officer or employee of the Association, Declarant or any employee or officer or agent of Declarant, or the Committee or any member, agent or employee thereof, be deemed to constitute in any way any representations or warranties of any kind, express or implied, with regard to the Application and any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use laws, or compliance with any other applicable codes, regulations and laws, or with regard to fitness for a particular purpose.

(j) Any approvals given pursuant to this Article XV shall be personal to the Unit Owner submitting the Application and cannot be assigned or transferred by such Unit Owner without the prior written consent of the appropriate Committee, which shall not be unreasonably withheld. Without such consent, any subsequent Unit Owner for which a previous Unit Owner has obtained approval of an Application shall submit a new Application pursuant to this Article XV for review and approval as though no prior approvals had been received from the Committee with respect to such Unit.

(k) Each respective Committee is hereby authorized and empowered to grant variances for improvements or uses within the Condominium prohibited or regulated by this Declaration or the Development Guidelines and further to grant reasonable requests for relief from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of

the provisions contained herein. Notwithstanding the foregoing, the Committee shall not grant such a variance to any Unit Owner unless:

(i) such Unit Owner has obtained all necessary governmental approvals;

(ii) the construction of improvements or the uses which are called for under the request for the variance shall be consistent in design, character, appearance and quality of construction with the other improvements and uses within the Condominium;

(iii) the variances do not materially injure, in the judgment of the Committee, any of the Units or Common Elements within the Property;

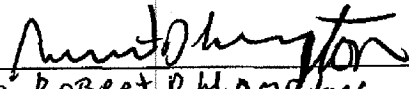
(iv) the construction of improvements and/or the uses called for under the request for variance are otherwise subject to and conform with all applicable laws, ordinances, rules and regulations, including, but not limited to, zoning regulations of any governmental agency or political entity having jurisdiction over the Property.

(l) No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person or portion of the Property, and the grant of a variance shall not obligate the Committee to grant other variances. In addition to the variance powers provided herein, the Committee shall be empowered to issue from time to time reasonable interpretations of the intent of the provisions of this Declaration or the Development Guidelines, which interpretations shall not constitute variances from the provisions of this Declaration, but shall be designed to further the implementation of this Declaration in a manner consistent with its provisions.

(m) All construction activities of any kind on any portion of the Property shall be governed by the provisions of this Article XV and corresponding provisions in the Development Guidelines. All construction activities shall be carried out in an orderly and timely manner and all partially completed improvements shall be kept in an orderly condition during construction. Dust from all construction shall be controlled at all times in a manner specified in the Development Guidelines. If trucks entering and leaving the Property deposit mud or dust on any streets or walkways, the Unit Owner on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets and walkways (or causing the same to be maintained) in a clean condition on a daily basis. If the provisions hereof conflict with the provisions of the Development Guidelines with respect to construction activities, the more restrictive provision shall control. Any repairs or replacements to the Common Elements, including any Limited Common Elements, necessitated by a Unit Owner's construction shall be performed by a contractor approved by the respective Committee having authority thereof.

11 IN WITNESS WHEREOF, the undersigned has caused this Declaration to be signed this day of August, 2005.

BRANDEIS LOFTS, LLC, a Nebraska limited liability company

By   
Name Robert P. Hampton  
Title manager

STATE OF NEBRASKA  
COUNTY OF DOUGLAS

)  
) ss.  
)

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of August, 2005 by ROBERT D. HAMPTON, the MANAGER of Brandeis Lofts, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



Christine K. Middleton

Notary Public  
My commission expires:

MARCH 20, 2007

CONSENT OF MORTGAGEE

Great Western Bank, holder of a Deed of Trust on the Property dated February 4, 2005, and recorded on February 8, 2005 as Instrument No. 2005014173, hereby consents to the execution and recording of the within Declaration of Condominium Ownership and agrees that such Deed of Trust is subject thereto and to the provisions of the Nebraska Condominium Act of the State of Nebraska.

IN WITNESS WHEREOF, Great Western Bank has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf, all done at Omaha, Nebraska on this \_\_\_ day of August, 2005.

GREAT WESTERN BANK

By Kolleen Hoover  
Name Kolleen Hoover  
Title Vice Pres

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2005 by Kolleen Hoover, the Vice Pres of Great Western Bank, a Nebraska Corporation, on behalf of the Corporation.



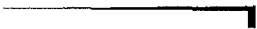
Patricia Purchase  
Notary Public  
My commission expires:  
Aug 14, 2007



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

LOTS 1, 2, 3, AND 4 IN BLOCK 117 IN THE ORIGINAL CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA.

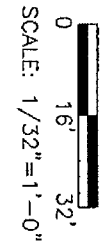
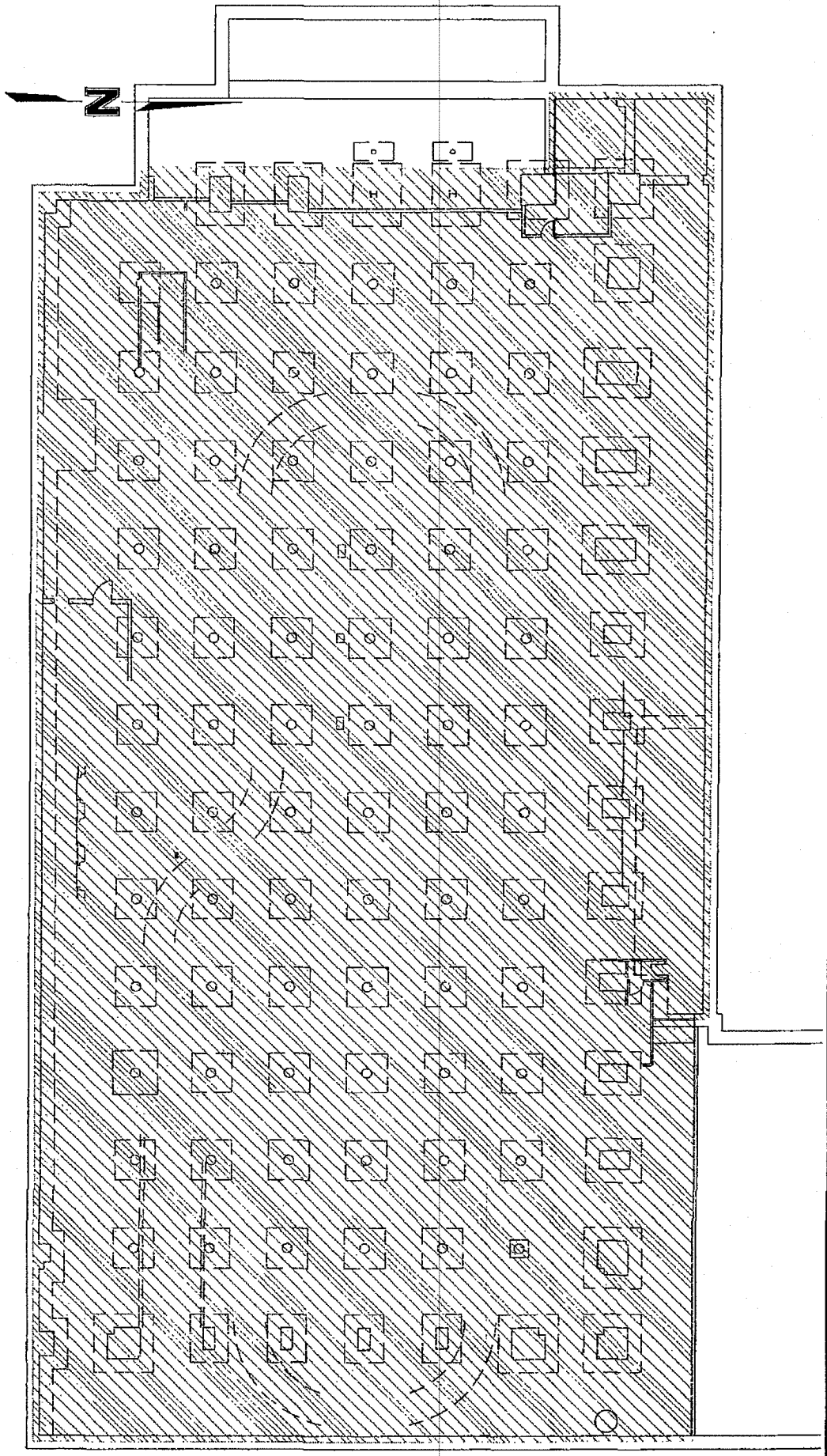
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**EXHIBIT B**  
**CONDOMINIUM PLAN**

[SEE ATTACHMENT]





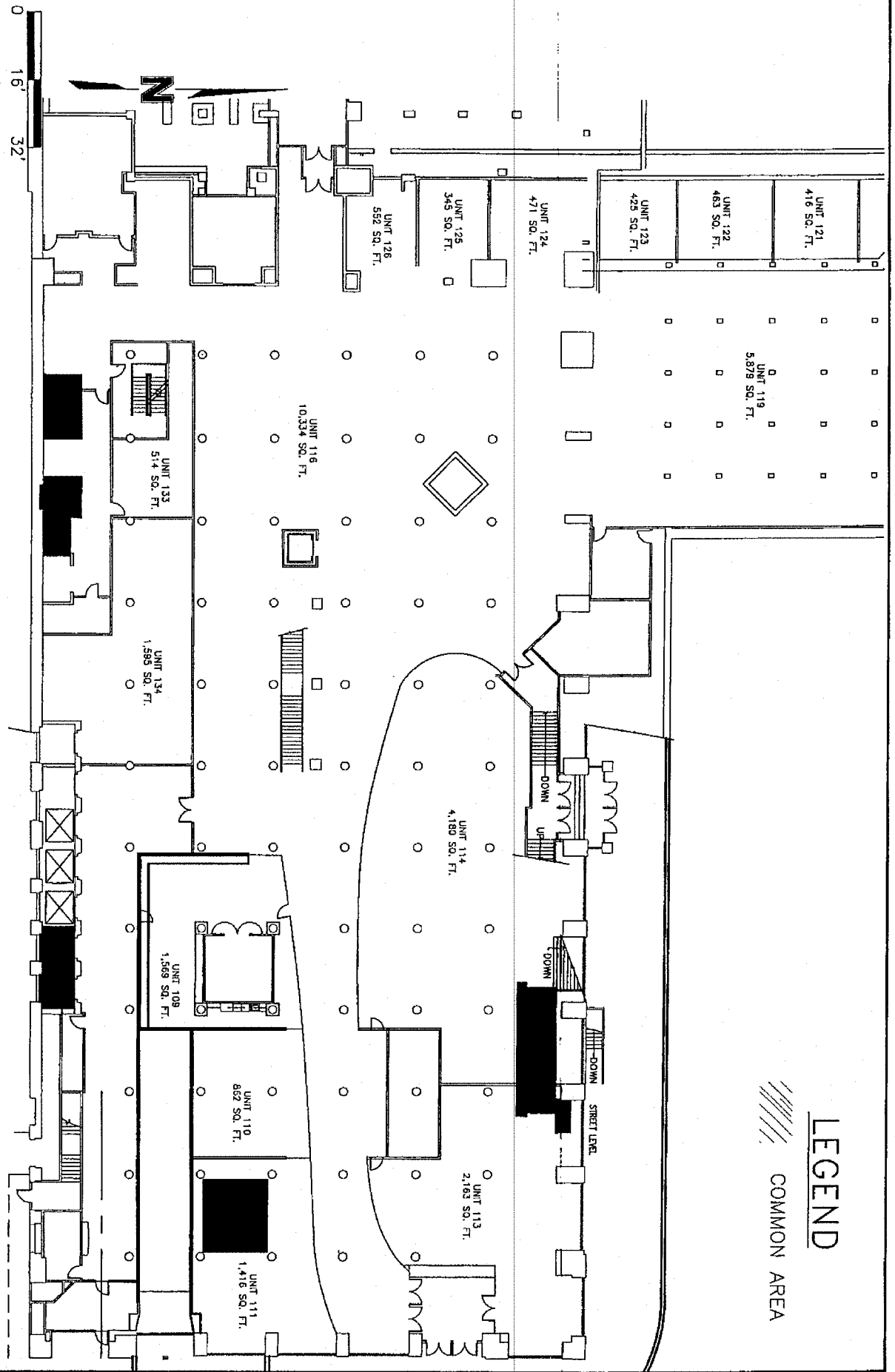
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**BASEMENT**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
**1 OF 12**



**LEGEND**  
 COMMON AREA

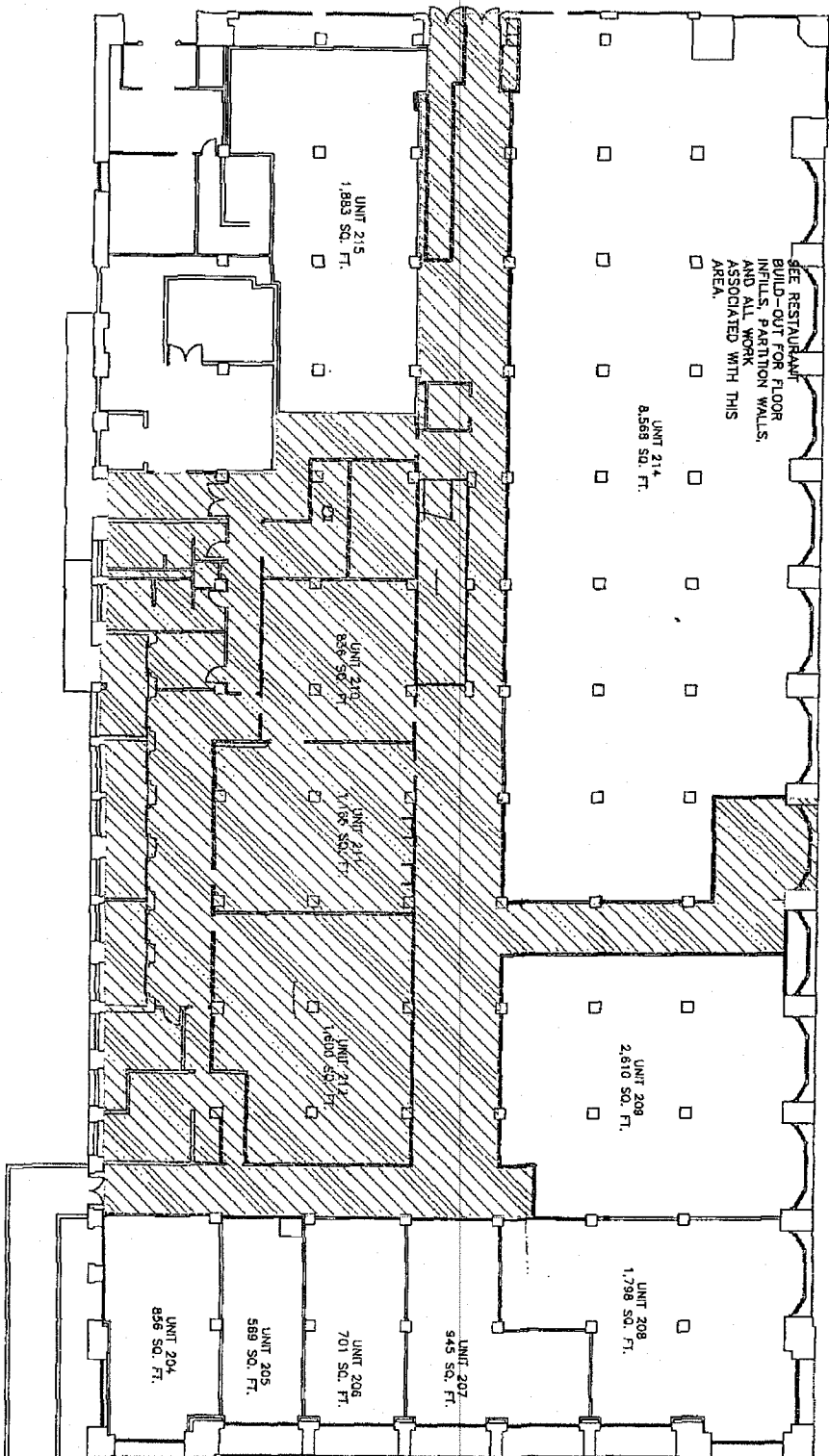
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**BRANDEIS BUILDING**  
**1ST FLOOR**  
 OMAHA, NEBRASKA

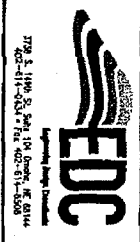
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 Job#: 05-025

**SHEET**  
 2 OF 12



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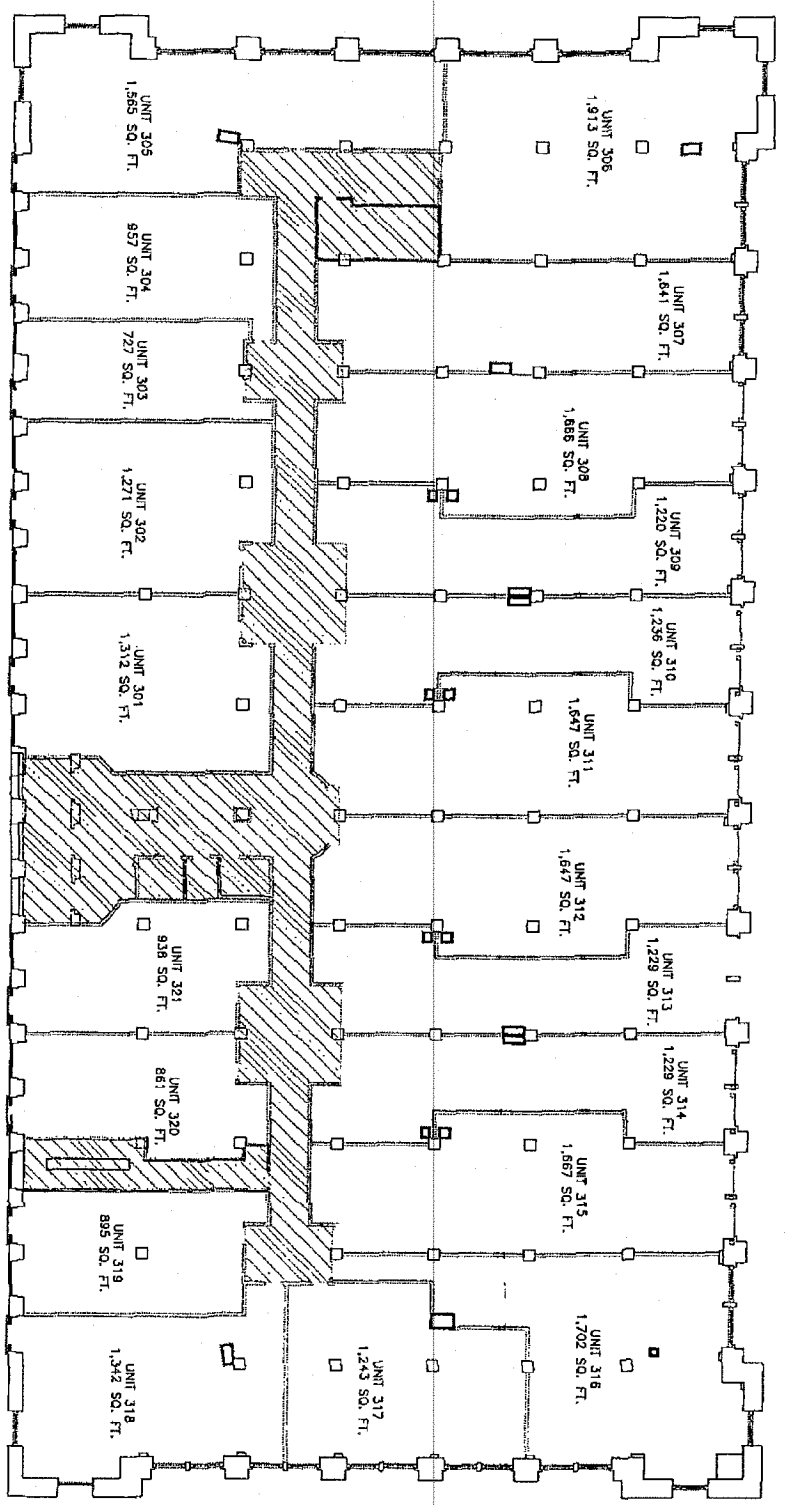
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**2ND FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
**3 OF 12**



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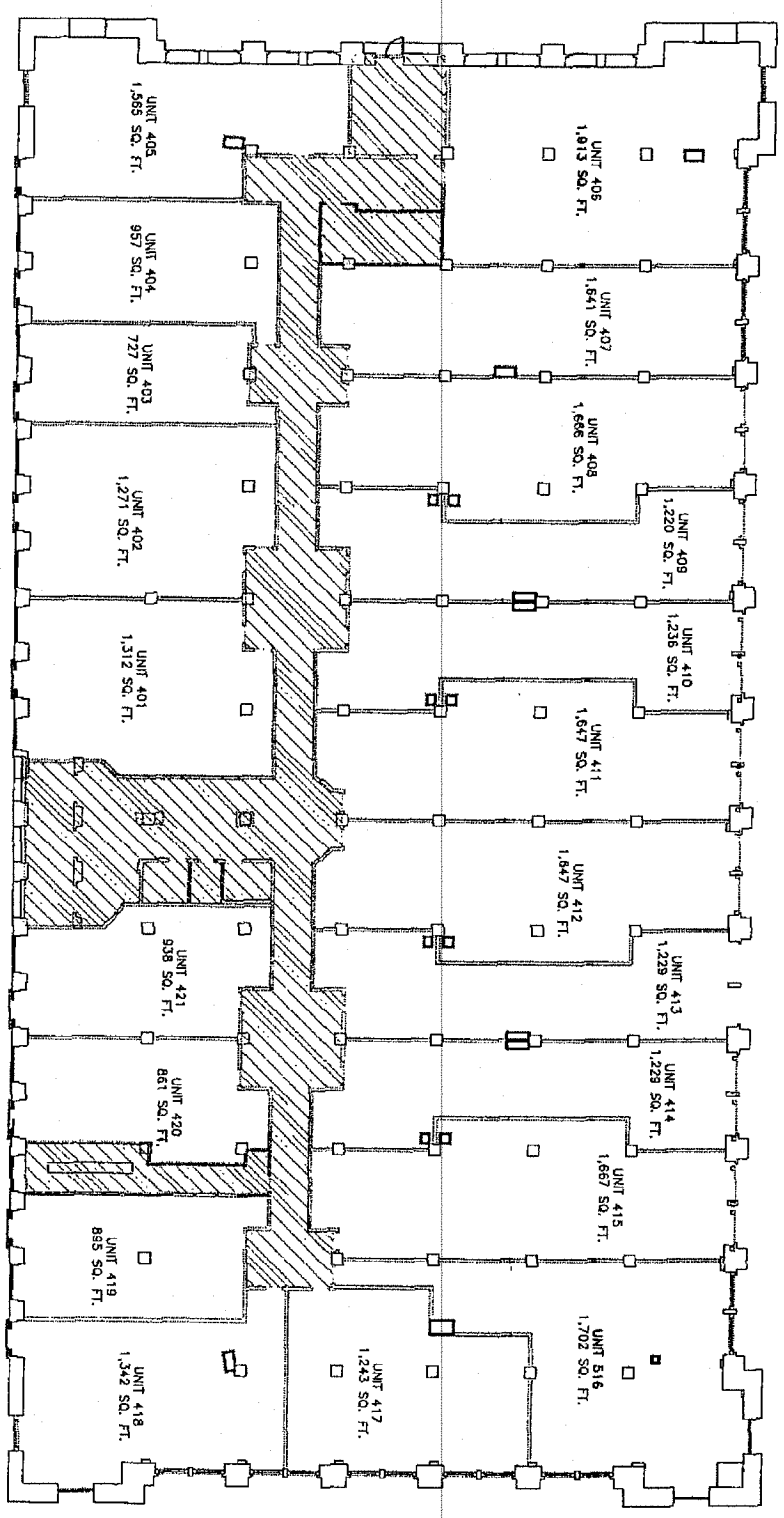
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**3RD FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
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 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
 4 OF 12



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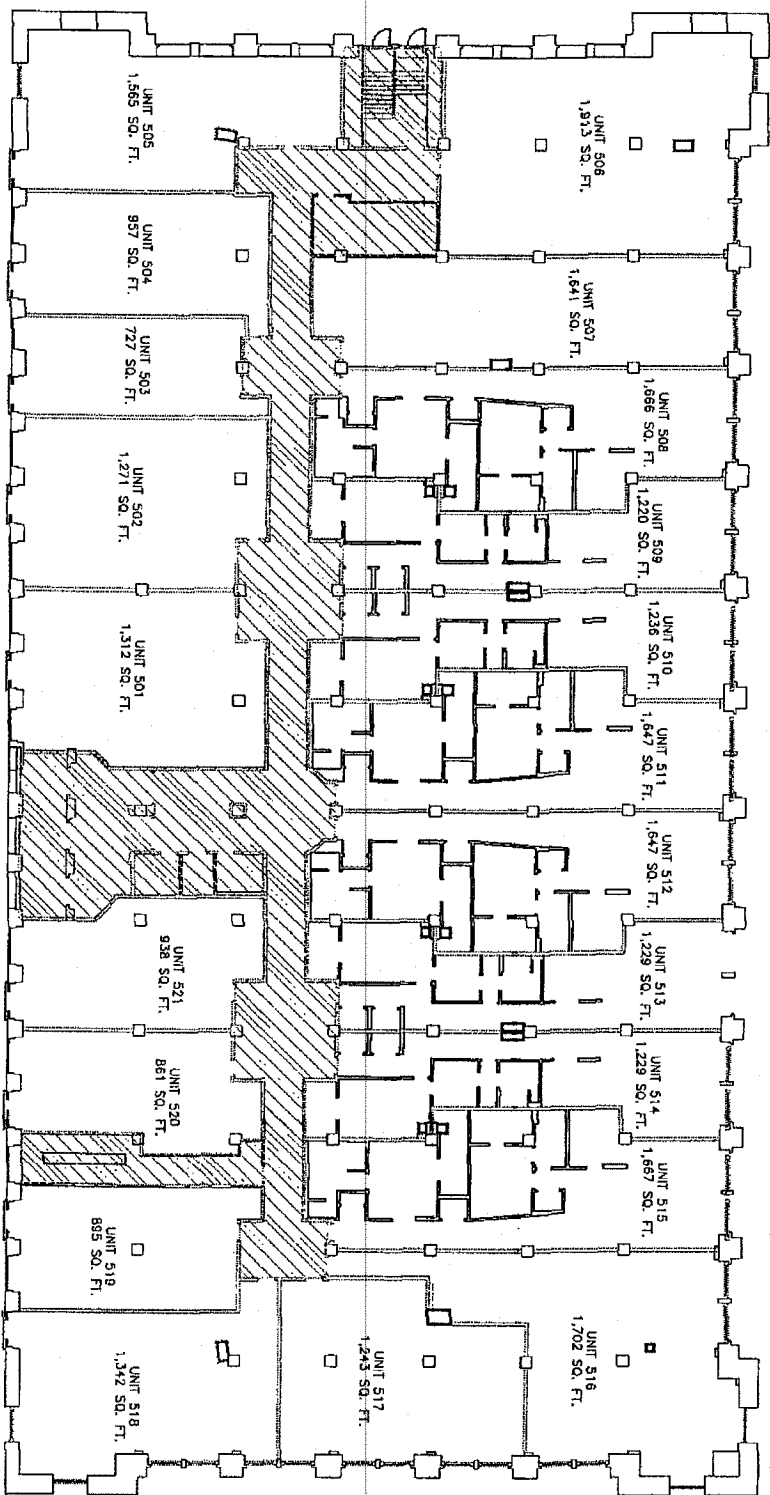
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**4TH FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05--025

**SHEET**  
**5 OF 12**



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**LEGEND**



COMMON AREA

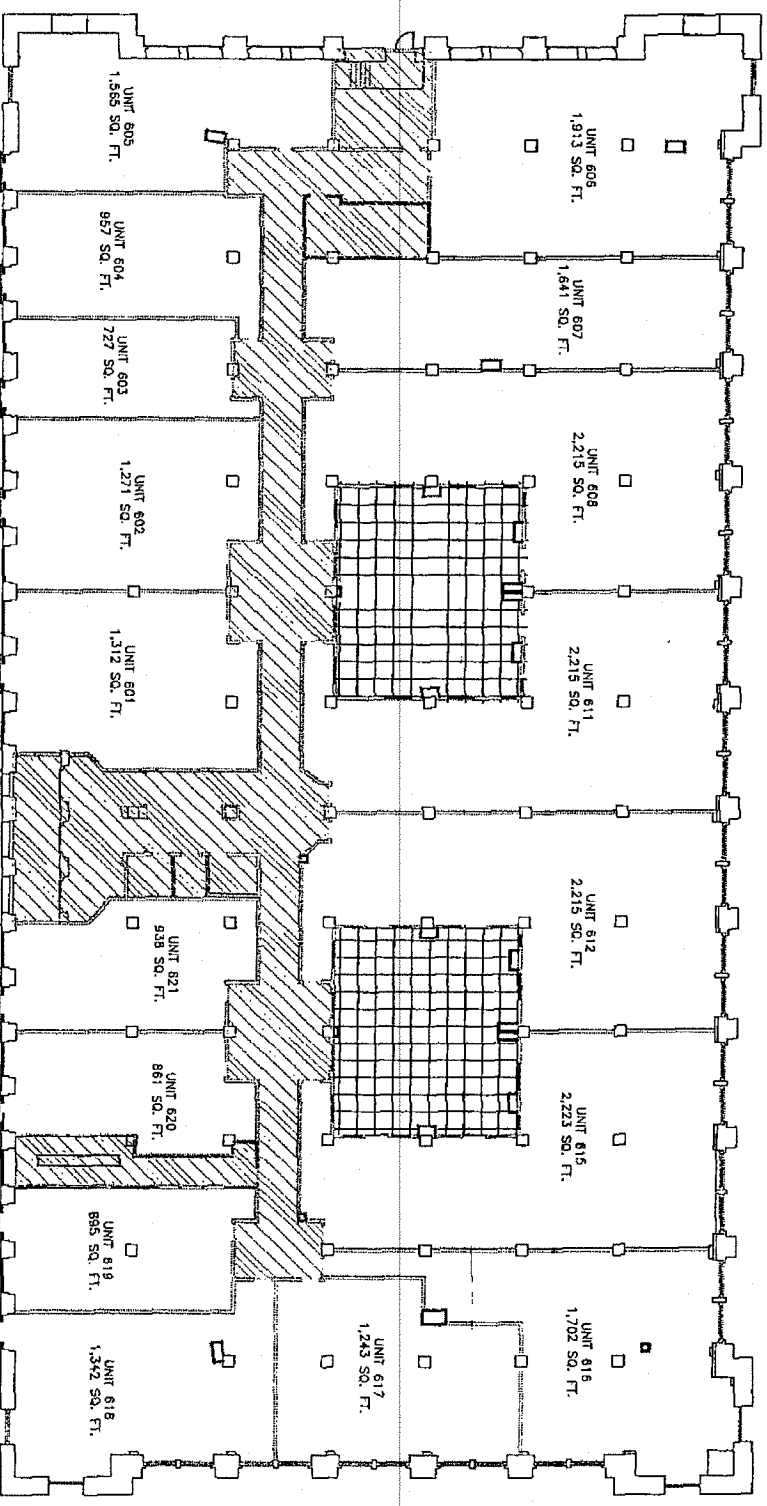


**BRANDEIS BUILDING**  
**5TH FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

SHEET  
 6 OF 12





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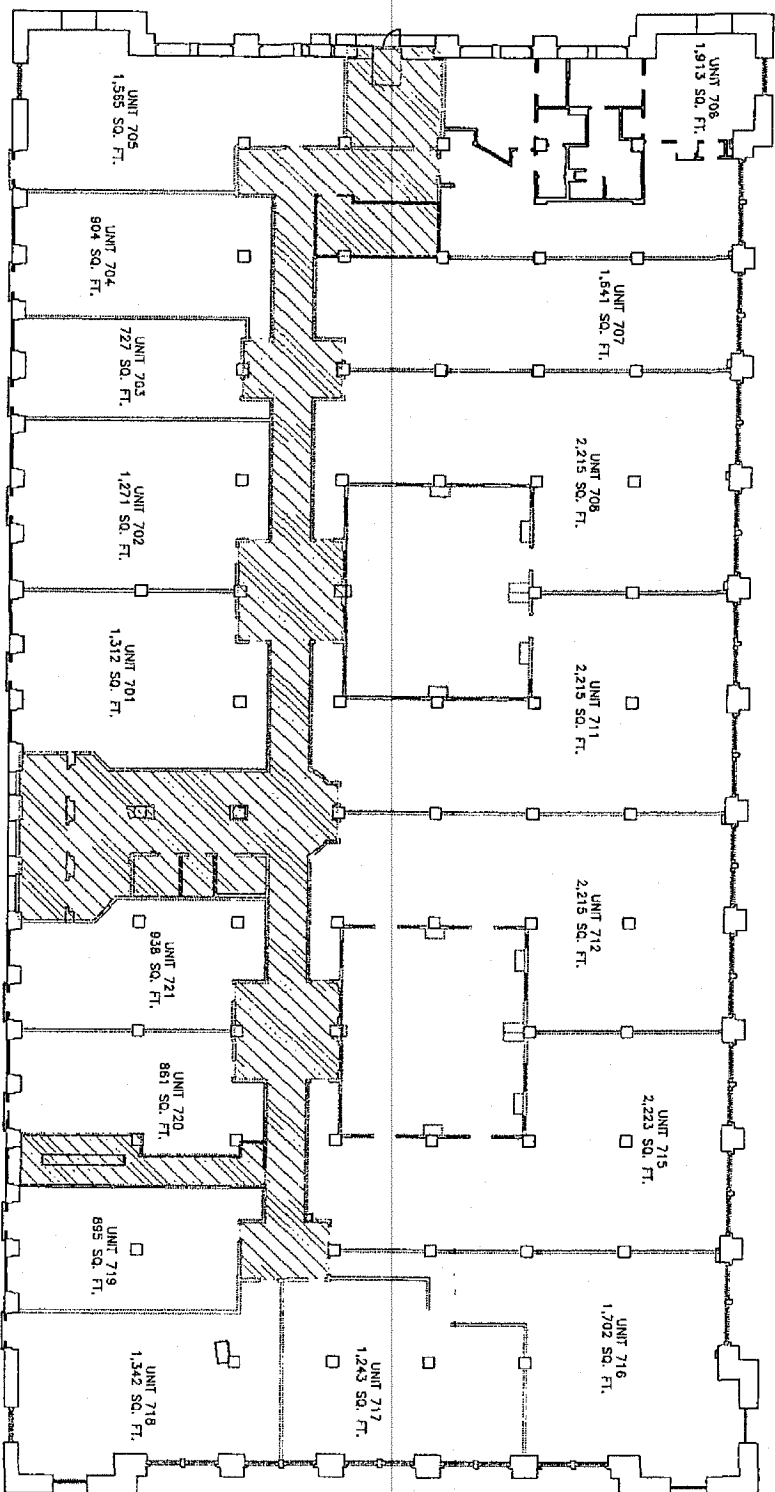
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**6TH FLOOR**  
 OMAHA, NEBRASKA


Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
**7 OF 12**



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**LEGEND**

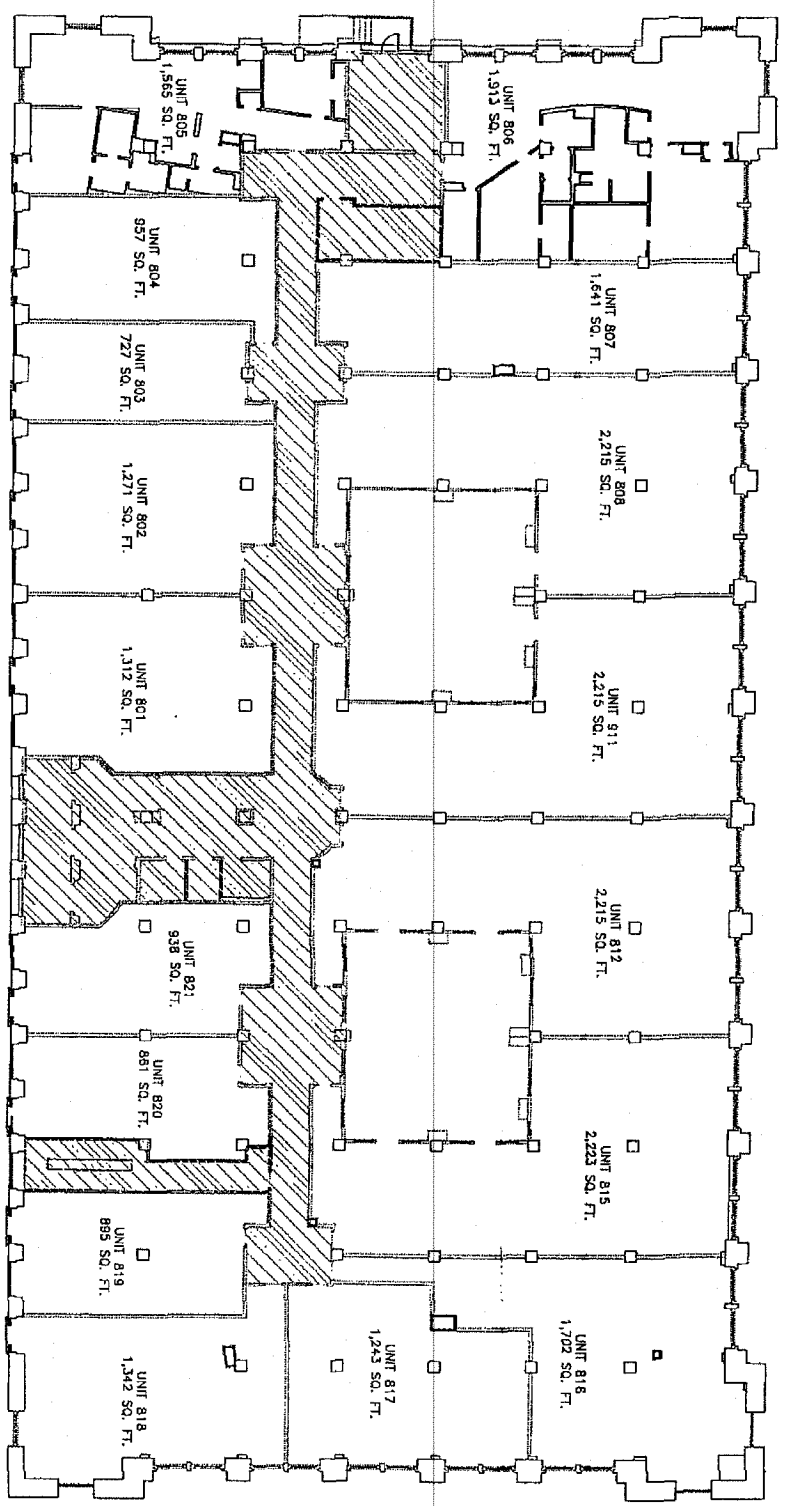
 COMMON AREA



**BRANDEIS BUILDING**  
**7TH FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: orch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
**8 OF 12**



0 16' 32'  
 SCALE: 1/32"=1'-0"

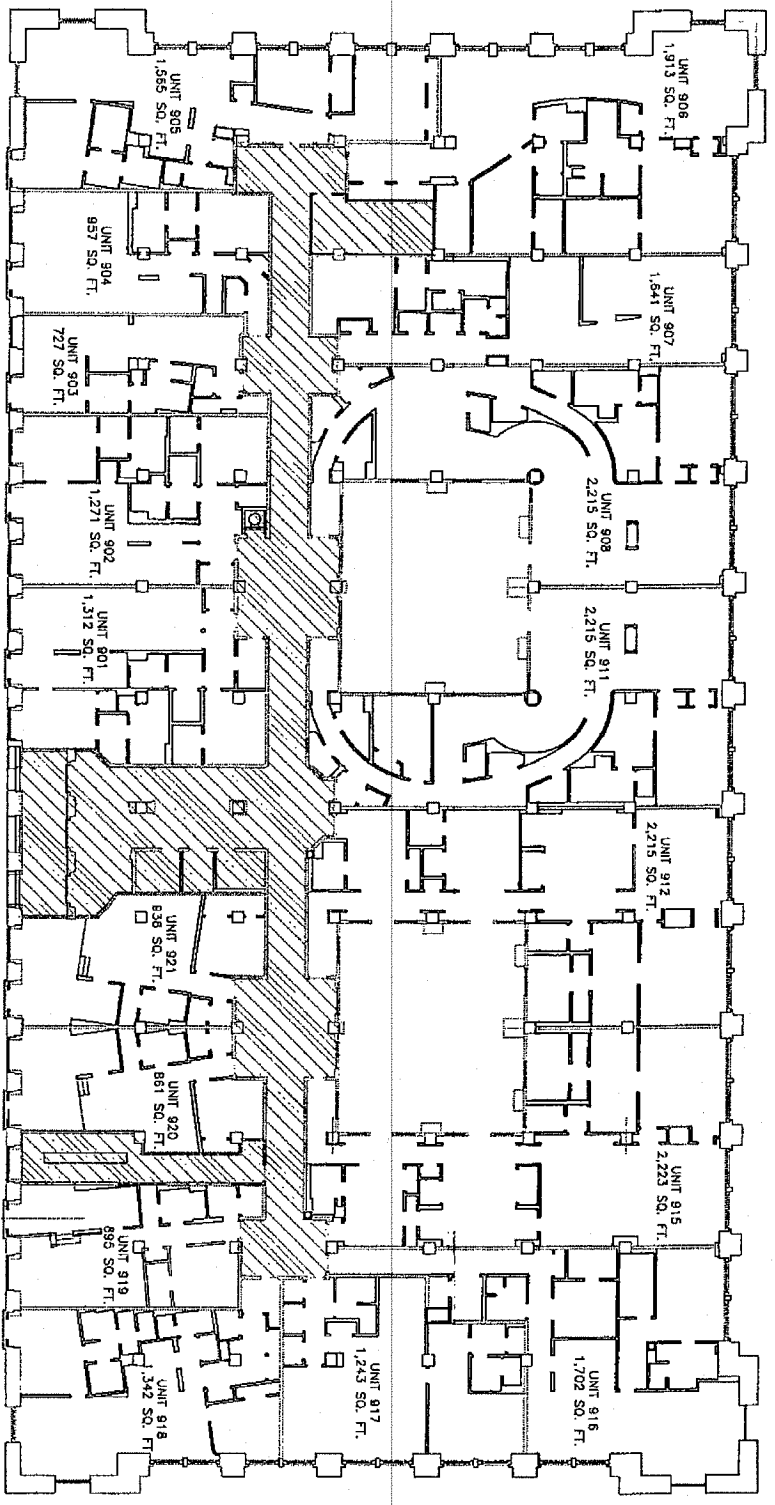
**LEGEND**  
 COMMON AREA



**BRANDEIS BUILDING**  
**8TH FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
**9 OF 12**



0 16' 32'  
 SCALE: 1/32"=1'-0"

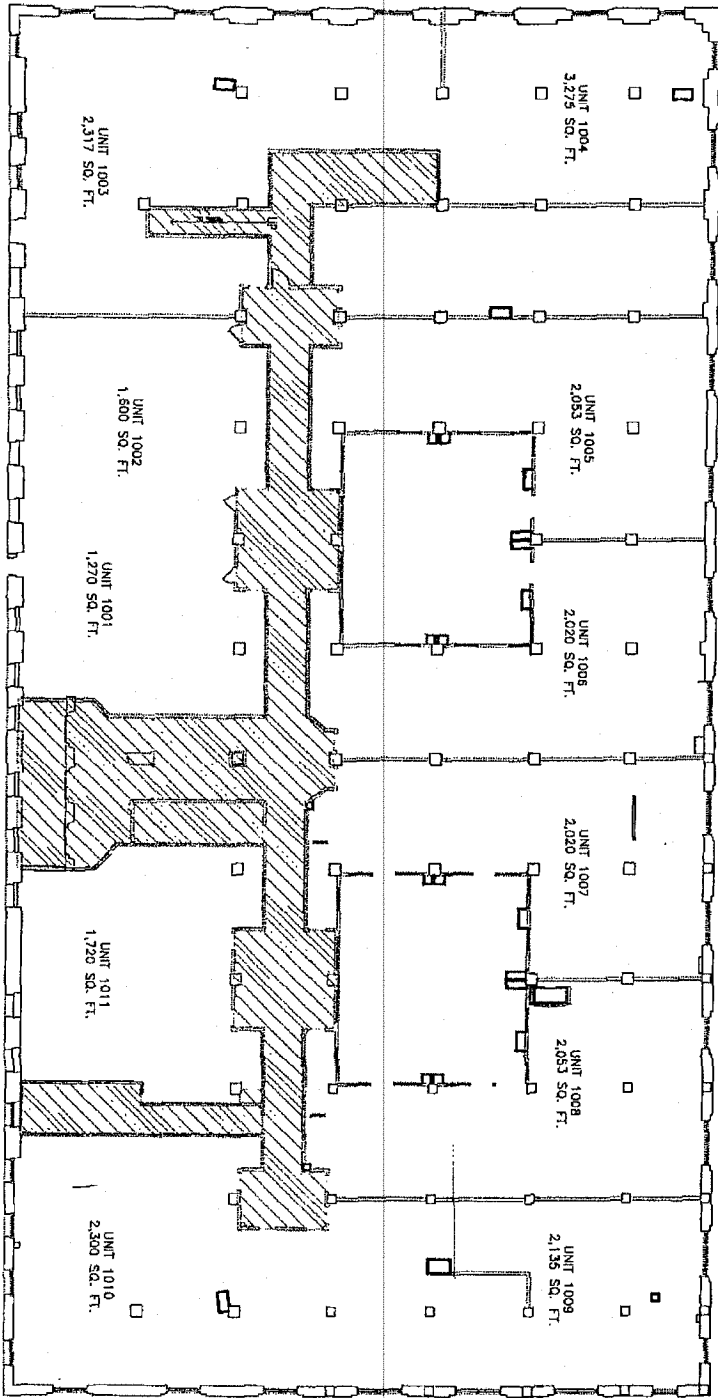
**LEGEND**  
 COMMON AREA

**BRANDEIS BUILDING**  
**9TH FLOOR**  
 OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job #: 05-025

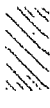
**SHEET**  
**10 OF 12**





0 16' 32'  
 SCALE: 1/32" = 1'-0"

**LEGEND**

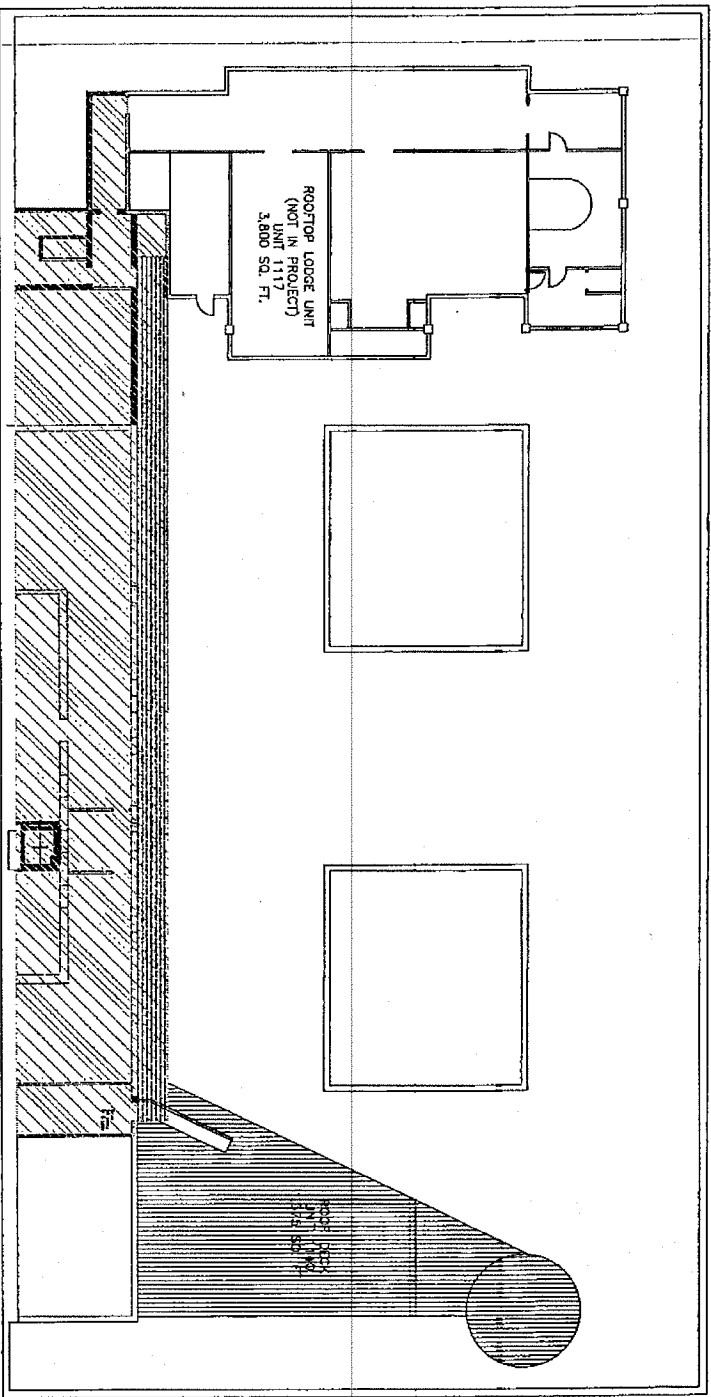
 COMMON AREA



**BRANDEIS BUILDING**  
**10TH FLOOR**  
 OMAHA, NEBRASKA

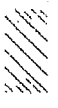
Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job #: 05-025

**SHEET**  
 11 OF 12



0 16' 32'  
 SCALE: 1/32" = 1'-0"

**LEGEND**

 COMMON AREA

**BRANDEIS BUILDING**

**ROOF**

OMAHA, NEBRASKA

Drawn By: NLP  
 Dwg.: arch floors  
 Date: 07/11/05  
 Job#: 05-025

**SHEET**  
 12 OF 12



2702 S. 10th St., Suite 200  
 Lincoln, NE 68502  
 Phone: 402-471-4500  
 Fax: 402-471-4501

**EXHIBIT C**  
**PERCENTAGE OF UNIT OWNERSHIP**

[SEE ATTACHMENT]

## EXHIBIT C

## Percentage Interest of Units in Common Area

Unit Number	Description	Unit Square Footage	Percentage Interest of Unit in Common Area
40	Parking	32,533.00	9.617%
101	cookie shop	1,578.00	0.466%
105	popcorn shop	514.00	0.152%
109	sales center	1,553.00	0.459%
110	Rx	847.00	0.250%
111	Deli	1,417.00	0.419%
113	coffee shop	2,173.00	0.642%
114	restaurant	3,928.00	1.161%
FC117	tenant	252.00	0.074%
FC118	exhaust fan	429.00	0.127%
FC120	tenant	858.00	0.254%
FC121	tenant	416.00	0.123%
FC122	tenant	463.00	0.137%
FC123	tenant	425.00	0.126%
FC124	tenant	471.00	0.139%
FC125	tenant	345.00	0.102%
FC126	tenant	552.00	0.163%
M105	S. stor. Bay	4,656.00	1.376%
M106	grocery	3,565.00	1.054%
M109	N. stor. Bay	17,982.00	5.316%
M205	N. stor. Bay	16,376.00	4.841%
M207	S. stor. Bay	6,463.00	1.911%
204	tenant	856.00	0.253%
205	tenant	569.00	0.168%
206	tenant	701.00	0.207%
207	tenant	945.00	0.279%
208	tenant	1,798.00	0.532%
209	tenant	3,179.00	0.940%
214	restaurant	7,753.00	2.292%
215	tenant	1,883.00	0.557%
301	condo	1,325.00	0.392%
302	condo	1,287.00	0.380%
303	condo	720.00	0.213%
304	condo	981.00	0.290%
305	condo	1,479.00	0.437%
306	condo	2,705.00	0.800%
307	condo	1,480.00	0.438%
308	condo	1,675.00	0.495%
309	condo	1,261.00	0.373%
310	condo	1,261.00	0.373%
311	condo	1,670.00	0.494%
312	condo	1,670.00	0.494%
313	condo	1,261.00	0.373%



## EXHIBIT C

## Percentage Interest of Units in Common Area

Unit Number	Description	Unit Square Footage	Percentage Interest of Units in Common Area
314	condo	1,261.00	0.373%
315	condo	1,679.00	0.496%
316	condo	1,844.00	0.545%
317	condo	1,335.00	0.395%
318	condo	1,433.00	0.424%
319	condo	916.00	0.271%
320	condo	874.00	0.258%
321	condo	948.00	0.280%
401	condo	1,325.00	0.392%
402	condo	1,287.00	0.380%
403	condo	720.00	0.213%
404	condo	981.00	0.290%
405	condo	1,585.00	0.469%
406	condo	2,427.00	0.717%
407	condo	1,480.00	0.438%
408	condo	1,675.00	0.495%
409	condo	1,261.00	0.373%
410	condo	1,261.00	0.373%
411	condo	1,670.00	0.494%
412	condo	1,670.00	0.494%
413	condo	1,261.00	0.373%
414	condo	1,261.00	0.373%
415	condo	1,679.00	0.496%
416	condo	1,844.00	0.545%
417	condo	1,335.00	0.395%
418	condo	1,433.00	0.424%
419	condo	916.00	0.271%
420	condo	874.00	0.258%
421	condo	948.00	0.280%
501	condo	1,325.00	0.392%
502	condo	1,287.00	0.380%
503	condo	720.00	0.213%
504	condo	981.00	0.290%
505	condo	1,585.00	0.469%
506	condo	2,346.00	0.694%
507	condo	1,480.00	0.438%
508	condo	1,675.00	0.495%
509	condo	1,261.00	0.373%
510	condo	1,261.00	0.373%
511	condo	1,670.00	0.494%
512	condo	1,670.00	0.494%
513	condo	1,261.00	0.373%
514	condo	1,261.00	0.373%

## EXHIBIT C

## Percentage Interest of Units in Common Area

Unit Number	Description	Unit Square Footage	Percentage Interest of Unit in Common Area
515	condo	1,679.00	0.496%
516	condo	1,844.00	0.545%
517	condo	1,335.00	0.395%
518	condo	1,433.00	0.424%
519	condo	916.00	0.271%
520	condo	874.00	0.258%
521	condo	948.00	0.280%
601	condo	1,325.00	0.392%
602	condo	1,287.00	0.380%
603	condo	720.00	0.213%
604	condo	981.00	0.290%
605	condo	1,653.00	0.489%
606	condo	2,259.00	0.668%
607	condo	1,480.00	0.438%
608	condo	2,309.00	0.683%
611	condo	2,305.00	0.681%
612	condo	2,305.00	0.681%
615	condo	2,313.00	0.684%
616	condo	1,844.00	0.545%
617	condo	1,335.00	0.395%
618	condo	1,433.00	0.424%
619	condo	916.00	0.271%
620	condo	874.00	0.258%
621	condo	948.00	0.280%
701	condo	1,325.00	0.392%
702	condo	1,287.00	0.380%
703	condo	720.00	0.213%
704	condo	981.00	0.290%
705	condo	1,585.00	0.469%
706	condo	2,427.00	0.717%
707	condo	1,480.00	0.438%
708	condo	2,309.00	0.683%
711	condo	2,305.00	0.681%
712	condo	2,305.00	0.681%
715	condo	2,313.00	0.684%
716	condo	1,844.00	0.545%
717	condo	1,335.00	0.395%
718	condo	1,433.00	0.424%
719	condo	916.00	0.271%
720	condo	874.00	0.258%
721	condo	948.00	0.280%
801	condo	1,325.00	0.392%
802	condo	1,287.00	0.380%

## EXHIBIT C

## Percentage Interest of Units in Common Area

Unit Number	Description	Unit Square Footage	Percentage Interest of Unit in Common Area
803	condo	720.00	0.213%
804	condo	981.00	0.290%
805	condo	1,585.00	0.469%
806	condo	2,427.00	0.717%
807	condo	1,480.00	0.438%
808	condo	2,309.00	0.683%
811	condo	2,305.00	0.681%
812	condo	2,305.00	0.681%
815	condo	2,313.00	0.684%
816	condo	1,844.00	0.545%
817	condo	1,335.00	0.395%
818	condo	1,433.00	0.424%
819	condo	916.00	0.271%
820	condo	874.00	0.258%
821	condo	948.00	0.280%
901	condo	1,325.00	0.392%
902	condo	1,287.00	0.380%
903	condo	720.00	0.213%
904	condo	981.00	0.290%
905	condo	1,579.00	0.467%
906	condo	2,661.00	0.787%
907	condo	1,480.00	0.438%
908	condo	2,309.00	0.683%
911	condo	2,305.00	0.681%
912	condo	2,305.00	0.681%
915	condo	2,313.00	0.684%
916	condo	1,844.00	0.545%
917	condo	1,335.00	0.395%
918	condo	1,433.00	0.424%
919	condo	916.00	0.271%
920	condo	874.00	0.258%
921	condo	948.00	0.280%
1001	condo	3,092.00	0.914%
1005	condo	2,502.00	0.740%
1006	condo	3,253.00	0.962%
1008	condo	2,108.00	0.623%
1011	condo	2,108.00	0.623%
1012	condo	2,108.00	0.623%
1016	condo	4,253.00	1.257%
1018	condo	2,237.00	0.661%
1021	condo	1,931.00	0.571%
1101	unassigned	1,475.00	0.436%
1119	unassigned	660.00	0.195%

EXHIBIT C

Percentage Interest of Units in Common Area

Unit Number	Description	Unit Square Footage	Percentage Interest of Unit in Common Area
1120	unassigned	820.00	0.242%
1106	rooftop bungalow	3,800.00	1.123%
	<b>Total Square Footage of all Units</b>	<b>338,273.00</b>	<b>100.000%</b>