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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2008-00003259

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**Type of Document:** Declaration of Submission of Property to Horizontal Property Regime

**Preparer Information:** (name, address and phone number)  
Michael J. Green  
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**Taxpayer Information:** (name and complete address)  
High Land Co., L.C.  
c/o John C. Kline  
2171 Grand Avenue  
West Des Moines, IA 50265

**RETURN TO:**  
**Return Document To:** (name and complete address)  
Michael J. Green  
4500 Westown Parkway, Suite 277  
West Des Moines, IA 50266

**Grantors:**  
High Land Co., L.C.

**Grantees:**

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents:**

**DECLARATION OF SUBMISSION OF PROPERTY  
TO HORIZONTAL PROPERTY REGIME  
INGERSOLL SQUARE CONDOMINIUMS**

High Land Co., L.C., an Iowa limited liability company, hereinafter referred to as "Developer", hereby executes this Declaration of Submission of Property to a Horizontal Property Regime to be known as Ingersoll Square Condominiums, all pursuant to Chapter 499B, Code of Iowa, 2005, entitled "Horizontal Property Act (Condominiums)" the same to take effect when filed for record in the office of the Polk County Recorder.

**RECITALS AND SUBMISSION:**

A. The Developer is the owner in fee of a parcel of land situated in Des Moines, Polk County, Iowa, more particularly described as:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDING ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(which parcel of land is hereinafter referred to as the "Land").

B. The Developer hereby establishes a Horizontal Property Regime, in accordance with Chapter 499B Code of Iowa, upon the Land. It is the purpose of the Developer by this Declaration to so divide, develop and impose covenants and restrictions upon the Land, all of which shall run with the Land, that the Land, together with the said Property Regime, shall constitute a Condominium Project as defined in Chapter 499B of the Code of Iowa, known as "Ingersoll Square Condominiums". The submission of the Land to the Horizontal Property Regime as aforesaid is subject to all covenants, conditions and restrictions now recorded or hereinafter to be placed of record.

**NOW, THEREFORE,** the Developer does hereby declare that all of the property designated as the Land above is held and shall be held subject to the following covenants, conditions, restrictions, uses, limitations, and obligations, all of which are declared and agreed to

be in the furtherance of a plan for the improvement of the property and the division thereof into residential and office condominiums and shall run with the land and shall be a burden and a benefit to Developer, their successor and assigns, and any person owning an interest in the real property, improvements appurtenances thereto, his grantee, successors, heirs, executors, administrators, devisees and assigns.

**ARTICLE I**  
**Definitions and General**

1. **Suite.** The Condominium Project consists of two buildings located locally at 1900 High Street (East Building) and 2000 High Street (West Building), Des Moines, Iowa. The buildings are four (4) stories consisting of a lower level parking facility and three (3) stories containing 139 suites total ranging from approximately 520 to 1,424 square feet in size as set forth on **Exhibit "A"**. The term "suite" or "condominium suite" shall mean and refer to each of the 139 portions of the buildings, situated upon the Land designed, numbered and intended for use consistent with the zoning of the Land for use, separately or in conjunction with other suites, and not owned in common with other owners in the regime. Each condominium suite shall include that part of the Condominium Project which lies within the following boundaries:

- a. **Upper and Lower Boundaries.** The upper and lower boundaries of the condominium suite shall be the following boundaries extended to an intersection with parametrical boundaries:
  - (i) **Upper Boundary.** The horizontal plane of the bottom surface of the ceiling structural elements.
  - (ii) **Lower Boundary.** The horizontal plane of the top surface of the undecorated concrete floor slab.
- b. **Parametrical Boundaries.** The parametrical boundaries of the condominium suite shall be the vertical plane which is calculated from the center line of all common walls and the interior face of all exposed walls bounding the condominium suite extended to intersections with each other and with the upper and lower boundaries. The owner of the condominium suite shall be deemed to own the walls and partitions which are contained in the owner's respective condominium suite, and also shall be deemed to own the windows and the entrance doors of the suite.
- c. **Heating and Air Conditioning Equipment.** Each suite owner shall own the heating and air conditioning equipment including the wires, ducts, pipes and other apparatus used in connection therewith, which equipment is located either on the roof of the building in which the suite is situated or in the common area. This equipment is considered part of the suite and not a limited common element and may not be relocated without the approval of the Association.

- d. **Storage Areas.** Select residential suites shall include that storage area located within the area of the parking stall(s) associated with that unit. The A-1 and A-2 units on floors one (1) through three (3) which front High Street and the C303 unit shall not include a storage area and/or parking stall. These storage units will be considered dedicated to the corresponding parking stall as set forth on **Exhibit "C"** attached hereto.
  
- e. **Patios.** Each unit shall include an outdoor patio. Each patio shall be maintained by the respective unit owner and shall be used only for seating purposes. No outdoor cooking grills or appliances, other than gas grills, may be used thereon. In addition, no decorations, storage items or non-seat items, except a service table to accommodate the seating shall be allowed. No more than four (4) flower plants in ten-inch or smaller pots and twelve inches or smaller in height shall be allowed. No signs shall be displayed from the patio area and the unit owner shall be responsible for the safety in the utilization of said patio. One-half of the square footage of the patio is included in the square footage valuation for a patio unit as set forth on **Exhibit "B-2"** attached hereto.
  
- f. **Exclusions from Ownership.** Each condominium suite owner shall be deemed not to own pipes, wires, conduits, or other public utility lines, ventilation or other ducts, which are utilized for or serve more than one condominium suite, which items are by these presents hereby made a part of the General Common Elements. Nor shall the suite owner be deemed to own any pipes, wires, conduits, or other public utility lines, ventilation or other ducts, which are utilized for or serve another condominium suite, which items shall be owned by the owner whose suite such items serve.
  
- g. **Identification.** For the purposes of identification, all condominium suites are given identifying numbers as delineated on **Exhibit "A"** which shows graphically the location of all condominium suites and common elements and which exhibit is attached hereto and made a part of this Declaration.
  
- h. **Windows.** Maintenance of all windows and door windows shall be the sole responsibility of the Unit Owner, except outside cleaning which shall be performed by the Association. No changes shall be allowed without the prior written consent of the Association Board of Directors. A Unit Owner shall have the right to decorate windows serving his/her Unit. However, this right is limited to the extent that only drapes, curtains, sheers and shutters may be used which must be lined so that they appear white from the outside of the building, or wood blinds or shutters. Nothing shall be hung between the interior surface of the window and the drapes, curtains, sheers or shutters used.
  
- i. **Fire Sprinkler System.** If there is a fire sprinkler system located within a Unit, it shall be maintained and repaired by the respective Unit Owner. It shall be the Unit Owner's responsibility to maintain, in proper working order, the portions of

the fire sprinkler system within his/her Unit. In the event the Unit Owner fails to so maintain or repair the portions of the sprinkler systems within his/her Unit, then the Association or its representative(s) may, after written notice to the Unit Owner, perform said maintenance or repair and charge the cost thereof as an assessment to the Unit and to the non-compliant Unit Owner. In addition and not in limitation, the Association may charge said non-compliant Unit Owner at least \$50.00 per day in liquid damages for each day in violation thereof. The Association or its representative(s) shall have the right to enter the Unit, after written notice to the Unit Owner, to inspect, repair, maintain or replace the fire sprinkler system.

2. **General Common Elements**. The term "general common elements" means and is hereby described as all portions of the building and the property not located within any suite and described as a part of a condominium suite, and the term also includes, but is not limited to alleyways, parking spaces outside of the building and roof, stairways, elevators, mechanical facilities, trash enclosures, sidewalks, landscaping and plantings, landscape sprinkler system, outside lighting facilities and wiring, and all sewer, water, heat and air conditioning, and other utility or service lines or facilities serving more than one suite. Each such Common Element shall be maintained and/or repaired by the Association and the costs thereof shall be assessed in equal shares against all the Units in this Condominium Regime. The Association shall further have the authority to establish rules and regulations regarding the use of each which shall be solely for its intended purpose. Each Unit owner, their invitees, guests or family members shall pick up and maintain each Common Element in a clean and presentable way, as much as possible.

3. **Building**. The term "building" means the building as located on the Land, and the term "building" refers to the building in which the condominium suites will be located.

4. **Condominium**. The term "condominium" when used as a noun means a suite and appurtenances thereto.

5. **Ownership Suites**. The term "ownership suites" means the ownership interest made appurtenant to each suite, its appurtenant interest in the common elements, rights in and to limited common elements, and each suite's number of votes. (See **Exhibit "B"**).

6. **Association**. The term "Association" means the Ingersoll Square Condominium Association, an Iowa non-profit corporation, and its successors.

7. **Condominium Documents**. The term "condominium documents" means this Declaration, all exhibits attached hereto including the Articles and By-laws of the Association, and supplements and amendments thereto. (See **Exhibit "E"**).

8. **Property**. The term "property" or the term "condominium property" includes all property, real, personal or mixed submitted to the regime other than the personal property of any owner which might otherwise be considered submitted to the regime.

9. **Plural and Gender.** Whenever the context so permits or requires, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

10. **Successors. Grantees and Assigns.** Reference to Developer, an owner, the Association, or any person or entity shall include the respective successors, grantees and assigns thereof.

11. **Owner.** The term "owner" means the holder of a real property interest in a suite, except when otherwise defined in the condominium documents.

12. **Severability.** The invalidity of any covenant, restriction, agreement, undertaking, or other provision of any condominium document shall not affect the validity of the remaining portions thereof.

13. **Incorporation.** Exhibits attached hereto and referred to herein are hereby made a part hereof with the same force and effect as other provisions of this document, provided that, wherever specifically provided, modification of certain exhibits shall not be deemed an amendment to this Declaration.

**ARTICLE II**  
**Identification of Land, Buildings and Suites**

1. **Location of Land and Improvements.** The land and improvements hereby submitted to the regime are located at the Northeast corner of Martin Luther King Parkway and Ingersoll Avenue, Des Moines, Iowa, and legally described in Recital "A" above. The suites, which are shown and designated by number on **Exhibit "B"** attached hereto, are hereby submitted to the regime. **Exhibits "A", "B", "C", "D" and "E"** inclusive, contain, and such contents shall govern, for purposes of this Declaration and for purposes of meeting the requirements of Section 499B.4 of the Code of Iowa, the following:

- (a) The number identifying each suite from every other suite;
- (b) A floor plan for each of the floors showing the location and number of each suite, the limited common elements specifically assigned to each suite and common elements to which each such suite owner has or will have access.

2. **Parking.** The parking areas shown on **Exhibit "C"** shall be private parking areas located within the basement level of the building. Each such space shall be identified by legal description affiliated with and a part of the assigned unit(s). Parking spaces shall not be sold or severed in any way from its assigned unit. A parking space may be short-term leased but only to another unit owner. Outside parking shall be nonassigned and as such shall be reserved for guest parking. These parking spaces shall be for automobiles only – no tractors, trailers, boats, recreational vehicles or other such vehicles shall be at any time parked thereon. Guest parking

shall be for a term not to exceed seven (7) days. Any such extended parking shall be on the exterior perimeters of the parking area and not on spaces in direct proximity to the accesses to the buildings.

3. **Ownership Interest.** For purposes of this Declaration and the By-laws of the Association, appurtenant to each suite shall be the ownership interest as shown on **Exhibit "B"**. The ownership interest which is appurtenant to each suite is hereby created by this Declaration and shall be counted for all purposes stated herein and in the other condominium documents irrespective of any actual occupancy or use of the suite to which appurtenant.

4. **Undivided Fractional Interest.** An undivided interest in the land and other common elements of the regime, regardless of whether such elements are general or limited common elements, shall be appurtenant to each suite. The amount of such undivided interest appurtenant to each suite shall be as shown on **Exhibit "B"**.

5. **General Common Elements.** Appurtenant to each suite shall be a right to use and enjoy the general common elements.

6. **Use of Limited Common Elements.** Not applicable.

7. **Membership and Voting Rights.** Appurtenant to each suite shall be membership in Ingersoll Square Condominium Association, and each suite shall have one (1) vote as set forth on **Exhibit "B"** attached hereto, provided, the exercise of such voting and membership rights shall be subject to the applicable provisions of the Articles and By-laws of the Association and of the other condominium documents including the appointment of Developer as agent for certain purposes. The action of such Association shall be deemed the action of the owners whenever such action is permitted or required by Chapter 499B of the Code of Iowa, and such action when taken in accordance with the By-laws of the Association and this Declaration shall be final and conclusive upon all suite owners.

8. **Encroachment Easements.** If any portion of the common elements encroaches upon any suite, or if any suite encroaches upon any other suite or upon any portion of the common elements, or if any of such encroachments shall occur hereafter as a result of repair or improvement to the common elements or as a result of repair or restoration of the common elements or a suite after damage by fire or other casualty, or as result of condemnation of or eminent domain proceedings, then in each of such events a valid easement shall exist for such encroachment and for the maintenance thereof so long as the buildings, common elements and suites exist.

9. **Cross Easements.** Appurtenant to each suite shall be easements from each suite owner to each other suite owner and to the Association and from the Association to the respective suite owners as follows:

- (a) For ingress and egress through the common areas and for maintenance, repair and replacement as authorized;

- (b) Through the suites and common facilities for maintenance, repair and replacement or reconstruction of common elements, but access to suites shall be only during reasonable hours except in case of emergency;
- (c) Through the suites and common areas for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility or other services to the other suites or the common areas;
- (d) To the extent necessary, each suite shall have an easement for structural support over the common elements and over any other suite in the building, and each suite and the common elements shall be subject to an easement for structural support in favor of every other suite in the building and the common elements.

10. **Combination or Subdividing of Suites.** An owner of two or more adjoining suites may combine them into one contiguous use provided the combination does not alter or affect the structure of the building or any load-bearing walls and that a suite be no smaller than 665 square feet. An owner may not subdivide one suite into two or more suites unless prior, two or more suites were combined. Provided, the plans shall be first reviewed and approved by the Board of Directors in writing and work shall be in compliance with all applicable building codes. The suite owner shall be responsible for the costs of such combination or subsequent subdivision thereof, including all permits, fees to the City of Des Moines, professional fees, and the cost of amending these documents. If suites are combined, each suite shall retain its assigned vote(s).

11. **Leasing.** An Owner of a Unit in the Regime shall be entitled to lease the Unit in accordance with the following terms. All leases shall be in writing, with a copy to the Owners Association prior to its commencement, and shall be subject to the terms of this Declaration and the Articles of Incorporation, Bylaws and any rules or regulations adopted by the Association. In no event shall an Owner lease his/her Unit for a term less than six (6) months. There shall be no subleasing of the space by a tenant. No lease shall relieve the Owner of the Unit from liabilities and responsibilities to the owners association and other owners as set forth in this Declaration or imposed by any rules and regulations of the Association or the laws of the State of Iowa. The leasing rights granted herein shall not be altered or modified in any way by the Association without an affirmative vote of one hundred percent (100%) of the Members.

**ARTICLE III**  
**Developer's Reserved Rights and Powers**

1. **Developer's Activities and Suite Ownership.** Developer is irrevocably and perpetually empowered, notwithstanding any use restriction or other provision hereof to the contrary, to sell or lease suites, except Suite C303, to any person approved by Developer and shall have the right to transact on the condominium property any business relating to the construction, sale or lease of suites including, but not limited to, the right to maintain models, offices, signs, employees and equipment and materials on the premises, to use common elements and to show suites. A sale and rental office, signs and all items and equipment pertaining to sale



or rental shall not be considered common elements and shall remain the separate property of Developer. Developer retains the right to be and remain the owner of completed but unsold suites under the same terms and conditions as other owners including membership in the Association save for this right to sell, rent, or lease. Completed suites for the purpose of this paragraph shall be suites which have been issued a certificate of occupancy by the City of Des Moines, Iowa. The Ingersoll Square Condominium Association shall have a perpetual first right of refusal to acquire Suite C303 upon the same terms and conditions of any third party sale or such terms and conditions as may be agreed upon by Developer and the Association.

2. **Phase Development.** Developer shall have the right to construct the improvements (buildings, units, parking, common areas and all other related improvements) under any timetable, schedule or phase in its sole discretion, including the timing for each building, floor or amenity. Further, Developer may impose such rules and regulations as it deems necessary to such phase development.

3. **Easements.** Developer expressly reserves perpetual easements for ingress, egress, and utility purposes as may be required across and under the land submitted hereby, within the improvements thereto and by any supplements hereto for expansion of the regime and in connection with any other development of the land described.

4. **Designation of Association Directors.** Developer shall have the right to name all members of the Board of Directors of Ingersoll Square Condominium Association until the annual members' meeting of the Association for the calendar year 2010, or earlier at the sole discretion of the Developer. Thereafter the Board of Directors shall be selected in the manner specified in the Bylaws of the Association.

5. **Right to Amend Plans.** Developer reserves the right to change the interior design and arrangements of all suites and to alter the boundaries between suites so long as developer owns the suite or suites so altered. The Developer shall make any changes in suite so authorized, such changes shall be reflected by an amendment to the Declaration, which the developer has the sole right to execute. If more than the suite is concerned, developer shall apportion between the suite the shares in the common elements which are appurtenant to the suites concerned. Amendments made pursuant to this paragraph need be signed and acknowledged only by the developer, its agents or assigns and need not be approved by the Association, suite owners or mortgagees, whether or not elsewhere required for an amendment. Provided, however, no change pursuant to this paragraph shall alter the boundaries of the common elements without amendment to this Declaration by approval of the Association, affected suite owners and affected mortgagees in the same manner as elsewhere provided herein.

6. **Exclusive Uses.** Developer shall have the right to establish from time to time, exclusive use restrictions which shall be binding on all suites. No restrictive or exclusive use shall be enforceable against any property owner or tenant, unless such exclusive use has received the prior written approval of the Developer. The Developer shall provide a listing to the Association from time to time listing the exclusive use provisions in effect on the suites and shall update such notice as soon as practical after allowing a new exclusive use on the property.

If this provision is violated, the Developer shall be entitled to seek any and all relief including, injunctive relief to prevent such use at any of the suites.

This clause may only be terminated by the Developer, and is transferable by Developer to the Association.

**ARTICLE IV**  
**Management of the Regime**

1. **Ingersoll Square Condominium Association; Membership; Vote or other Action of Owners.** The business and affairs of the regime shall be governed and managed by Ingersoll Square Condominium Association, a nonprofit membership corporation organized and existing under Chapter 504A, Code of Iowa, which shall be managed by the Developer until such time as one hundred percent (100%) of the units have been sold or the Developer relinquishes such right. Copies of its Articles of Incorporation and of its By-laws are attached hereto as **Exhibits "D" and "E"**. Whenever a vote or other action of suite owners as a group is required the mechanics of conducting such a vote or taking such action shall be under the control and supervision of the Association. The action of the Association shall constitute the action of the owners whenever such action is permitted or required herein or by Chapter 499B of the Code of Iowa (2005).

2. **Agreements and Compliance.** All owners, tenants, licensees, invitees and other persons using or occupying the regime shall be bound by and strictly comply with the provisions of the By-laws of the Association and applicable provisions of the other condominium documents, and all agreements, regulations, and determinations lawfully made by the Association and its directors, officers or agents shall be binding on all such owners and other persons. A failure to comply with the By-laws or the provisions of the other condominium documents or any agreement or determination thus lawfully made shall be grounds for an action to recover sums due for damages on the part of the Association or any owner as applicable and for mandatory or other injunctive relief without waiving either remedy.

3. **Included Powers; Foreclosure of Lien; Waiver of Partition.** Each owner agrees that the Association has and shall exercise all powers, rights and authority granted to it, as are more particularly set forth in the condominium documents, including but not limited to the making of assessments chargeable to owners, including, but not limited to, a monthly dues charge, a one time non-refundable charge of thirty-two cents (\$.32) per square foot as an Association Reserve Fee due from each purchaser at the time of closing on the purchase of each unit, and such other special assessments as are referenced hereafter, commencing with the sale from Developer to the initial unit owner and continuing with each sale transaction thereafter, and the creation of a lien on suites thereby, and the right, acting on behalf of the suite owners, to foreclose the lien thereof and acquire a suite at foreclosure sale and to hold, lease, mortgage or convey the same; all suite owners shall be deemed to have waived all rights of partition, if any, in connection with such acquisition. Notwithstanding the above, no dues and/or assessments shall be required as to any unit owned by the Developer until completion of the first sale of the same.

4. **No Avoidance by Waiver of Use; Right of Entry.** Each owner shall be liable for all assessments for their suite or suites made by the Association for common expenses and liabilities of the Association and the condominium property and regime. The liability of a Suite owner for all assessments made by the Association may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of a suite for which an assessment is made. The Association shall have the right exercisable at reasonable times to enter a suite as may be necessary or advisable to carry out its responsibilities.

5. **Management Contract.** Pursuant to authority granted in its By-laws, the Association shall enter into an agreement with the Developer or their assigns for professional management of its affairs for an initial term not to extend beyond December 31, 2010, and the management fee thereof shall be a common expense. Such fee shall be comparable with similar types of fees paid for similar types and quality of services provided in the Des Moines metropolitan area. After the initial term, the Association shall enter into a Contract or Contracts with a party or parties (including Developer) to provide management services to the common areas of the properties.

6. **Discharge of Liability.** The owner shall promptly discharge any lien which may hereafter be filed against his condominium.

7. **Limitation of Association's Liability.** The Association shall not be liable for any failure of heat, air conditioning, water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to property caused by or on the common elements or by another owner or person in the project, or resulting from electricity, water, rain, air, dust, dirt or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless caused by gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the common area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

8. **Indemnification of Officers and Directors.** Each member of the Association shall be indemnified by the owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been an officer or director of the Association or any settlement thereof, whether or not he is an officer or director at the time such expenses are incurred, except in such cases wherein such person is adjudged guilty of or liable for willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association.

9. **Association as Attorney-in-fact for Owners.** The Association is hereby irrevocably appointed attorney-in-fact for the Owners of each and every Condominium to

manage, control and deal with the interest of such Owners in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder to deal with Ashworth Park Commercial Plaza upon its destruction or obsolescence as hereinafter provided, and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards as hereinafter provided. The acceptance by any person or entity of any interest in any condominium shall constitute an appointment of the Association as an attorney-in-fact as provided above.

10. **Subordination of Assessment Liens.** If any suite subject to a lien created by any provision in this Declaration shall be subject to the lien of a first Mortgage of record: (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of such Mortgage or the acceptance of a deed in lieu of the foreclosure by the Mortgagee, shall not operate to affect or impair the lien except that assessment liens, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed, in lieu of foreclosure-purchaser and purchasers therefrom taking title free of assessments, if any, that have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or deed given in lieu of foreclosure, but subject to assessment liens that shall have come due subsequent to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure. All assessment liens as shall have come due up to the expiration of the applicable redemption period and issuance of a sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of a deed in lieu of foreclosure and have not been paid shall be deemed to be an expense of the Association, but this shall not derogate the Association's right to collect said sums from the defaulting owner personally.

11. **Special Assessments.** In addition to the above, the Association shall have the right to levy and collect special assessments against certain suites for disproportionate usage of water, trash collection, or other common services provided by and paid for by the Association as a common expense. This power shall be limited as stated in the By-laws of the Association.

**ARTICLE V**  
**Maintenance, Alteration and Improvement**

1. **Definitions.** Certain terms used in this Article shall have a meaning as follows, provided any dispute over the characterization of work within one of the following meanings shall be conclusively decided by the Board of Directors of the Association.

- a. "Maintenance" or "repair" shall mean the act of maintaining, restoration, renovation, reconstruction, replacement, rebuilding and similar work necessary to preserve a suite, the building, the common elements, or the property in its condition as of the date of the completion of such improvements or restoration.

- b. "Improvement" shall mean the addition of a new structure, element or facility, other than structure, element or facility otherwise provided for by this Declaration or any Supplementary Declaration.

2. **Maintenance by Association.**

- a. The Association shall maintain all common elements, whether limited or general, and shall make assessments therefor as a common expense except where the cost of maintenance has been specifically made the responsibility of each suite in which case, each such suite shall be assessed on an individual basis.
- b. The Association shall repair incidental damage caused to a suite through maintenance by the Association and shall assess the cost thereof as a common expense.
- c. If a suite owner defaults on his responsibilities of maintenance, the Association shall assume such responsibilities and shall assess the cost thereof against the owner of such suite and such assessment shall be collectible from the suite owner as if it were an assessment for common expenses.
- d. The Association may, in its discretion, assume responsibility for any maintenance project which requires reconstruction, repair, rebuilding, renovation, restoration or similar work to one or more suites and the cost thereof may in the discretion of the Association, either be assessed against each suite on which such costs were incurred or be assessed against all suites as a common expense according to the circumstances.
- e. The Association shall be responsible for pest control in the Common Areas and the cost thereof shall be assessed in equal shares against all of the Units in this Condominium Regime.

3. **Maintenance by Owner.**

- a. Each suite owner at his own expense shall maintain the interior, including the boundary surfaces, of such suite and its equipment, shall keep such interior in a clean and sanitary condition, shall do all redecorating, painting and other finishing which may at any time be necessary to maintain his suite, and shall be responsible for the maintenance of all personalty including carpets, furnishings, and appliances within such suite.
- b. The owner of each suite shall be responsible for maintenance of its designated storage area and any plumbing fixture, lighting fixtures, appliances, heating, ventilation, air-conditioning equipment, and hot water heater located in or connected with such suite and for its exclusive use. The owner shall also, at his

own expense, keep in a clean condition any limited common area which is for the exclusive use of his suite; and neither the Association nor the regime shall be liable or responsible for any loss or damage caused by theft or otherwise of articles which may be stored by the owner in a limited common area or in a suite except for the repair specifically made the responsibility of the Association for damage caused to a suite through its maintenance as provided in Section 2(b) of this Article.

- c. The suite owner shall maintain, at his expense, any improvement or other alteration made by him.
- d. The owner of each suite shall promptly report to the Association any defects or other maintenance needs which are the responsibility of the Association.

4. **Alterations or Improvements by Owner.** No suite owner shall make or permit to be made any structural alteration to a suite or to the building or any of the common elements, limited or general, without first obtaining written consent of the Board of Directors of the Association which shall determine the proper insurance of such improvement or other alteration, and the effect of such improvement or alteration on insurance of other property of the regime, and which shall arrange with such suite owner for the payment of the cost of any additional insurance thereby required. In the case of alterations within a suite the consent required by the preceding sentence shall be immediately granted upon agreement of the suite owner to pay the cost of such additional insurance, and a determination that such alteration will not impair the structural soundness of the building or safety of the property. Alterations to the exterior of the building or common element shall not be made, if, in the opinion of the Board of Directors of the Association, such alteration would not become the integrity and appearance of the regime as a whole. Such owner shall do no act or work which will impair the structural soundness or integrity of the building or safety of the property or impair any easement. The improvement or alteration of a suite shall cause no increase or decrease in the number of ownership suites appurtenant to such suite.

5. **Improvements by Owner Located in Other Suites.** Any owner making improvements to their suite which requires work in an occupied suite owned by another owner shall first notify the affected owner and make arrangements to enter said suite to construct his improvements. In any event, this right of entry is limited to times approved by the affected owner and any dispute concerning this shall be conclusively determined by the Board of Directors of the Association.

6. **Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors the common elements shall require addition, alterations or improvements during the fiscal year costing more than \$5,000.00, and the making of such additions, alterations or improvements shall have been approved by a majority of the ownership suites, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all suite owners for the proportionate cost thereof as a common charge. Any additions, alterations, or improvements during the fiscal year costing less than \$5,000.00 or less may be made by the

Board of Directors without approval of suite owners, and the cost thereof shall constitute part of the common expenses. Notwithstanding the foregoing, the Developer shall be entitled to loan sufficient funds to the Association necessary to the set up and furnishing of the common areas in consideration of a Promissory Note from the Association and in favor of the Developer to be paid in full with interest on such terms as are fair and reasonable to the Association and the Developer.

7. **Construction of Internal Boundary Walls.** In the event an owner constructs or reconstructs an internal perimeter boundary wall between suites, such owner shall first obtain written approval from the Board of Directors of the Association upon submission of plans for construction. The construction shall meet all applicable building and fire codes, and in any event, the construction or reconstruction shall be at a minimum double-laminated, insulated for sound and rated a one hour fire wall for all internal boundary walls. The walls shall extend from the floor to the bottom of the floor above or to the roof, as the case may be.

**ARTICLE VI**  
**Conditions of and Restrictions on Ownership, Use and Enjoyment**

1. **Subjection of the Property to Certain Provisions.** The ownership, use, occupation, and enjoyment of each suite and of the common elements of the regime shall be subject to the provisions of the By-laws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all suites and owners thereof and their respective assigns, lessees, tenants, occupants, and successors in interest.

2. **Use of Property.** The condominium property shall be used in accordance with and subject to the following provisions:

- (a) No suite shall be used other than for single family residential purposes.
- (b) Nothing in this Article or elsewhere herein shall be construed to prohibit the Developer from the use of any condominium which Developer owns for community or civic purposes, promotion, marketing or display purposes as "model" or from leasing any suite or suites which Developer owns.
- (c) The right to use or occupy any condominium suite within the project, permanently or otherwise, and the right to sell, rent, lease or otherwise transfer or convey any condominium suite may be subject to such uniform objective standards relating to financial responsibility and/or character as may now or hereafter be set forth as determined by the Board of Directors of the Association. No such restriction shall be based upon race, religion, sex or place of national origin.

- (d) No noxious or offensive activity shall be carried on in any condominium suite, nor shall anything be done or be permitted to remain in any condominium suite which may be or become a nuisance or annoyance to owners. Owners and/or tenants, shall exercise care not to disturb other owners or tenants with excessive noise.
- (e) There shall be no obstruction of any common elements. Nothing shall be stored upon any common elements (excepting those areas designated for storage of personal property by the owners of the condominium suites) without the approval of the Association. Vehicular parking upon general common elements may be regulated or assigned by the Board of Directors of the Association.
- (f) There shall be no use which violates a restrictive use provision as set forth in Article III (5) herein.
- (g) Signs.
  - (i) There shall be no signs affixed to the building except building identification signs.
  - (ii) Identification signage on the door to each suite shall be uniform throughout the building pursuant to rules and regulations adopted by the Board of Directors as provided in subparagraph (iv) below.
  - (iii) There shall be no signage permitted to be displayed or affixed to any window of the condominium.
  - (iv) The Board of Directors of the Association shall adopt rules and regulations concerning signs including a directory sign and shall have authority to grant exceptions and variances concerning signs. In any event, all rules and regulations for signs shall be uniform and equally enforced.
- (h) No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted within any condominium suite or be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose.
- (i) No structure of a temporary character shall be maintained upon any common elements at anytime.
- (j) No owner or other person shall install any electrical or telephone wire, television antenna, or other antenna, air conditioning suite or other machine or device on the exterior of the building without the approval of the Board of Directors of this Association.



- (k) Nothing shall be altered in, constructed in, or removed from the common elements except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association, and further provided that any holder of a first mortgage which acquires possession of a suite by foreclosure or by deed in lieu of foreclosure shall have the right to post signs for the sale or rental of such suite until such suite is sold or a rental is entered into.
- (l) No more than two animals may be kept by the Owner of a Unit, in any Unit. No more than two dogs or two cats; or one dog and one cat. No more than one dog which must weigh less than 75 pounds at any stage of growth, or two dogs with a combined weight not to exceed 75 pounds at any stage of growth, or two cats. No exotic, dangerous or vicious animals shall be allowed. In no event shall an Owner or its guests, family members and invitees, have or allow a pet considered vicious or dangerous, including without thereby limiting, dogs which have the appearance and characteristics or being predominately of breeds of Staffordshire terrier, American pit bull terrier or American Staffordshire terrier. Any pets shall not be left unattended by the Owners, may not be tied up in any common area and shall not be allowed to run free. All pets outside of a Unit must be on a leash and at all times accompanied by an adult. Owners shall be fully liable for any injury or damage to any person or to the common area caused by Owner's pet. Each Owner shall be responsible for cleaning up all waste of their pet(s). Any damage done by any pets, including dragging chains, digging, scratching or chewing shall be the responsibility of the Owner of such pet, including, but not limited to, any such damage done to landscaping. No owner shall be allowed to chain or otherwise confine their pets in the common area at any time. Pets are not allowed around the pool or hot tub areas. Fencing or invisible fencing is not allowed. The Association may levy a \$25.00 per incident fine for any pet waste that is not cleaned up by the Owner of such pet. The Association Board may adopt such other rules and regulations regarding pets as they may deem appropriate, and in the event that in the judgment of the Association, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Property upon written notice of such determination by the Association.
- (m) No activity shall be allowed which unduly interferes with the peaceful possession and use of the property by the suite owners nor shall any fire hazard or unsightly accumulation of refuse be allowed.
- (n) Nothing shall be done or kept in any suite or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his suite or in the common area which will result in the cancellation of insurance on any suite or any part of the common area, or which would be in violation of any law.

- (o) The Association shall have the authority to adopt rules and regulations governing the use of the property and such rules shall be observed and obeyed by the owners, their guests, licensees and business invitees.
- (p) Agents of or contractors hired by the Association may enter any suite when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the owners as practicable.
- (q) A suite owner shall give notice to the Association of every lien against his suite other than permitted mortgages, taxes, and Association assessments, and of any suit or other proceeding which may affect the title to his suite, within ten days after the lien attaches or the owner receives notice of such suit.
- (r) A suite owner shall be liable to the Association for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom.
- (s) The Owners of each Unit shall be required to provide to the Association Manager a key that allows for emergency access to the Unit or common area maintenance with prior notice. Any change in the lock by the Unit Owner will require the substitution of a new key for access by the Manager.

3. **No Waiver.** Failure of the Association or any owner to enforce any covenants, condition, restriction, or other provision of Chapter 499B of the Code of Iowa, this Declaration, the Articles of Incorporation or By-laws of the Association, or the rules and regulations adopted pursuant thereto, shall not constitute a waiver of the rights to enforce the same thereafter.

**ARTICLE VII**  
**Condemnation**

1. **Taking By Eminent Domain.** Payment for the taking of a portion of a suite or the common elements by eminent domain or the conveyance under threat thereof shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to owners, the suite owners shall deposit the awards with the Insurance Trustee. And, in the event of failure to do so, in the discretion of the Association a special assessment shall be made against a defaulting owner in the amount of his award, and the amount of such award shall be set off against the sums hereinafter made payable to such owner. The proceeds of the award shall be distributed or used in a manner heretofore provided for insurance proceeds except that when the Horizontal Property Regime is not to be terminated, and one or more suites are taken in part, the taking shall have the following effects:

a) **If the Suite is reduced but tenable.**

If the suite taking reduces the size of the suite, and the remaining portion of the suite can be made tenable, the award for the taking of a portion of the suite shall be used for the following purposes in order stated, and the following changes shall be effected in the Horizontal Property Regime:

- (i) The suite shall be made tenable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the owner of the condominium suite.
- (ii) The balance of the award, if any, shall be distributed to the owner of the suite and to each mortgagee of the suite of record, the remittance being payable jointly to the owner and the mortgagees.
- (iii) If the taking reduced the gross area of the suite, the ownership suite shall be reduced on an equitable basis to be determined by the Association.

b) **Suite made untenable.**

If the taking destroys or so reduces the size of the suite that it cannot be made tenable, the awards for the taking of the suite shall be used for the following purposes in the order stated, and the following changes shall be effected in the Horizontal Property Regime:

- (i) The market value of such suite immediately prior to the taking shall be paid to the owner of the suite and to each mortgagee of the suite of record, the remittance being payable jointly to the owner and the mortgagees.
- (ii) The remaining portion of such suite, if any, shall become a part of the common elements and shall be placed in condition for use by all of the suite owners in a manner approved by the Association; provided, if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be paid for by assessment as a common expense among all remaining suites.
- (iii) If the amount of the award for the taking is not sufficient to pay the market value of the condemned suite to the owner, and to condition the remaining portion of the suite for use as part of the common elements, the additional funds required for such purposes shall be raised by assessments against all of the suite owners who will continue as co-owners of condominium suites after the changes in the Horizontal Property Regime affected by the taking. In the event that the market price cannot be determined by negotiations, it shall be determined by binding arbitration in accordance with Chapter 679 of the Code of Iowa.

- (iv) If the amount of the award for the taking exceeds the amounts necessary to pay the market value of the condemned suite to the owners as provided in subparagraph (i) above, and to condition the remaining portion of the suite for use as part of the common elements as provided in subparagraph (ii) above, the excess funds shall be payable to the owner of the condemned suite.
- c) The Association shall thereafter have the right to file among the land records an amendment to this Declaration to incorporate all necessary changes.

**ARTICLE VIII**  
**Destruction, Casualty and Repairs**

1. In the event less than one-half of the entire project is damaged or destroyed by fire or other peril, it shall be deemed that the Association shall have immediately voted unanimously to repair, reconstruct or rebuild and the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications with the proceeds of insurance available for that purpose, if any. Provided, however, if 75% or more of the ownership suites within twenty days from such damage and destruction notify the Board of Directors in writing, requesting a vote of the Association members concerning the question of rebuilding, repairing or reconstructing the damage or destruction, the Association shall hold such a meeting and shall commence such rebuilding, repairs or reconstruction upon the affirmative vote of 51 % of the ownership suites.

2. In the event the proceeds of insurance are not sufficient to repair damage or if destruction is caused by any peril not herein required to be insured against, then the repair or reconstruction of the damaged common elements shall be accomplished promptly by the Association at its common expense and the repair or reconstruction of any condominium suite shall be accomplished promptly by the Association at the expense of the owner of the affected condominium suite. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities heretofore provided for in this Declaration and by the By-laws of the Association.

3. In the event that one-half (1/2) or more of the entire project is substantially damaged or destroyed by fire or other casualty and 51% or more of the ownership suites does not within thirty (30) days resolve to proceed with repair or reconstruction, then and in that event the project shall be deemed to be owned in common by the owners of all of the condominium suites in the same proportions as that previously established for ownership of appurtenant undivided interests in the common elements, and the project shall be subject to an action for partition at the suit of the owner of any condominium suite or the holder of any lien thereon, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Association or its members in common, shall be considered as one fund and shall be divided among the owners of all the condominium suites as herein provided, after first paying out of the share of the owner of

any condominium suite, to the extent such share is sufficient for the purpose, all liens upon such condominium suite.

**ARTICLE IX**  
**Insurance**

1. The Association shall obtain and maintain at all times, to the extent available, at least, the following insurance (hereinafter referred to as "Condominium Property Insurance"):

- a) Insurance on the Condominium Project in an amount equal to full replacement value of the Condominium Project (as determined annually by the Association) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection against, at least, the following:
  - (i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;
  - (ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including, but not limited to vandalism, malicious mischief, machinery explosion or damage, and such other insurance as the Association may from time to time determine; and
- b) Public liability insurance in such amounts and in such forms as may be considered appropriate by the Association including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium project or any portion thereof; and
- c) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and
- d) Non-conforming structure endorsement to the extent necessary.
- e) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Association.

2. The premiums for the insurance coverage shall be a common expense to be paid by monthly assessments levied by the Association against owners of each of the suites. The premiums attributable to coverage on the condominium suites and the Common Elements shall be apportioned among the suites.

3. The Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.

4. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by owners of suites or their mortgagees.

5. Each suite owner may obtain additional insurance at his own expense upon his condominium suite provided that no owner shall maintain insurance coverage which will tend to decrease the amount which the Association members may realize under any insurance policy which it may have in force on Ingersoll Square Condominiums.

6. All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insured named thereon, including any and all condominium suites.

7. The Association shall from time to time designate an Insurance Trustee. The Association shall be responsible for fees and expenses of the Insurance Trustee which shall constitute a common expense of Ingersoll Square Condominiums.

8. Except as hereinafter provided, the Insurance Trustee named in the condominium property endorsement shall receive and hold the amount payable under the Condominium Project Insurance and apply the same to the cost of reconstruction or repair of a damaged or destroyed condominium suite. The work of repairing or reconstruction of the damaged or destroyed condominium suite shall be commenced within thirty (30) days from the date of the damage or destruction. The work shall be accomplished in accordance with the same plans and specifications by which the condominium suites were originally constructed, subject, however, to the prior written approval of the Association. The Insurance Trustee shall make available and pay to the owner the amount of insurance proceeds received by the Insurance Trustee for the reconstruction and repair of the condominium suite. The payment of the proceeds of insurance shall be made as the work progresses at such time and upon compliance by the owner with such conditions as the Insurance Trustee shall impose, in order to assure full restoration or repair of the damaged portions of the condominium suite in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims or charges other than a first mortgage lien. If the cost of the reconstruction or repair exceeds the amount paid to the Insurance Trustee, the excess shall be paid by the owner; provided, however, that in the event a decision to reconstruct is not made according to the terms of Article IX(3) hereof, Ingersoll Square Condominiums shall be considered terminated. In the event of such termination, the Board of Directors shall have the responsibility of closing out the affairs of the Condominium Project in an orderly manner. All damaged or destroyed condominium suites must be repaired or restored if:

- a) less than 1/2 of the project is damaged or destroyed as described in Article VIII Paragraph 1 above; or

- b) more than 1/2 of the project is damaged or destroyed and a decision to reconstruct or rebuild damaged or destroyed condominium suites is made as provided for hereinabove.

9. Any insurance obtained pursuant to the requirements of this Article, except under subsection h. hereof, shall be subject to the following provisions:

- a) All policies shall be written with a company or companies licensed to do business in the State of Iowa and holding a rating of "A-XI" or better, by Best's Insurance Reports and a policyholder's rating of "A" or better.
- b) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall herein elsewhere be referred to as the "Insurance Trustee" and all proceeds covering any loss shall be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Association and the owners of all suites and their respective mortgagees as interest may appear. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and By-laws.
- c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this Article be brought into contribution with insurance issued in the name of any individual suite owner purchased as herein permitted by such owner of a condominium suite or their mortgagee. Any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements of this Article shall exclude such policies from consideration.
- d) All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon, including any and all mortgagees of the condominium suites.
- e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to erect or restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of the Declaration and the By-laws.
- f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Board of Directors, their agents

and employees, the respective condominium suite owners, their residence employees and agents. Independent contractors shall not be considered agents, employees or servants of the Association or of the respective condominium suite owners within the meaning of said waiver.

- g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:
  - (i) By any act or neglect of any occupants or owners of the building when such act or neglect is not within the control of the condominium suite owners collectively; or
  - (ii) By failure of the condominium suite owners collectively comply with any warranty or condition with regard to any portion of the premises over which the condominium suite owners collectively have no control.
  
- h) The owner of any condominium suite (including the holder of any mortgage thereon) may obtain additional insurance (including a "condominium suite-owner's endorsement" for improvements and betterments to the condominium suite made or acquired at the expense of the owner) at his own expense. Such insurance shall be written either by the same carrier as that purchased by the Association pursuant to this Article or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provisions as set forth in Section 9f of this Article.

**ARTICLE X.**  
**Utilities**

Each Unit owner shall pay all charges before they become delinquent for telephone, electricity, gas, cable television and any other service which is billed directly to the Unit owner. All other utility charges shall be paid by the Association and the costs of the same shall be a common expense to be assessed against each Unit owner as part of the regular assessment. Each Owner shall pay the separately metered utility expenses to maintain a minimum consistent temperate of fifty-five degrees Fahrenheit (55°F) within the Owner's Unit and each Owner shall be liable to every other Owner for any damage to the other Owner's Unit caused by failure to maintain a sufficient minimum consistent temperature (deemed to be 55°F) and shall be responsible to the Association for at least \$50.00 per day in liquid damages for each day in violation thereof. In no event shall the Unit Owner interrupt or discontinue utility service. In the event of a sale or transfer of a Unit, it shall be the parties' responsibility to ensure that these utilities are transferred to the name of the new Unit Owner without interruption or discontinuation of service. Failure to do so shall result in the Unit Owner being liable to the Association for at least \$50.00 per day in liquid damages for each day in violation thereof. In the event any Unit is



going to be left vacant for any period of time, the Owner shall make arrangements to ensure that the utility service to the Unit is not disrupted or interrupted.

**ARTICLE XI**  
**Amendments**

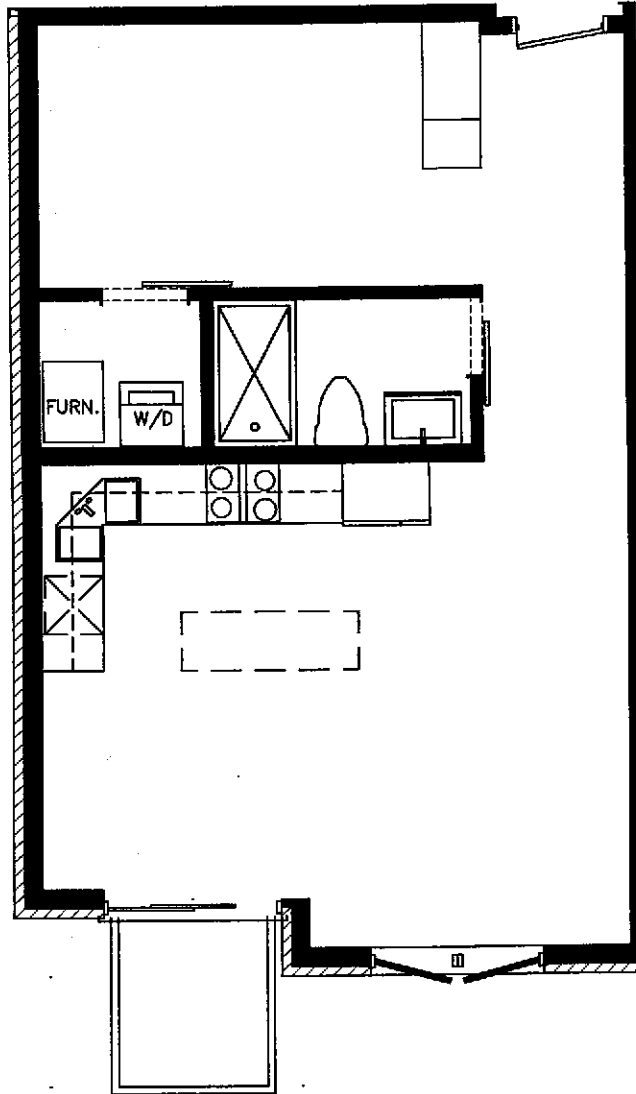
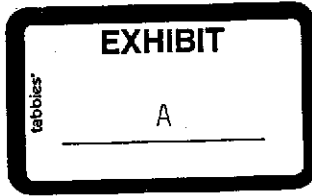
1. **Procedure.** Except as otherwise provided in this Declaration, this Declaration may be amended and such amendment shall be made in the following manner:

- a) In the case of an amendment to this Declaration by reason of an amendment to the By-laws of the Association, in the manner specified in such By-laws, such amendment shall be effective upon its execution and recordation by the President or other officer of the Association, authorized therefor by Resolution.
- b) In the case of all other amendments to this Declaration, by written agreement of two-thirds of the suite owners, provided holders of a first mortgage of record which have notified the Association of such interest shall receive notice of such amendment 30 days prior to its effective date.
- c) Developer may, until the annual Members' meeting of the Association for the calendar year 2010, make any amendments to this Declaration without the approval of the suite owners necessary to the fulfillment of the requirements necessary to the completion of this Development. Such amendment shall also be for the purpose of clarification or correction of errors in the Declaration.

2. **Effectiveness.** Upon its recordation at the Polk County Courthouse by the President or other officer appointed for that purpose, an amendment adopted in the manner specified in Section 1 of this Article shall be effective against any persons having an interest in a suite or the regime regardless of whether such person had such interest at the time said amendment was adopted in accordance with Section 1 of this Article.

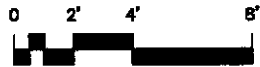


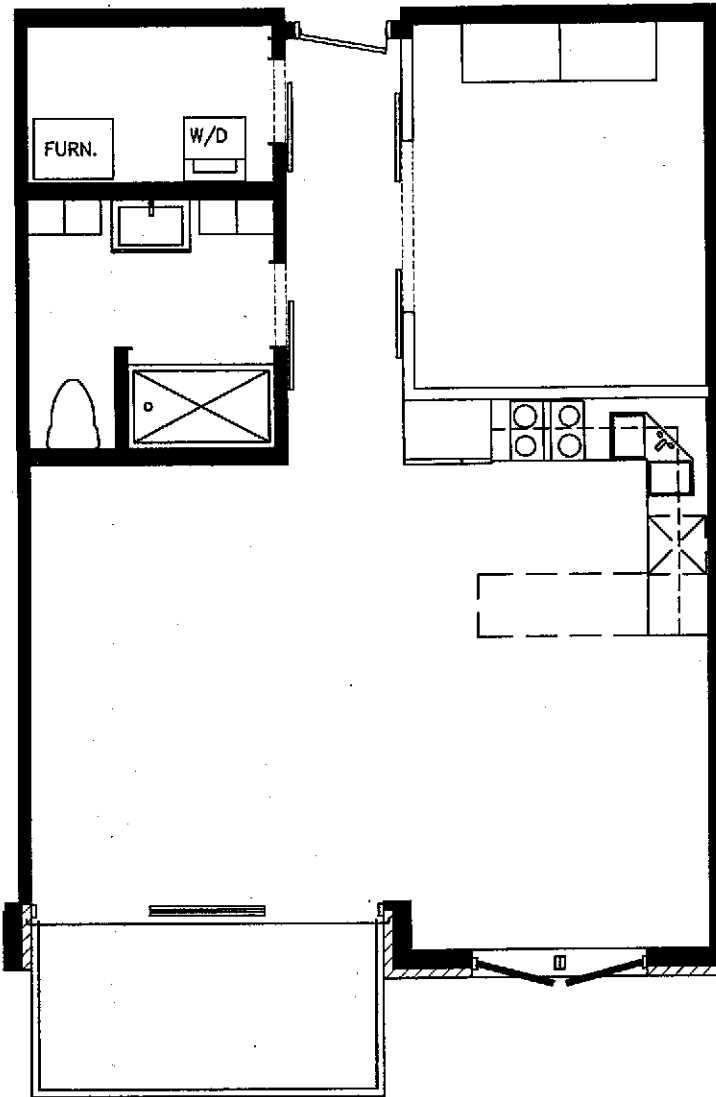
EXHIBIT	DESCRIPTION
A	Floor Plans with Area Calculations, Suite Locations and Common Areas
B	Suite Number, Square Footage, Percentage Interest and Votes
C	Assigned Parking Spaces in the Parking Garage
D	Articles of Association
E	By-Laws of Association
F	Covenants



## **A1 - ONE BEDROOM (3 units per phase)**

AREA=665 S.F.

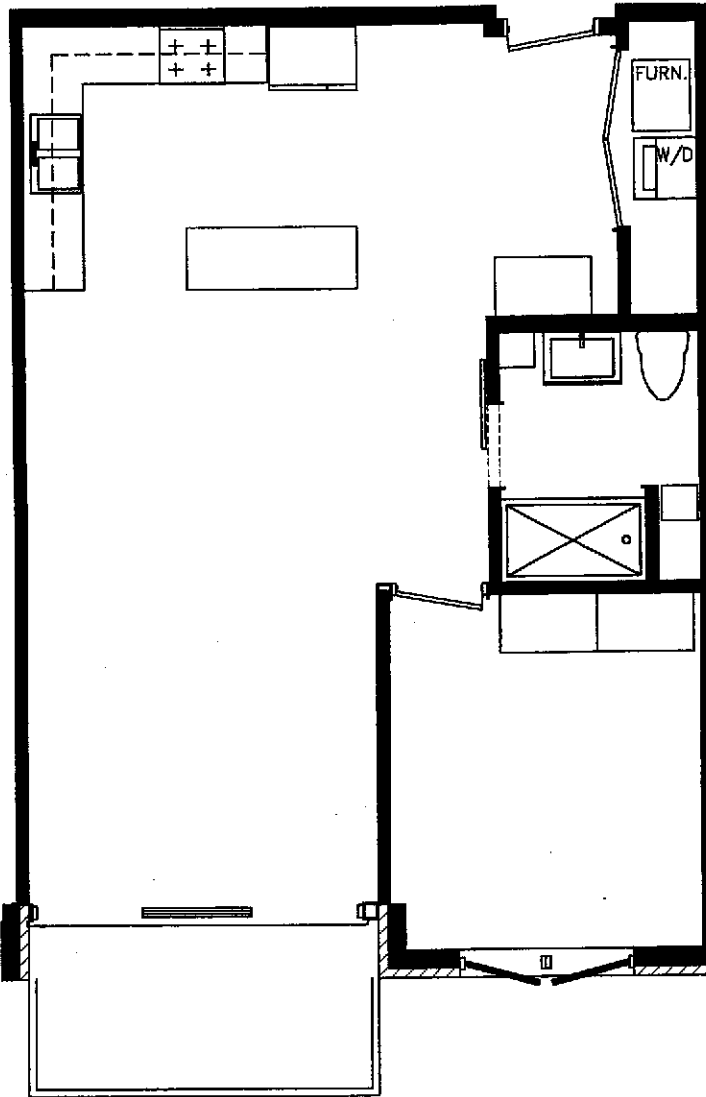




**A2 - ONE BEDROOM (30 units per phase)**

AREA=763, 795 & 796 S.F.

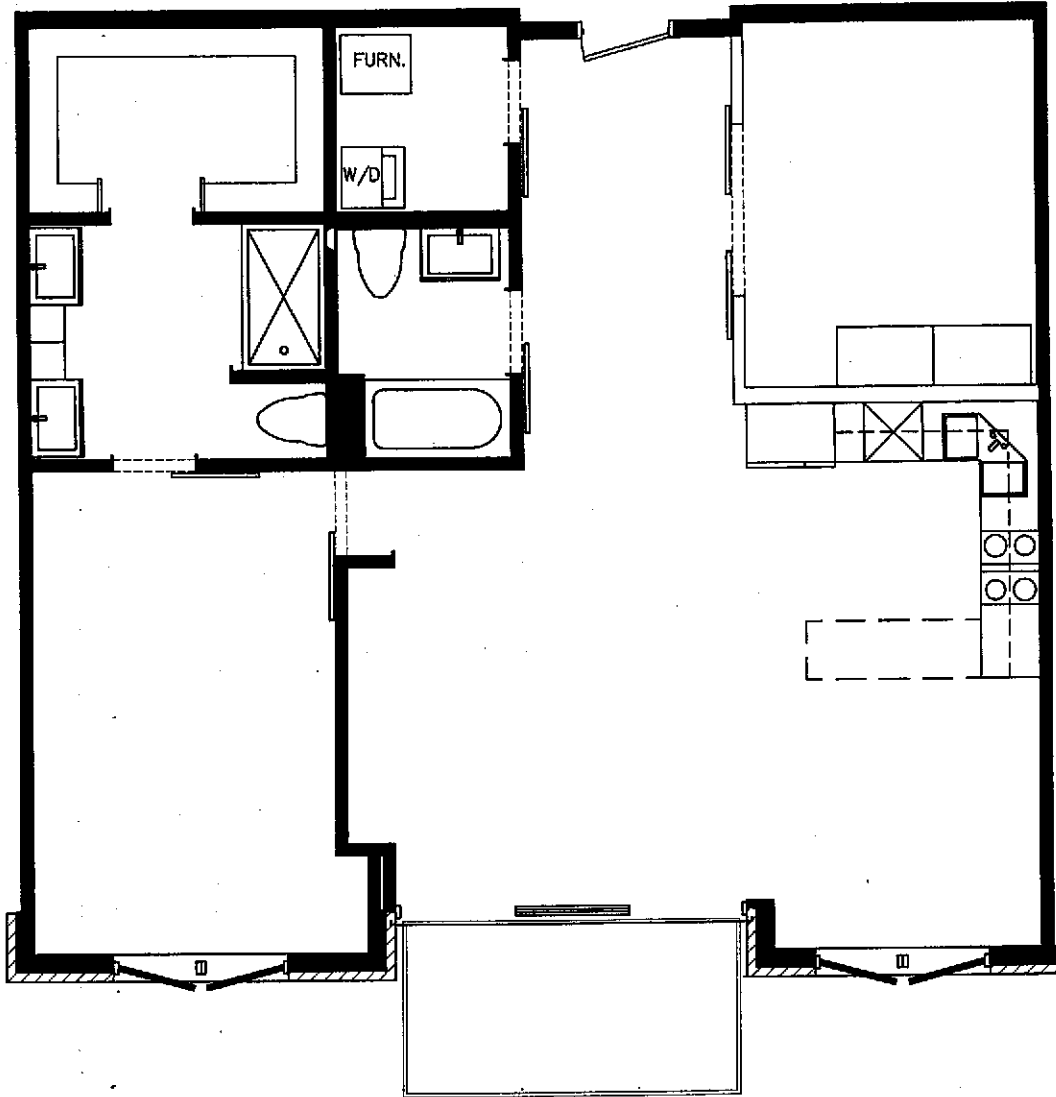




## **A3 - ONE BEDROOM (9 units per phase)**

AREA = 763, 778 & 806 S.F.

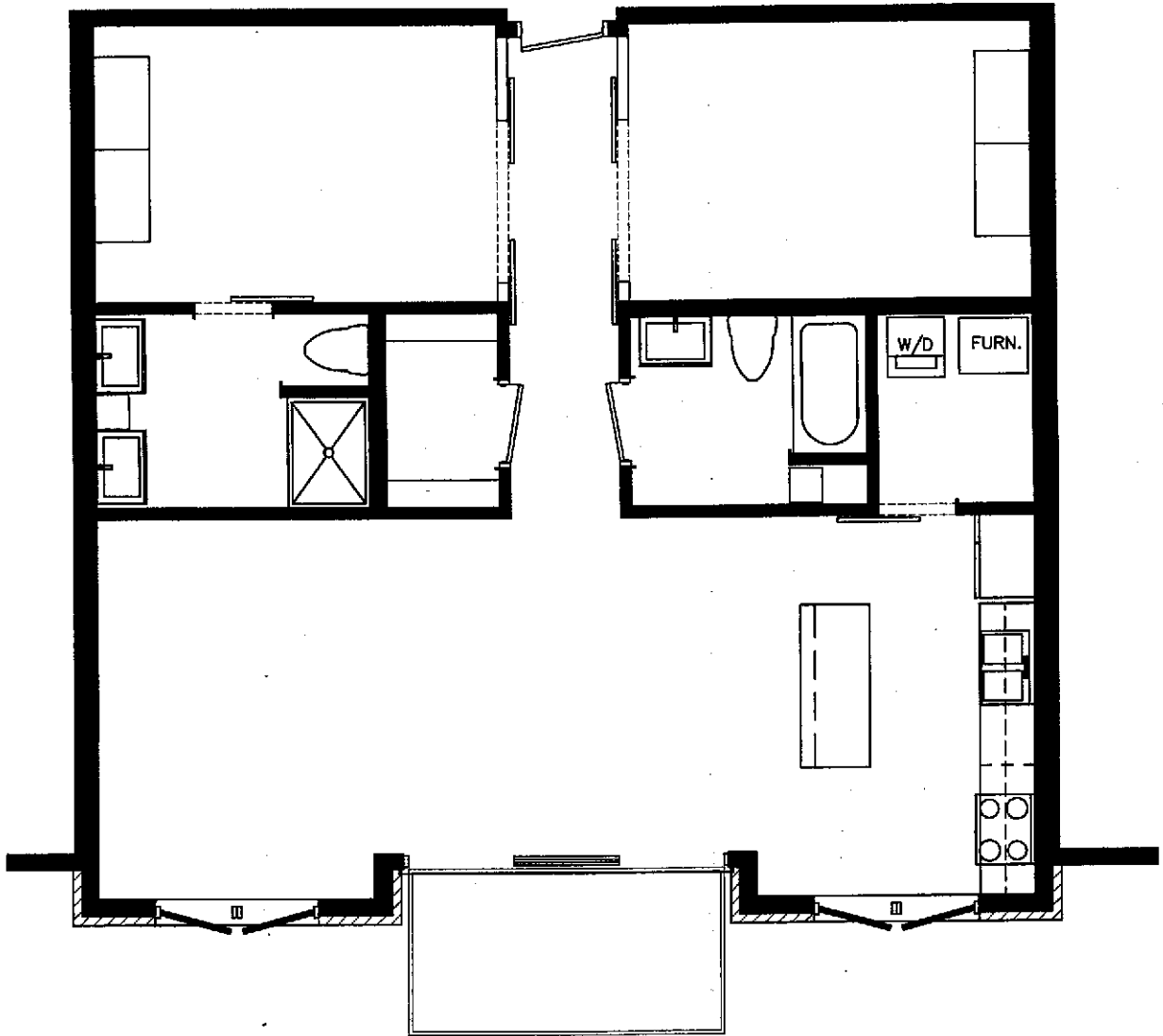




**B1 - TWO BEDROOM (6 units per phase)**

AREA = 1138 & 1140 S.F.



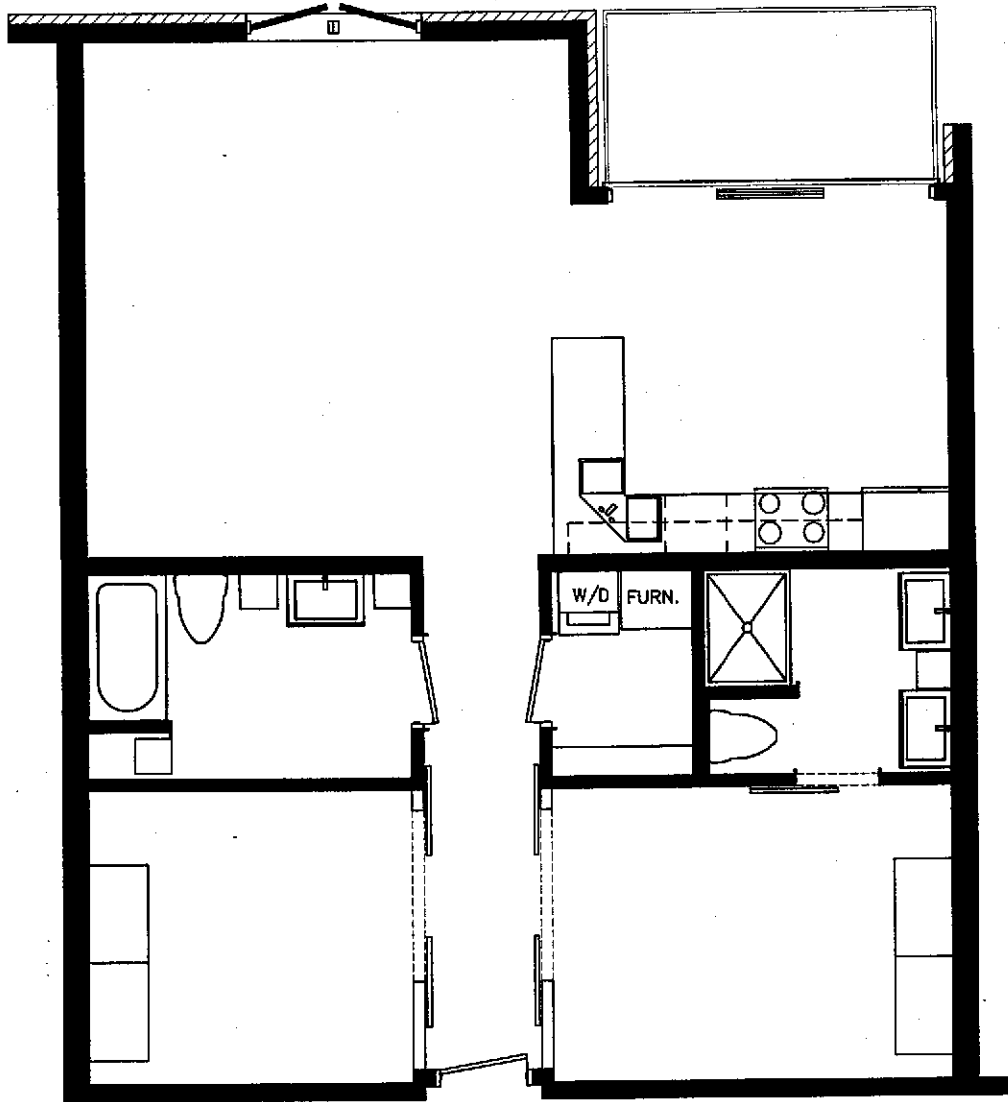


**B2 - TWO BEDROOM (6 units per phase)**

AREA = 1122 & 1149 S.F.



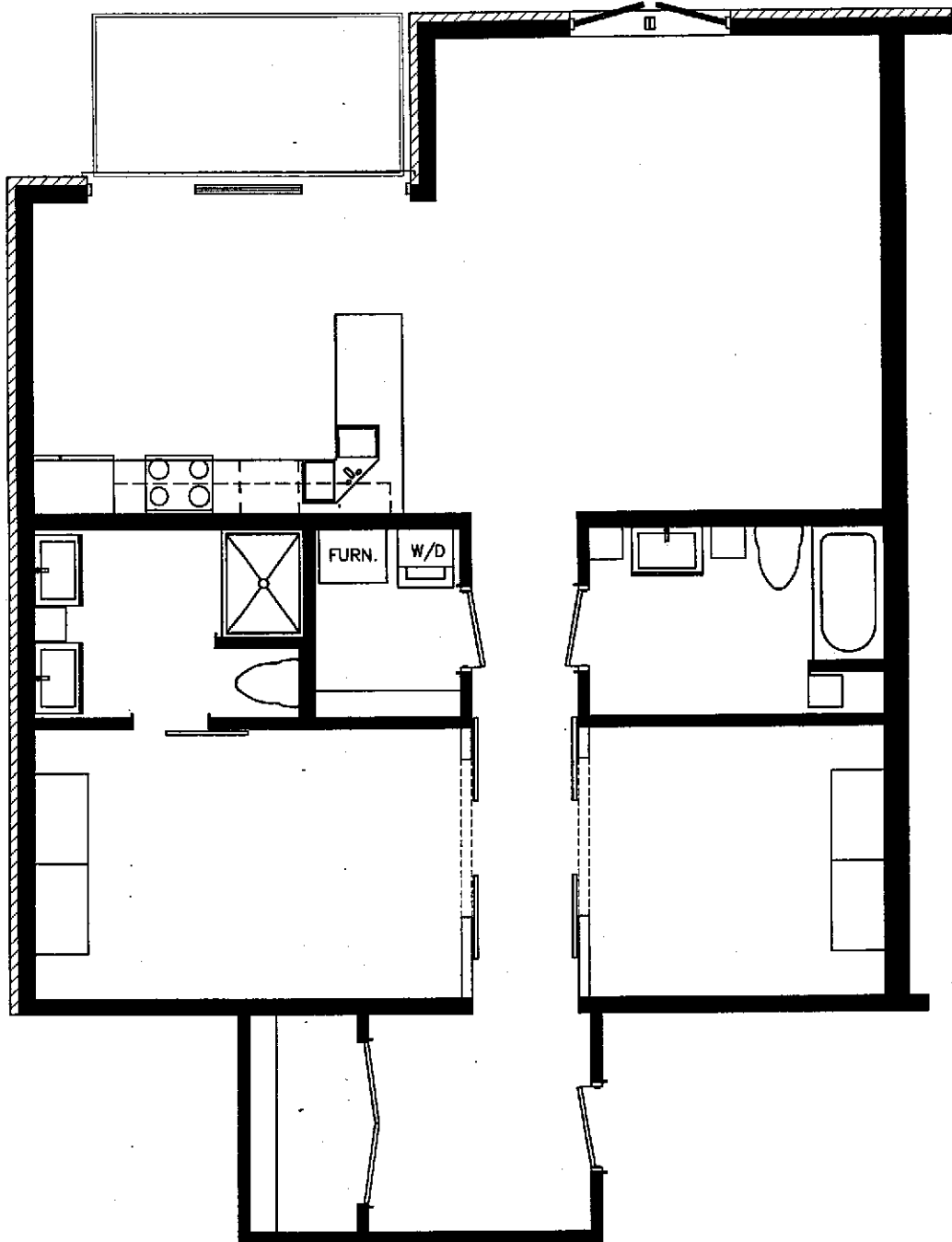




**B3 - TWO BEDROOM (3 units per phase)**

AREA=1046 S.F.





**B4 - TWO BEDROOM ( 3 units per phase)**

AREA = 1223 S.F.

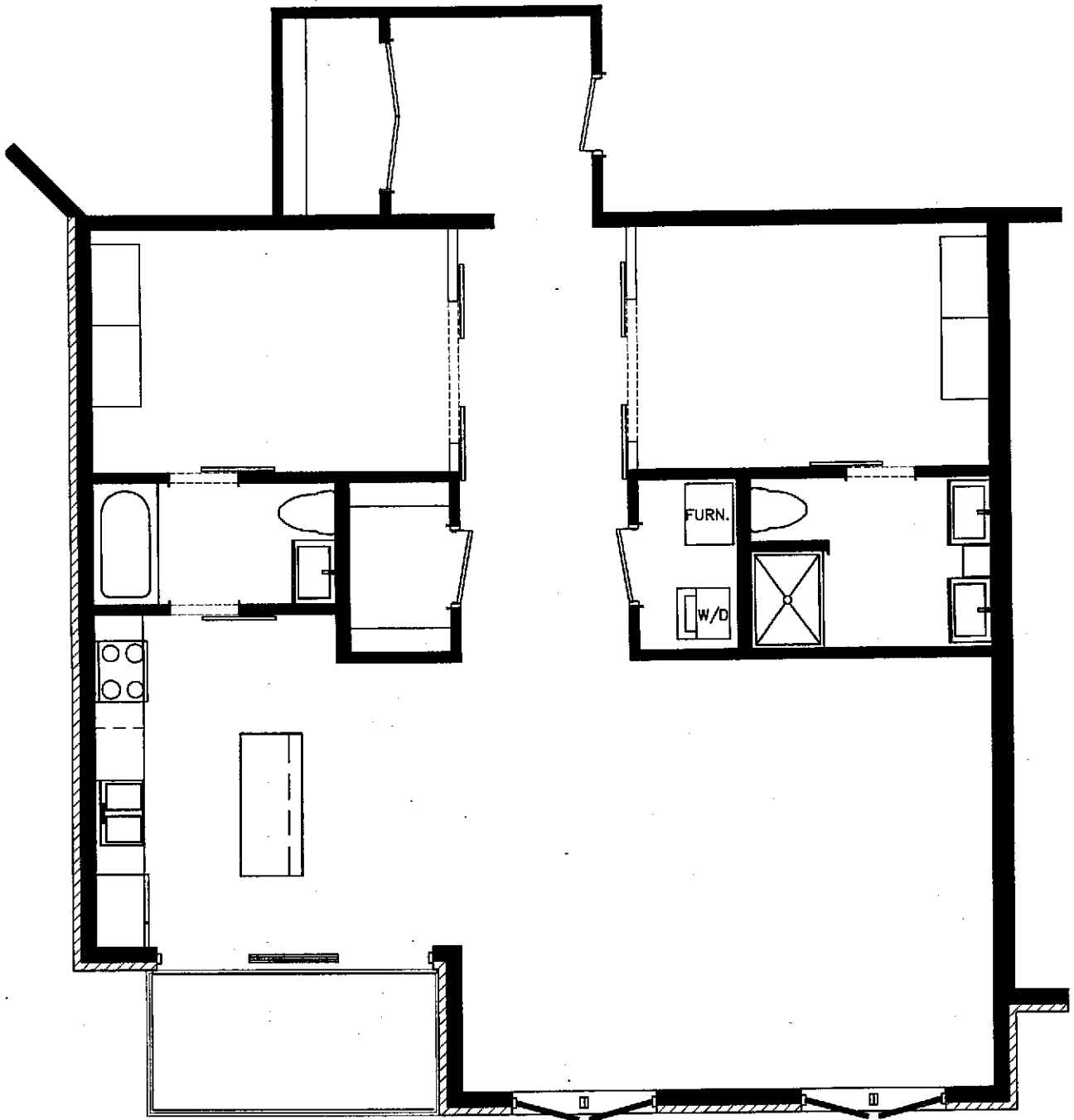




## C1 - TWO BEDROOM CORNER (6 units per phase)

AREA=1364 & 1366 S.F.

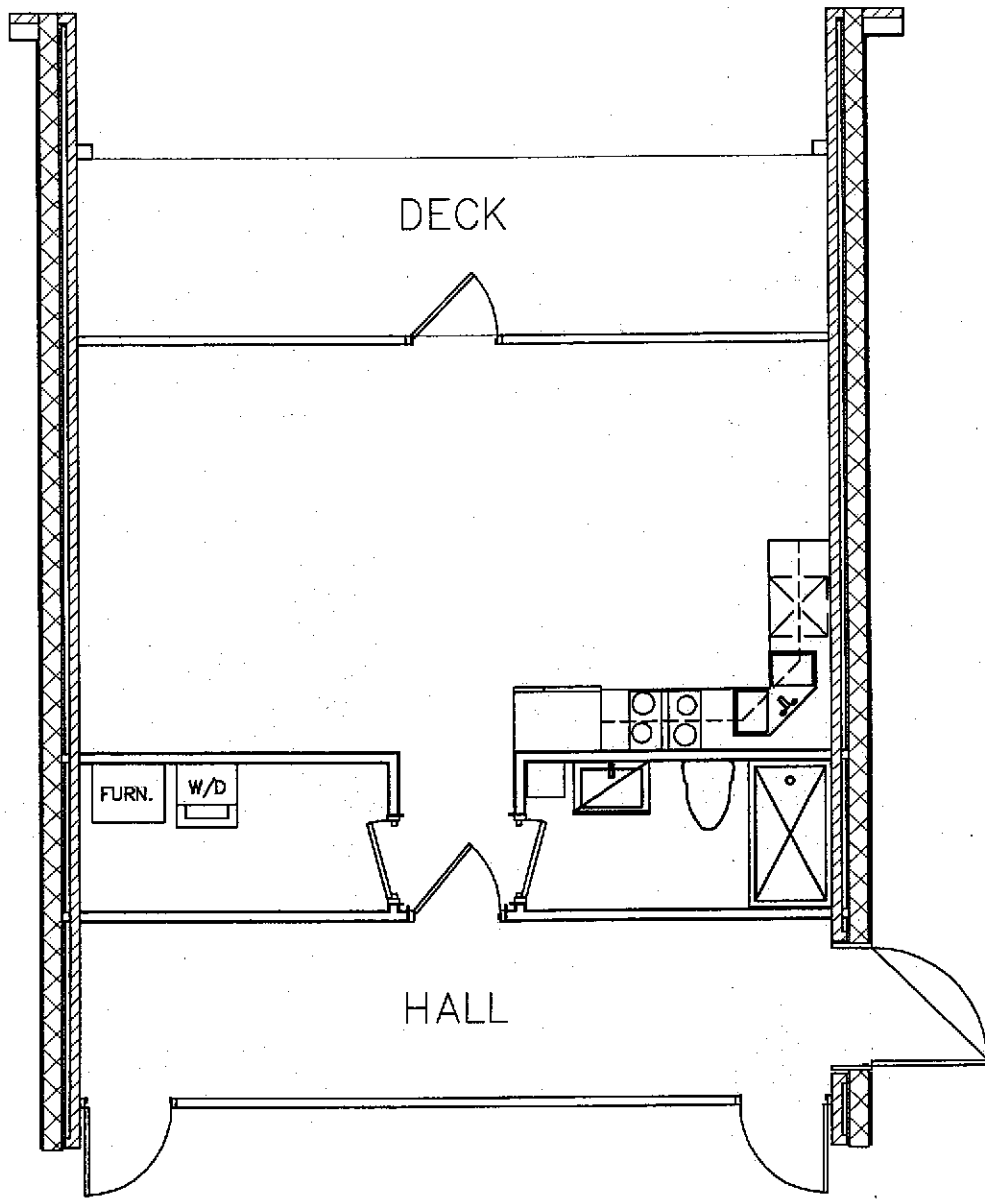




## C2 - TWO BEDROOM CORNER (3 units per phase)

AREA=1424 S.F.

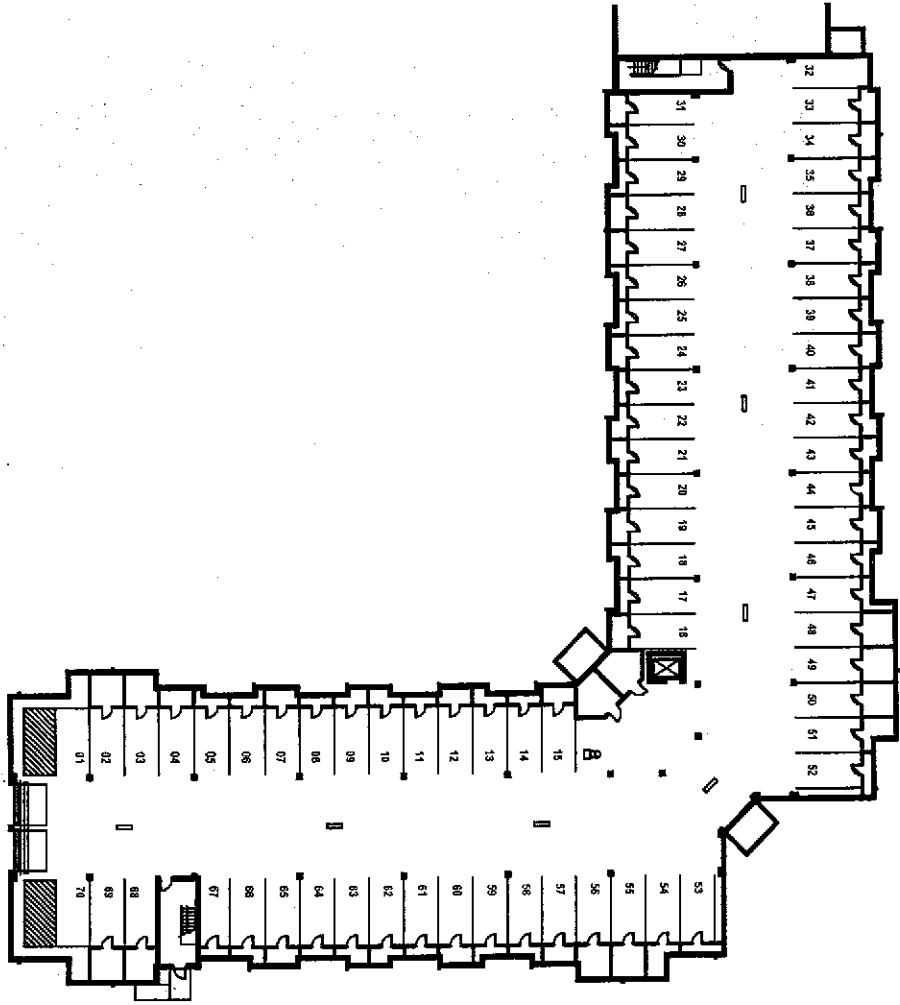


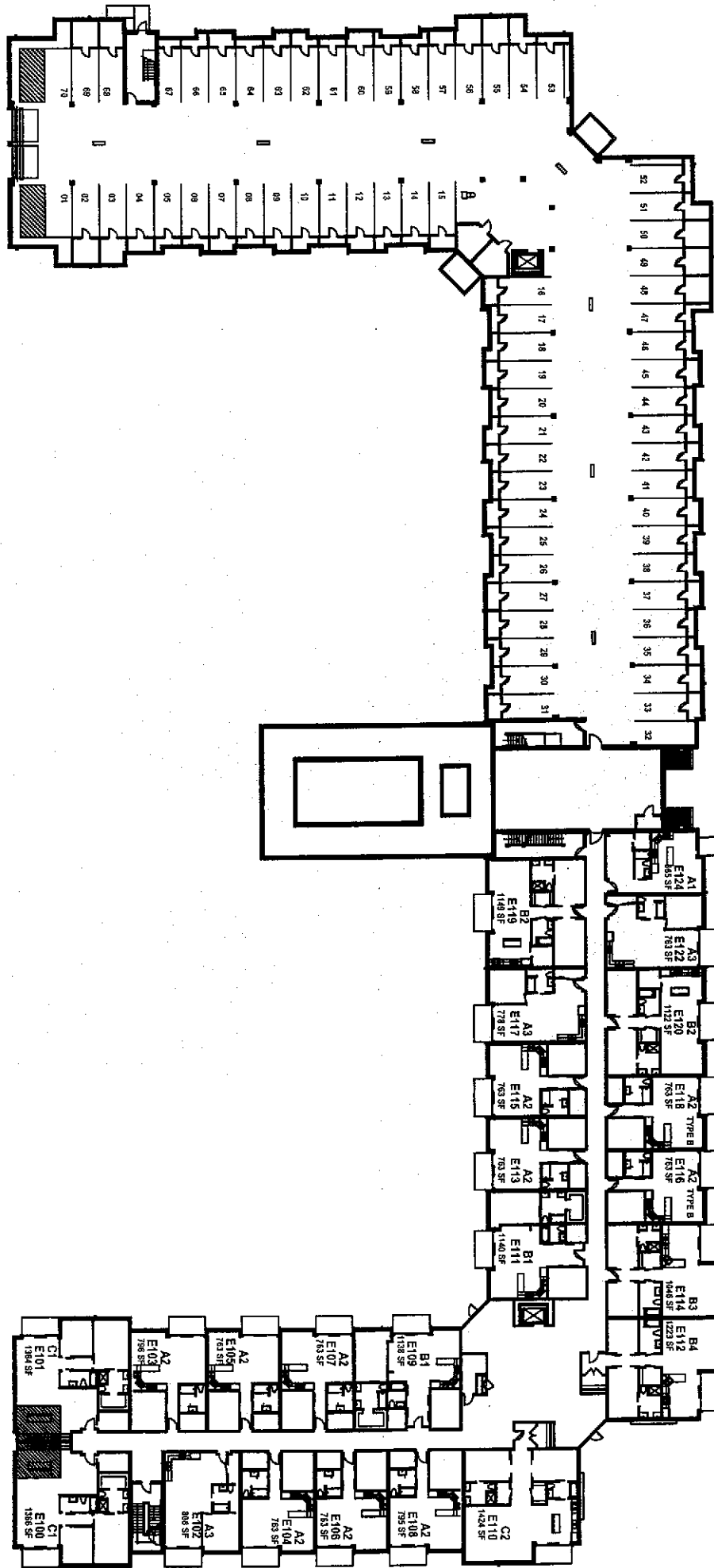


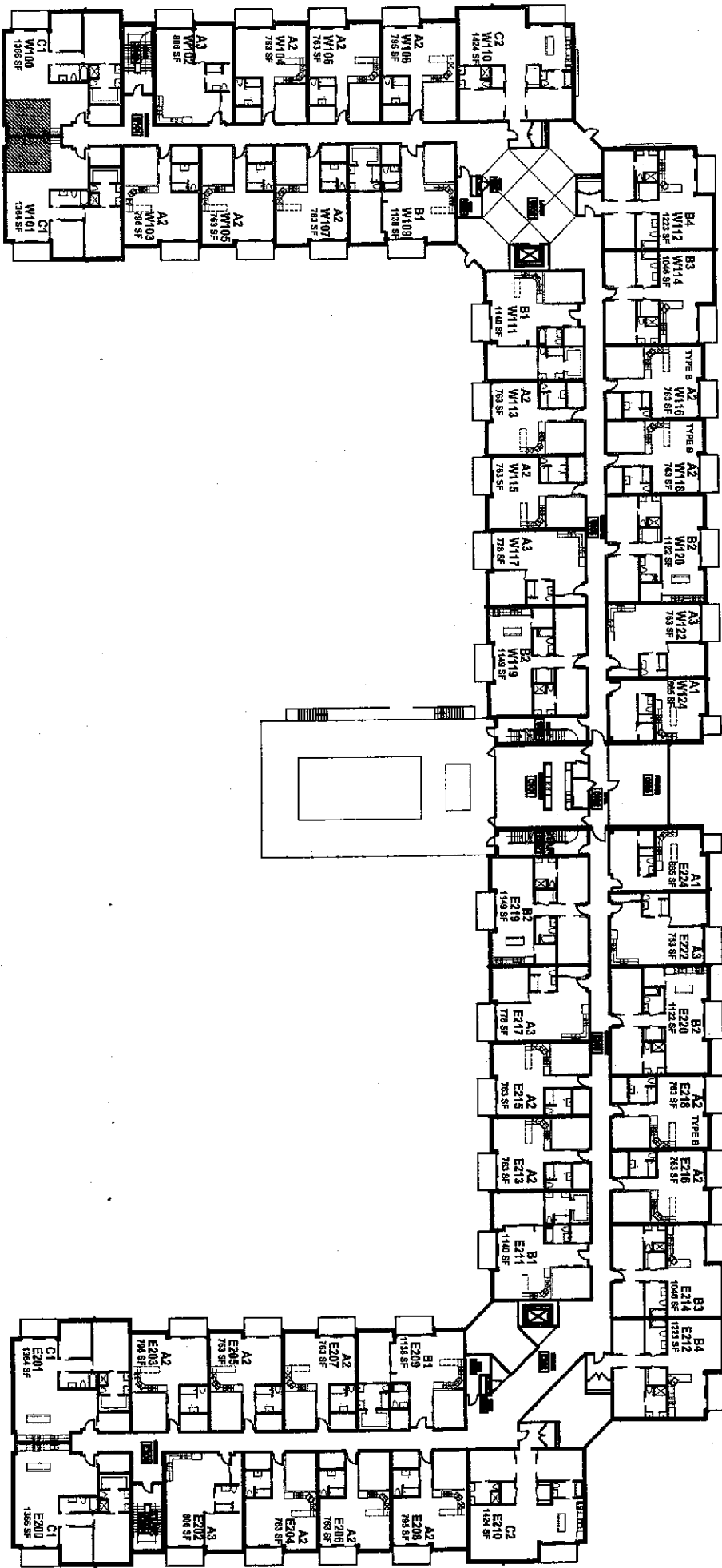
## STUDIO (1 unit)

AREA = 520 S.F.

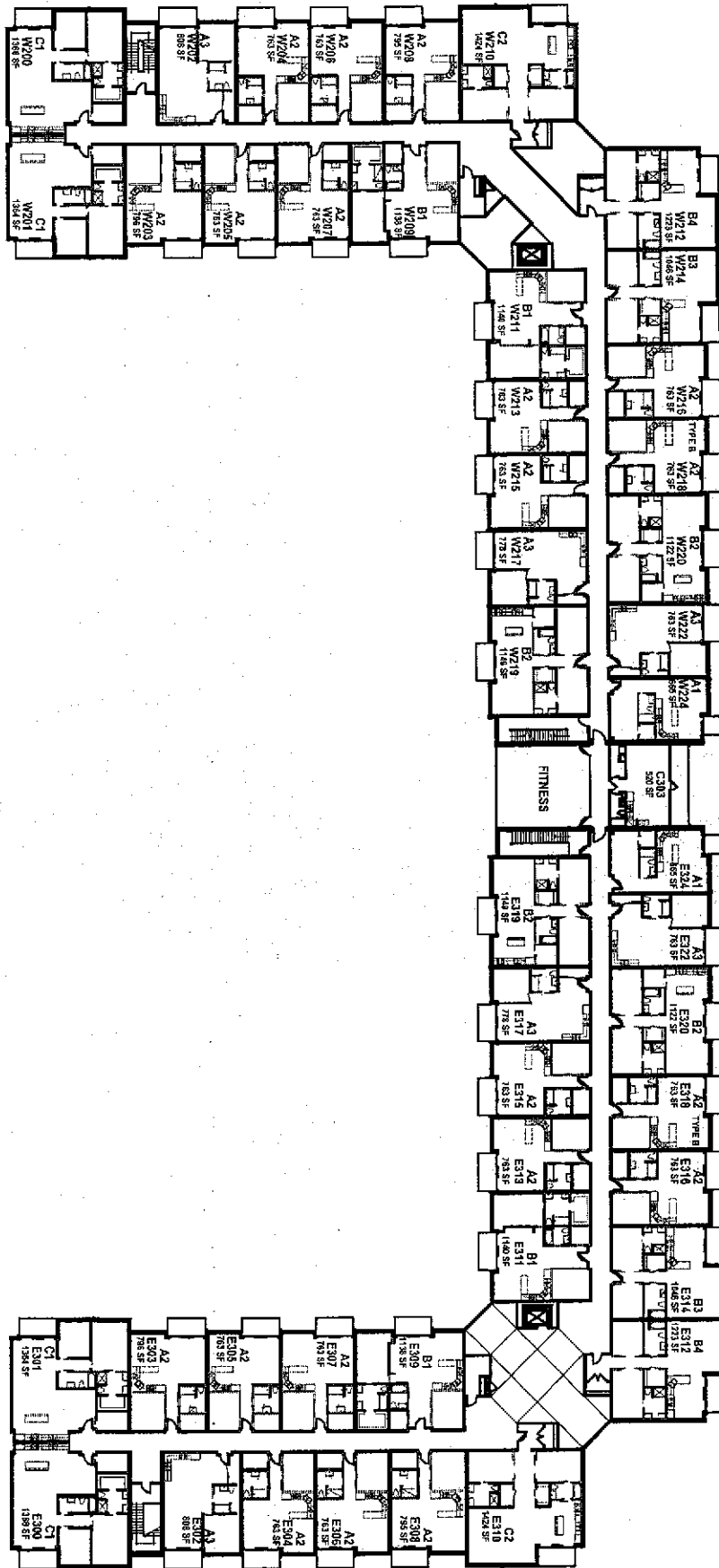


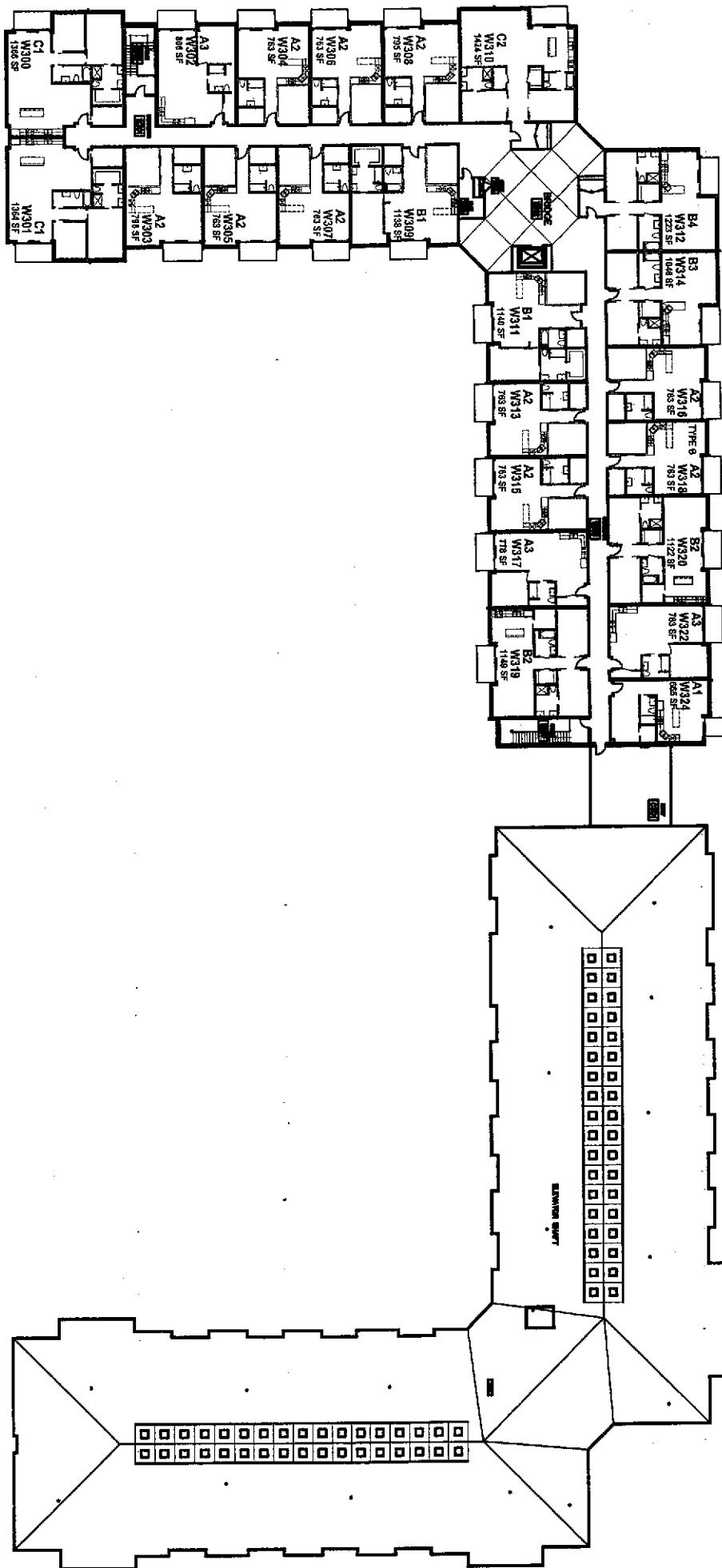


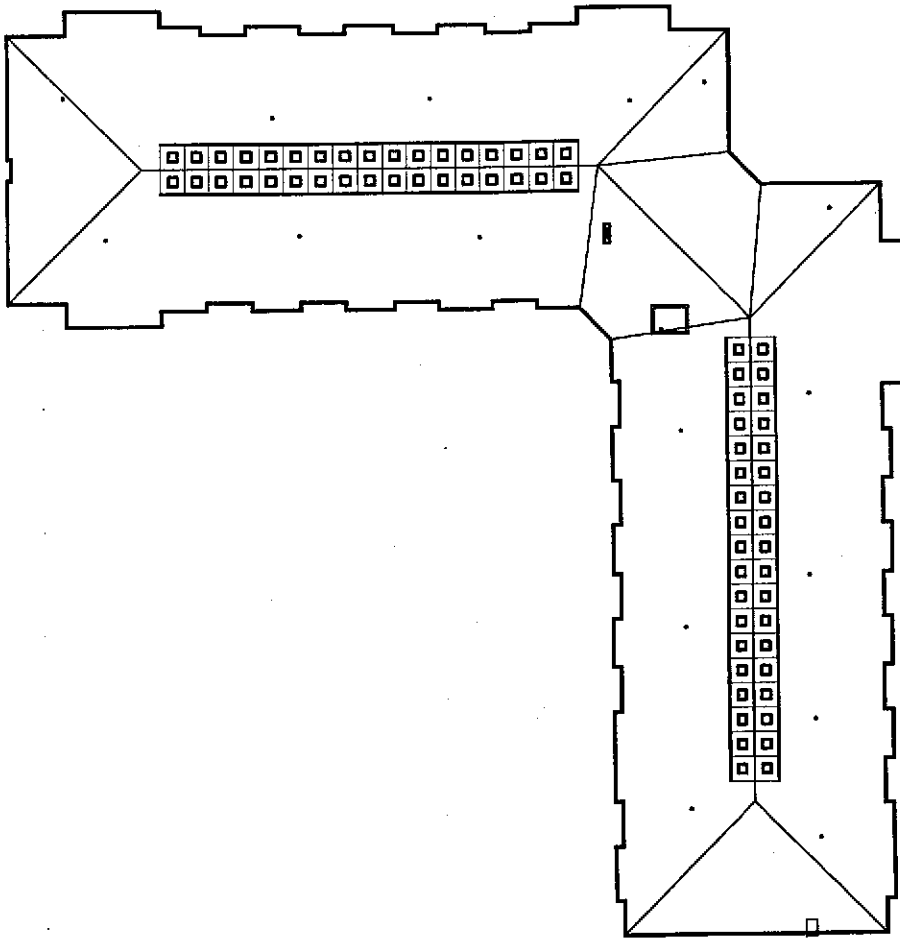












**EXHIBIT "B-1"**

BUILDING 1 (1900 High Street)

<u>Floor</u>	<u>Suite Nos.</u>
1	E100
	E101
	E102
	E103
	E104
	E105
	E106
	E107
	E108
	E109
	E110
	E111
	E112
	E113
	E114
	E115
	E116
	E117
	E118
	E119
	E120
	E122
	E124
2	E200
	E201
	E202
	E203
	E204
	E205
	E206
	E207
	E208
	E209
	E210
	E211
	E212
	E213
	E214

E215  
E216  
E217  
E218  
E219  
E220  
E222  
E224

3

E300  
E301  
E302  
E303  
E304  
E305  
E306  
E307  
E308  
E309  
E310  
E311  
E312  
E313  
E314  
E315  
E316  
E317  
E318  
E319  
E320  
E322  
E324  
C303

BUILDING 2 (2000 High Street)

1

W100  
W101  
W102  
W103  
W104  
W105  
W106  
W107  
W108

W109  
W110  
W111  
W112  
W113  
W114  
W115  
W116  
W117  
W118  
W119  
W120  
W122  
W124

2

W200  
W201  
W202  
W203  
W204  
W205  
W206  
W207  
W208  
W209  
W210  
W211  
W212  
W213  
W214  
W215  
W216  
W217  
W218  
W219  
W220  
W222  
W224

3

W300  
W301  
W302  
W303  
W304  
W305

W306  
W307  
W308  
W309  
W310  
W311  
W312  
W313  
W314  
W315  
W316  
W317  
W318  
W319  
W320  
W322  
W324

## EXHIBIT "B-2"

CONDOMINIUM AREA CALCULATIONS

CONDO NUMBER	VOTES	CONDO NUMBER	VOTES	UNIT TYPE	AREA (S.F.)	% INTEREST
E100	1	W100	1	C1	1366	0.0105
E101	1	W101	1	C1	1364	0.0104
E102	1	W102	1	A3	806	0.0062
E103	1	W103	1	A2	796	0.0061
E104	1	W104	1	A2	763	0.0058
E105	1	W105	1	A2	763	0.0058
E106	1	W106	1	A2	763	0.0058
E107	1	W107	1	A2	763	0.0058
E108	1	W108	1	A2	795	0.0061
E109	1	W109	1	B1	1138	0.0087
E110	1	W110	1	C2	1424	0.0109
E111	1	W111	1	B1	1140	0.0087
E112	1	W112	1	B4	1223	0.0094
E113	1	W113	1	A2	763	0.0058
E114	1	W114	1	B3	1046	0.008
E115	1	W115	1	A2	763	0.0058
E116	1	W116	1	A2	763	0.0058
E117	1	W117	1	A3	778	0.006
E118	1	W118	1	A2	763	0.0058
E119	1	W119	1	B2	1149	0.0088
E120	1	W120	1	B2	1122	0.0086
E122	1	W122	1	A3	763	0.0058
E124	1	W124	1	A1	665	0.0051
E200	1	W200	1	C1	1366	0.0105
E201	1	W201	1	C1	1364	0.0104
E202	1	W202	1	A3	806	0.0062
E203	1	W203	1	A2	796	0.0061
E204	1	W204	1	A2	763	0.0058
E205	1	W205	1	A2	763	0.0058
E206	1	W206	1	A2	763	0.0058
E207	1	W207	1	A2	763	0.0058
E208	1	W208	1	A2	795	0.0061
E209	1	W209	1	B1	1138	0.0087
E210	1	W210	1	C2	1424	0.0109
E211	1	W211	1	B1	1140	0.0087
E212	1	W212	1	B4	1223	0.0094
E213	1	W213	1	A2	763	0.0058
E214	1	W214	1	B3	1046	0.008
E215	1	W215	1	A2	763	0.0058
E216	1	W216	1	A2	763	0.0058
E217	1	W217	1	A3	778	0.006



E218	1	W218	1	A2	763	0.0058
E219	1	W219	1	B2	1149	0.0088
E220	1	W220	1	B2	1122	0.0086
E222	1	W222	1	A3	763	0.0058
E224	1	W224	1	A1	665	0.0051
E300	1	W300	1	C1	1366	0.0051
E301	1	W301	1	C1	1364	0.0105
E302	1	W302	1	A3	806	0.0062
E303	1	W303	1	A2	796	0.0061
E304	1	W304	1	A2	763	0.0058
E305	1	W305	1	A2	763	0.0058
E306	1	W306	1	A2	763	0.0058
E307	1	W307	1	A2	763	0.0058
E308	1	W308	1	A2	795	0.0061
E309	1	W309	1	B1	1138	0.0087
E310	1	W310	1	C2	1424	0.0109
E311	1	W311	1	B1	1140	0.0087
E312	1	W312	1	B4	1223	0.0094
E313	1	W313	1	A2	763	0.0058
E314	1	W314	1	B3	1046	0.008
E315	1	W315	1	A2	763	0.0058
E316	1	W316	1	A2	763	0.0058
E317	1	W317	1	A3	778	0.006
E318	1	W318	1	A2	763	0.0058
E319	1	W319	1	B2	1149	0.0088
E320	1	W320	1	B2	1122	0.0086
E322	1	W322	1	A3	763	0.0058
E324	1	W324	1	A1	665	0.0051
C303	1	---	---	Studio	598	0.0046

**TOTAL VOTES: 139**

**TOTAL SELLABLE AREA (EAST BUILDING) 65,635**

**TOTAL SELLABLE AREA (WEST BUILDING) 65,037**

**GRAND TOTAL SELLABLE AREA (BOTH BUILDINGS) 130,672**

## EXHIBIT "C"

## PARKING STALLS - INGERSOLL SQUARE

UNIT #	GARAGE STALL & STORAGE
E100	EPS 67 & 70
E101	EPS 1 & 4
E102	EPS 64
E103	EPS 7
E104	EPS 61
E105	EPS 10
E106	EPS 46
E107	EPS 13
E108	EPS 43
E109	EPS 18
E110	EPS 53 & 56
E111	EPS 21
E112	EPS 52
E113	EPS 22
E114	EPS 47
E115	EPS 25
E116	EPS 40
E117	EPS 28
E118	---
E119	EPS 31
E120	EPS 37
E122	---
E124	---
E200	EPS 66 & 69
E201	EPS 2 & 5
E202	EPS 63
E203	EPS 8
E204	EPS 60
E205	EPS 11
E206	EPS 45
E207	EPS 14
E208	EPS 42
E209	EPS 17
E210	EPS 54 & 57
E211	EPS 20
E212	EPS 51
E213	EPS 23
E214	EPS 48
E215	EPS 26
E216	EPS 39
E217	EPS 29
E218	---
E219	EPS 33
E220	EPS 36
E222	---
E224	---

E300	EPS 65 & 68
E301	EPS 3 & 6
E302	EPS 62
E303	EPS 9
E304	EPS 59
E305	EPS 12
E306	EPS 44
E307	EPS 15
E308	EPS 41
E309	EPS 16
E310	EPS 55 & 58
E311	EPS 19
E312	EPS 50
E313	EPS 24
E314	EPS 49
E315	EPS 27
E316	EPS 38
E317	EPS 30
E318	----
E319	EPS 34
E320	EPS 35
E322	----
E324	----
C303	----
<b>UNIT #</b>	<b><u>GARAGE STALL &amp; STORAGE</u></b>
W100	WPS 67 & 70
W101	WPS 1 & 4
W102	WPS 64
W103	WPS 7
W104	WPS 61
W105	WPS 10
W106	WPS 46
W107	WPS 13
W108	WPS 43
W109	WPS 18
W110	WPS 53 & 56
W111	WPS 21
W112	WPS 52
W113	WPS 22
W114	WPS 47
W115	WPS 25
W116	WPS 40
W117	WPS 28
W118	----
W119	WPS 31
W120	WPS 37
W122	----
W124	----
W200	WPS 66 & 69
W201	WPS 2 & 5

W202	WPS 63
W203	WPS 8
W204	WPS 60
W205	WPS 11
W206	WPS 45
W207	WPS 14
W208	WPS 42
W209	WPS 17
W210	WPS 54 & 57
W211	WPS 20
W212	WPS 51
W213	WPS 23
W214	WPS 48
W215	WPS 26
W216	WPS 39
W217	WPS 29
W218	----
W219	WPS 33
W220	WPS 36
W222	----
W224	----
W300	WPS 65 & 68
W301	WPS 3 & 6
W302	WPS 62
W303	WPS 9
W304	WPS 59
W305	WPS 12
W306	WPS 44
W307	WPS 15
W308	WPS 41
W309	WPS 16
W310	WPS 55 & 58
W311	WPS 19
W312	WPS 50
W313	WPS 24
W314	WPS 49
W315	WPS 27
W316	WPS 38
W317	WPS 30
W318	----
W319	WPS 34
W320	WPS 35
W322	----
W324	----

NOTE: Garage stall 32 has not been assigned to a Unit. Sale pending.

**EXHIBIT "D"**

**ARTICLES OF INCORPORATION**

**OF**

**INGERSOLL SQUARE CONDOMINIUM ASSOCIATION, INC.**

The undersigned, acting as incorporator of a corporation pursuant to the provisions of the Iowa nonprofit Corporation Act, under Chapter 504A of the Code of Iowa, adopts the following Articles for such condominium.

ARTICLE I

The Corporation shall be known as Ingersoll Square Condominium Association, Inc., and its principal office shall be located in Des Moines, Iowa.

ARTICLE II

The existence of this Corporation shall commence with the date these Articles are filed with the Secretary of State, and the period of its duration is perpetual.

ARTICLE III

- A. The purpose and objectives of the Corporation are to manage the affairs of the Association, the common areas and other amenities of Ingersoll Square Condominium Regime for the property described as follows:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDNG ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

- B. The purposes of the Corporation are exclusively not for private profit or gain and no part of its activities shall consist of carrying on political propaganda or otherwise attempting to influence legislation, and the Corporation shall make no distribution of income to its members, directors or officers except at liquidation.
- C. The Corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be organized under this Act and consistent with the provisions herein.

ARTICLE IV

The address of the initial office of the Corporation is P.O. Box 27061, West Des Moines, Iowa 50265 and the name of its initial registered agent at such address is Robert J. Caluzzi.

ARTICLE V

The members of this Corporation shall be those persons described as members in the Declaration of the Corporation. The voting rights of the members shall be as provided in the Declaration of the Corporation.

ARTICLE VI

The number of directors shall be no less than one (1), no more than ten (10). The number of directors constituting the initial Board of Directors of the Corporation is one (1). The name and address of the person who is to serve as the initial director is:

<u>Name</u>	<u>Address</u>
Robert J. Caluzzi	P.O. Box 27061 West Des Moines, Iowa 50265

The terms of office of the initial Board of Directors shall be until the final condominium unit is sold.

ARTICLE VII

The initial Bylaws of the Corporation and amendments thereto shall be adopted by its initial Board of Directors, but the power to thereafter alter, amend or repeal the same or adopt new Bylaws is reserved to the members of the Corporation, subject to the restrictions contained in the initial Bylaws and amendments thereto.

ARTICLE VIII

In the event of liquidation, assets of the Corporation, if any remain, shall be distributed to the members in accordance with their proportionate share of votes in the affairs of the Corporation as determined by the Bylaws.

ARTICLE IX

All transfers, conveyances, leases, mortgages or assignments of real estate or of any interest therein shall be executed by any two of the following officers: President or Vice President and Secretary or Treasurer. All transfers, conveyances, leases or encumbrances of personal property or any interest therein shall be executed by any officer of the Corporation or any agent authorized by the Board of Directors. All judgments or other liens shall be satisfied, discharged, released or assigned by any officer of the Corporation.

ARTICLE X

Neither the members, the Board of Directors, nor their private property shall be liable for corporate debts, obligations or undertakings.

ARTICLE XI

This Corporation shall indemnify any present or former director, officer, employee, member or volunteer of this Corporation, and each such person who is serving or who has served at the request of this Corporation, as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan to the fullest extent possible against expenses, including attorney fees, judgments, fines, settlements and reasonable expenses, actually incurred by such person relating to his conduct as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of the duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or (iii) for a transaction from which such person derived an improper personal benefit.

ARTICLE XII

These Articles may only be amended by the initial Director until such time as the last condominium unit is sold. Thereafter, amendment of these Articles shall require the assent of eighty percent (80%) of the members.

ARTICLE XIII

The name and address of the incorporator is Robert J. Caluzzi, P.O. Box 27061, West Des Moines, Iowa 50265.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Robert J. Caluzzi

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2007.

\_\_\_\_\_  
Notary Public, in and for the State of Iowa



**CONSENT AND MINUTES OF THE  
FIRST ORGANIZATIONAL MEETING OF  
THE BOARD OF DIRECTORS OF  
INGERSOLL SQUARE CONDOMINIUM ASSOCIATION, INC.**

**WHEREAS**, Section 504A.97 of the Iowa Non-profit Corporation Act (a) authorizes the taking of action by the directors of a corporation without a meeting if written consents, which may be in counterparts, describing the action so taken shall be signed by all of the directors and included in the minutes or filed with the corporate records and (b) declares that such consent shall have the same force and effect as a meeting vote; and

**WHEREAS**, the undersigned Directors of Ingersoll Square Condominium Association, Inc., an Iowa corporation (the "Corporation"), desires that the action described in the following resolutions shall be taken;

**NOW, THEREFORE**, the undersigned, being the President of the Corporation, hereby consents to the taking of the action expressed in the following resolutions and hereby adopts the same, effective as of the date of the latest signature below unless a different date is specified:

1. **Directors.** RESOLVED, that the members of the initial Board of Directors named in the Articles of Incorporation are elected to constitute the members of the Board of Directors until the first annual meeting or until their successors are duly elected and qualified.

2. **Officers.** RESOLVED FURTHER, that the following persons are elected to the offices below designated until the first annual meeting of the Corporation or until their successors are duly elected and have qualified:

Robert J. Caluzzi	President
Robert J. Caluzzi	Vice President
Robert J. Caluzzi	Secretary
Robert J. Caluzzi	Treasurer

3. **Bylaws.** RESOLVED FURTHER, that the Bylaws for the government of the Corporation, submitted to and reviewed by the Directors, are hereby adopted as the Bylaws of the Corporation and that the Secretary is hereby directed to sign and place them in the Minute Book of the Corporation.

4. **Condominium Association.** RESOLVED FURTHER, that the corporation be and it hereby is authorized and directed to elect to be taxed as a non-profit condominium association with the Internal Revenue Service and the Iowa Department of Revenue, and that either the President of the corporation be and hereby is authorized and directed to do any and all things necessary to effectuate the intent and purpose of this resolution.

5. **No Seal.** RESOLVED FURTHER, that no corporate seal shall be adopted.

6. **Officers' General Authority.** RESOLVED FURTHER, that any officer of this Corporation be, and hereby are, authorized and directed to do any and all things necessary to carry into effect the foregoing resolutions and to complete all matters necessary to the organization of this Corporation.

7. **Effective Date.** RESOLVED FURTHER, that the above resolutions shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert J. Caluzzi, President

**EXHIBIT "E"**

**BY-LAWS  
OF  
INGERSOLL SQUARE CONDOMINIUM ASSOCIATION, INC.**

These are the By-Laws of Ingersoll Square Condominium Association, Inc. (hereinafter referred to as "Association"), a corporation organized pursuant to Chapter 504A of the Code of Iowa for the purpose of administering Ingersoll Square Condominiums, a horizontal property regime (condominium) established under Chapter 499B of the Code of Iowa (hereinafter sometimes referred to as "Regime") located upon the following described real property in the City of Des Moines, County of Polk, Iowa:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDNG ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

**I.**

**MEMBERS AND VOTING RIGHTS**

1. The owners shall constitute the members of the corporation and a membership shall automatically cease upon termination of all interests which constitute a person an owner. Developer shall be and have the right of members with respect to unsold suites.

2. An owner of record shall be recognized as a member without further action for so long as he holds an ownership interest. If ownership is acquired but not of record, or if acquired other than by way of conveyance or other formal instrument of transfer (such as by death, judicial act or dissolution), the person acquiring or succeeding to ownership shall present to the Association evidence satisfactory to it of facts evidencing lawful ownership status prior to exercise of any rights as a member of the Association. (Failure to provide such evidence shall not, however, relieve any owner of his membership obligations). A fiduciary or other official

acting in a representative capacity shall exercise all membership rights and privileges of the owner which he represents.

3. If more than one person is an owner of the same suite, all such owners shall be members and remain jointly and severally liable for all membership obligations. In such cases, or if more than one fiduciary or other official is acting in the premises, the votes entitled to be cast by the owner of that suite shall be cast by the person named for that purpose on a certificate signed by all such owners or fiduciaries or other officials and filed with the Association and such person shall be deemed to hold ownership suites appurtenant to such suite for purposes of voting and determining the representation of such ownership suite at any meeting or for purposes otherwise provided herein. If such certificate is not executed and filed with the Association, such membership shall not be in good standing and the votes appurtenant to that suite shall not be considered in determining a quorum or any vote or for any other purpose until this By-law is complied with. Such certificate shall continue in force until revoked in writing and filed with the Association Secretary.

4. The owners of each suite shall be entitled to as many votes on all matters to be determined by the members of the Association as contemplated by Chapter 499B, Code of Iowa and as there are ownership suites appurtenant to that suite and determined by the Declaration, including any supplements or amendments thereto, submitting the property to the Regime. All votes appurtenant to a suite shall be cast as a block and may not be divided.

## **II. MEMBERS' MEETINGS**

1. The annual and any special meeting shall be held at a time and at a place within Polk County, Iowa, chosen by the Board of Directors, and all such meetings, annual or special, shall be held at such particular time and place as is set forth in the Notice thereof.

2. A special meeting shall be held whenever called by the President, or, in his absence or disability, the Vice President, or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast 33 1/3% of the votes of the entire membership.

3. The Secretary or his designate shall give written notice to each member of the annual meeting. The person or persons calling a special meeting pursuant to paragraph 2 shall give like written notice of such special meeting. All notices shall set forth the time and place and purpose or purposes for which the meeting will be held. No action shall be taken at a special meeting which is not directly related to the purpose or purposes stated in the notice of meeting for which such meeting is held.

4. Notice of a members' meeting shall be given by mailing or delivering the same not less than ten (10), nor more than thirty (30), days prior to the date of the meeting. Notice shall be deemed duly given if mailed by first class mail to the member at the address of his suite within the Regime, unless at the time of giving such notice he has given written direction,

delivered to an officer or member of the Board of Directors, specifying a different mailing address to be carried on the rolls of the Association. If more than one person is an owner of the same suite or if more than one fiduciary or other official is acting in the premises, notice shall be deemed given when given in accordance with this paragraph to the person named in the certificate filed with the Association in accordance with paragraph 3 of Article 1. Notice of any meeting may be waived in writing by the person entitled thereto. Notice given pursuant hereto shall be sufficient if given to all such owners of record with the Association Secretary as of the date of mailing.

5. A quorum at a members' meeting shall consist of the presence of members or other persons in person or by proxy, holding a majority of the ownership suites outstanding. The acts carried or approved by a vote of a majority of the ownership suites represented at a meeting at which a quorum is present shall constitute the acts of the members unless a different rule is provided herein or by the Articles of Incorporation, the Declaration, or other agreement to which the Association is a party. The President, or, in his absence or disability, the Vice President shall preside at each members' meeting; if neither the President or the Vice President is available to preside, a chairman shall be elected by the members present at such meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements herein and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided such subsequent meeting shall be sixty (60) days following such preceding meeting.

6. At any membership meeting, the presence of a person holding ownership suites and the exercise of the voting rights of an owner or person entitled to cast votes, by proxy shall be permitted and recognized provided such proxy must be in writing and signed by the person holding ownership suites or entitled to cast votes and shall set forth the suite with respect to which such rights are appurtenant, the number of ownership suites appurtenant thereto and the period for which the proxy is to be in force and effect. The decision of the Board of Directors as to the sufficiency of any proxy for recognition shall be final and not subject to appeal to the members.

7. At all meetings the order of business shall consist of the following:
- A. Election of chairman, if required.
  - B. Calling roll and certifying of proxies.
  - C. Proof of notice of meeting or waiver of notice.
  - D. Reading and disposal of unapproved minutes.
  - E. Reports of officers, if applicable.
  - F. Reports of committees, if applicable.
  - G. Election of Directors, if applicable.
  - H. Unfinished business.
  - I. New business.

**III.**  
**BOARD OF DIRECTORS**

1. The affairs of the Association shall be managed by a Board of not less than one (1) nor more than five (5) directors. The initial Board shall consist of such persons as the developer may appoint and need not be members of the Association. The initial Board shall serve until the first annual members' meeting. From and after the first annual meeting of the members, the Board of Directors shall be selected from the members of the Association. An officer or designated agent of a corporate member qualifies to serve as a Director.

2. At the first annual members' meeting and each meeting thereafter, not less than three (3) nor more than five (5) Directors shall be elected and the term of office of each Director appointed by Developer shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner as elsewhere provided.

3. Each Director shall be elected by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast at the annual meeting of the members of the Association. Each person entitled to vote shall be entitled to vote for as many nominees as there are vacancies to be filled by election and each member shall be elected by separate ballot (unless provided otherwise by unanimous consent of the members).

4. Except as provided in Paragraph 5 of this Article, vacancies in the Board of Directors may be filled until the date of the next annual meeting by a vote of a majority of the Directors remaining in office regardless of whether those remaining constitute a quorum.

5. The initial Directors shall be subject to removal only by the developer. Thereafter a Director may be removed by concurrence of two-thirds (2/3) of the members of the Association at a special meeting called for that purpose. The vacancy in the Board of Directors so created shall be filled by the persons entitled to vote at the same meeting.

6. The initial Directors, and officers selected by the initial Directors, shall serve without compensation.

7. An organization meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected. No further notice of the organization meeting shall be necessary.

8. A majority of the Board may, by resolution, set the time and place for regular meetings of the board and no notice thereof shall be required until such resolution is modified or rescinded. Special meeting of the Directors may be called by the President, Vice President, or any two Directors provided not less than two days' notice shall be given, personally or by mail, telephone, or telegraph, which notice shall state the time, place and purpose of the meeting.

9. A quorum, at a Directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting duly called at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by Declaration or these By-Laws.

10. The presiding officer of a Directors' meeting shall be the President or in his absence, the Vice President. In the absence of the President and Vice President, the Directors present shall designate one of their number to preside.

11. The Board of Directors, by resolution approved by all members thereof, may designate from among its members such committees as it deems advisable and by resolution provide the extent and manner to which the same may have and exercise the authority of the Board.

#### **IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes, the Articles of Incorporation, and the documents establishing the Regime. Such powers and duties of the Directors shall be exercised in accordance with the provisions of the Declaration of Condominium which governs the use of the land, and shall include in addition to those elsewhere provided for but shall not be limited to the following:

1. To allocate assessments between commercial and residential floors on a per suite basis.
2. To make and collect assessments against members for all common expenses.
3. To use the proceeds of assessments in the exercise of its powers and duties.
4. The maintenance, repair, replacement, and operation of the Regime property, including all common areas, elements, and facilities, and suite as applicable, and making or providing for payment of all such work and approving or delegating to the officers authority to approve vouchers therefor.
5. The reconstruction, repair, restoration, or rebuilding of the Regime property and of any suite as applicable after casualty; the construction of new improvements or alterations if authorized; to make and amend regulations respecting the use and occupancy of the property in the Regime and to permit or forbid an action or conduct within the discretion committed to them by the Declaration, By-Laws, and Resolutions of the members.
6. To enforce by legal means the provisions of the Horizontal Property Act, the Articles of Incorporation, the By-Laws of the Association, the Declaration, and

the regulations for the use of the property in the Regime; and to take legal action in the name of the Association and on behalf of its members.

7. To contract for management of the Regime and to delegate to such contractor any or all powers and duties of the Association except such as are specifically required by the Declaration, By-Laws, or Resolution of the members to have approval of the Board of Directors or the membership of the Association.
8. To employ, designate, and remove personnel to perform the services required for property operation of the Regime.
9. To carry insurance upon the property subject to the Regime and insurance for the protection of suite owners, occupants, and the Association.
10. To pay the cost of all power, water, sewer, and other utility or other services rendered to the Regime and not billed directly to owners of the individual suites.
11. To conduct all votes or determinations by members other than at a membership meeting.
12. To borrow money from any bank, lending institution or agency for the use and benefit of the Association, and to secure the loan or loans by pledge of the assets of the Association, and from time to time to renew such loan and give additional security.
13. To do such other acts as are necessary and proper to effect the purposes of the Regime as stated in the Declaration and By-Laws provided such acts are not otherwise prohibited.

## V. OFFICERS

1. The officers of the Association shall be the President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and may be peremptorily removed and replaced by vote of the Directors at any meeting. The initial officers and their successors until the first annual meeting shall be chosen by the initial Board of Directors and shall serve until the first annual membership meeting. The Board of Directors may from time to time create and fill other offices and designate the powers and duties thereof. Each officer shall have the powers and duties usually vested in such office, and such authority as is committed to the office by the By-Laws or by specific grant from the Board, but subject at all times to the provisions of the By-Laws and to the control of the Board of Directors.

2. The President shall be the chief executive officer of the Association. He shall preside at all membership meetings and meetings of the Board of Directors and shall have power



to appoint committees from among the members to assist in the conduct of the affairs of the Association and Regime.

3. The Vice President shall preside over membership meetings in the absence or disability of the President, and shall otherwise exercise the powers and duties of the President in the event of the absence or disability of the President, and shall generally assist the President and exercise such other powers and duties as are prescribed by the Directors.

4. The Secretary shall keep the minutes of all proceedings of membership and meetings and Directors' meetings and shall have custody and control of the minute book of the Association, and shall keep or be in charge and control of the records of the Association except those of the Treasurer.

5. The Treasurer shall have control of the funds and other property of the Association and shall keep the financial books and records thereof.

6. The compensation of all officers and employees shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee, nor the contracting with a Director for the management of the Regime.

7. Any instrument affecting an interest in real estate shall be executed pursuant to the terms of Article IX of the Articles of Incorporation.

## **VI.** **FISCAL MANAGEMENT**

1. The Board of Directors shall adopt a budget for each fiscal year (which shall be the same as the Association's fiscal year for income tax purposes) which shall include the estimated funds required to defray the common expenses and to provide and maintain funds for the following accounting categories according to good accounting practices:

- a) Current expenses which shall include all funds and expenditures to be made within the year for which the funds are budgeted, including a reasonable allowance for the contingencies and working funds, except expenditures chargeable to reserves or to additional improvements. The balance of this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.
- b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.
- c) Reserve for replacement which shall include funds for repair or replacement required because of damage, destruction, depreciation or obsolescence.

2. The Board of Directors shall assess against each suite, and the owners thereof only shall be liable for, a share of the items in the budget adopted pursuant to Paragraph 1 which bears the same ratio to the total budget as the ownership suites appurtenant to such commercial or residential suite bear to the total ownership suites of all such suites subject to the Regime. Such share shall be assessed for the fiscal year for which the budget was prepared annually in advance and notice of such assessments shall be mailed or delivered not less than thirty (30) days prior to the first day of such fiscal year. Such assessment shall be due and payable from the respective suite owner or owners in 12 equal installments, each installment being due and payable the first day of each calendar month, which day falls within such fiscal year. In the event notice of such assessment is not timely given the amount of such assessment shall not change, but the due date for each installment which would otherwise be due and payable less than 30 days from the giving of such notice shall be due and payable on the due date of the first installment which is due not less than 30 days from the date such notice is mailed or delivered. In the event the annual assessment proves to be insufficient, the budget and assessments therefor, may be amended at any time by the Board of Directors if the total amount of the budget as amended does not exceed 105% of the total amount of the budget as originally adopted for the said fiscal year. In the event the budget as amended exceeds the limitation of the previous sentence, such budget may be adopted at a special members' meeting upon an affirmative vote of a majority of the ownership suites represented at such meeting. The additional amount so budgeted shall be assessed to each suite in the same manner as assessments for the annual budget and shall be prorated along the remaining installments due and payable in such year.

3. The Board of Directors shall, in addition to the assessments in Paragraph 2 above, levy and collect on a regular basis special assessments against certain suites which use a disproportionate amount of water, trash collection or other common services provided by the Association at a common expense. Prior to the levying of any special assessment, the Board of Directors shall first determine upon reasonable grounds that a certain suite is using more of a common service than the normal office retail use and then determine how much more usage has been incurred or will be incurred. The Board shall notify the suite owner of the intended special assessment and allow the owner to attend the meeting and present a showing as to this usage of common services. If the owner is in disagreement as to the amount of or the applicability of a special assessment, he and the Association shall submit the same to arbitration pursuant to and in accordance with Chapter 679A of the Code of Iowa (2005).

4. Assessments for common expenses for emergencies and extraordinary expenditures, which cannot be paid from the annual assessments for common expenses or the maintenance reserve fund shall be made only after notice of the need thereof to the suite owners concerned. After such notice and upon approval in writing by persons entitled to cast more than one half of the votes appurtenant to the suites concerned, the assessment shall become effective, and it shall be due in such manner as the Board of Directors may require after thirty (30) days' notice thereof. In the event any expenditure for repair or replacement of any suite or common elements cannot be paid from annual assessments but can be at least 90% paid from insurance proceeds therefor, such expenditures may be made upon approval of the Board of Directors without approval of the members and an amended budget and assessment may be made therefor if necessary.

5. If an owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installment of the assessment upon notice thereof to such owner, and thereupon the unpaid balance of the assessment shall come due upon the date stated in the notice, but not less than ten (10) days after delivery thereof to such owner either personally or by registered or certified mail. Interest shall be computed and due on balance due under this paragraph but upon such due date at the maximum rate of interest allowable by law from the date such balance becomes due and payable in accordance with the preceding sentence; such interest shall be in addition to any other payments for which said owner is liable.

6. The holder of a mortgage on any suite, upon its filing written request with the Association, shall be given written notice from the Association of any default by the mortgagor in the performance of the mortgagor's obligations under these By-Laws, the Declaration of Condominium or other condominium documents which is not cured within thirty (30) days.

7. All sums assessed but unpaid including, but not limited to, interest with respect to a suite or against a suite owner shall constitute a lien on such suite prior to all other liens except (1) tax liens on suite in favor of any assessing suite and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by the Association in the manner and with the consequences provided in Section 499B.17 Code of Iowa in which event the suite owner shall be required to pay a reasonable rental for the suite. The Association may sue for money judgment for unpaid assessment and interest or sums due without foreclosing or waiving any lien which it holds.

8. If a mortgagee or purchaser of a suite obtains possession as a result of foreclosure of a first mortgage, or deed in lieu of foreclosure, such mortgagee or purchaser, his successors and assigns, shall not be liable for the assessments chargeable to such suite due prior to the acquisition of possession and such unpaid assessments shall thereafter be deemed to be common expenses collectible from all suite owners including the mortgagee or purchaser, his successors and assigns, all without prejudice to the right of the Association to collect the same from the defaulting suite owner personally. The owner of a suite pursuant to a voluntary conveyance or by inheritance or devise shall be jointly and severally liable with the grantor or prior owner for all unpaid assessment against the grantor or prior owner but without the prejudice to the right of such grantee or devisee to recover from grantor the amounts paid therefor. The grantee or other successor interest of an individual subject to a levy of assessment on account of default shall be liable for any such special assessment.

9. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the moneys of the Association shall be deposited. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

10. An accounting of the Association's books shall be made annually and a copy of the report shall be made available for inspection by each member not later than sixty (60) days after the close of the fiscal year for which the report is made.

**VII.**  
**REFERENDUM**

Any vote or determination required or permitted to be made by the members of the Association and not required by law or any of the condominium documents to be made at a meeting of the members may be taken or made pursuant to a referendum ballot. Such ballot may be initiated by one-third of the Board of Directors, or upon the written petition of members owning collectively 33 1/3% of the total membership and voting suites. If such referendum is initiated, the Secretary shall forthwith prepare and mail to each member a ballot returnable in not less than ten nor more than thirty days from the date of mailing. If prior or subsequent to such petition, but not subsequent to such tally, a special membership meeting has been called to consider the same subject matter, the special meeting shall prevail and the referendum vote shall not be tallied.

**VIII.**  
**AMENDMENT**

1. These By-Laws may be amended, altered, repealed or new By-Laws adopted by the members at a regular or special meeting of or upon a referendum ballot by the members upon the affirmative vote of 66 2/3% of the ownership suites outstanding.

2. No amendment may be adopted at either a special or regular membership meeting or by referendum not included in the notice thereof, except if notice of the proposed amendment has been given, a different amendment relative to the same subject matter may be adopted by those present, in person or by proxy and possessing the requisite percentage of membership and voting suites, provided further no vote by proxy may be counted unless the proxy expressly provides for such contingency. Notice referred to herein shall be given in the manner prescribed in Article II Section 3 of these By-Laws and shall be given to the persons described in Article II Section 4 and the holder of any first mortgage of record which has notified the association of his interest. More than one proposed amendment may be included in the notice of a meeting.

3. To the extent provided by Section 499B.14, Code of Iowa, no modification or amendment of these By-Laws shall be effective unless set forth in an amendment to the Declaration of Condominium, executed and recorded in the manner set forth in the Declaration, and an amendment to these By-Laws shall constitute an amendment to the Declaration as provided for by law. Upon such recording such amendment shall be effective against all persons having an interest in a suite or the Regime regardless of whether such person had such interest at the time the amendment was adopted.

4. Unless required by the specific provisions of the Regime documents or by law, a supplemental Declaration of Condominium submitting further lands and suites to the Regime, or

an amendment to the Declaration of Condominium not overlapping or affecting the subject matter of these By-Laws shall not be considered an amendment of these By-Laws.

**IX.**  
**MERGER OR CONSOLIDATION**

The Association shall have the power to merge with or consolidate with another condominium owners' association or council of co-owners so as to provide for management of the regime in connection with another condominium regime. Merger and consolidation shall be in accordance with the procedures set forth in Chapter 504A, Code of Iowa.

**X.**  
**GENERAL PROVISION**

1. The invalidity of any portion or provision of these By-Laws shall not affect the validity of the remaining provisions or portions hereof.

2. The association shall not have a corporate seal.

3. The Board of Directors shall require fidelity bonds from all directors, officers, or agents handling or responsible for Association funds and the expense of such bonds shall be a common expense of the Association.

4. The Association shall at all times maintain complete and accurate written records of each suite and owner and the address of each, and setting forth the status of all assessments, accounts and funds pertinent to that suite and owner. Any person may rely on a certificate made from such records by an officer or agent of the Association as to the status of all assessments and accounts.

5. Each member shall have the obligations as such member as are imposed upon him by the Regime documents as an owner, and no member shall have any power or authority to incur a mechanic's lien or other lien effective against the Regime property, except as the same may attach only against his appurtenant interest therein and be removable as such.

6. The Board of Directors may in its discretion issue written evidence of membership but the same shall be evidence thereof only and shall in no manner be transferable or negotiable, and the share of the member in the assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to such assignment, hypothecation, or transfer of the suite.

7. No provision or restriction otherwise void by reason of application of the rules against perpetuities or Section 558.68 of the Code of Iowa shall continue for a period longer than the life of the last to survive of the owners and shareholder of the developer and their children in being at the time of the initial recording of the Declaration of Condominium to the Regime and twenty-one (21) years thereafter.

8. Each owner or the lessee of his suite as applicable shall have a right to use and enjoy the common elements provided such use shall be limited to that use permitted by the Declaration of Condominium and other governing documents of the Regime.

**XI.**  
**DEFINITIONS**

Unless the context otherwise requires, the terms used herein shall have the meanings stated in the Horizontal Property Act, and as follows:

1. Person - the term "person" shall include an individual, a corporation, or other legal entity or its representative.
2. Owner - the term "owner" for purposes of these By-Laws shall mean any person who owns or holds for himself an interest in one or more suites subject to the Regime provided that the holder of a leasehold interest in a suite shall not be an owner and further provided that the holder of an equitable title shall be an owner.
3. Suite - the term "suite" shall mean and refer to each of the condominium suites located in the buildings, whether commercial or residential, situated upon the property designed, numbered and intended for use as a residence separately or in conjunction with other suites and not owned in common with other owners in the Regime. The boundary lines of each suite shall be the interior surfaces of its party and exterior walls, bearing walls, bottom floor or floors, top story ceilings, windows and window frames, doors and door frames, and trim, and includes both the portions of the building so described and the airspace so encompassed.
4. Ownership Suites - the term "ownership suites" means the number of ownership suites assigned to each condominium suite by the Declaration of Condominium for purposes of voting, assessment, and determination of each suite's appurtenant share of the common elements (provided, however, that such ownership suites may be used for other purposes).
5. Common expenses -- common expenses include:
  - a) expenses of administration, expenses of maintenance, operation, repair or replacement of common elements, and the portions of suites to be maintained by the Association.
  - b) expenses declared common expenses by the Declaration or these By-Laws.
  - c) any valid charge against the Regime as a whole.



**EXHIBIT "F"**

**CONDOMINIUM COVENANTS**

Michael J. Green  
4500 Westown Parkway, Suite 277  
West Des Moines, Iowa 50266

<b>Preparer</b>	Michael J. Green	Regency West 5, 4500 Westown Pkwy, Ste. 277	West Des Moines, IA 50266	(515) 242-2431
<b>Information</b>	Individual's Name	Street Address	City	Phone

**SPACE ABOVE THIS LINE FOR RECORDER**

**INGERSOLL SQUARE CONDOMINIUMS  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by High Land Co., L.C., an Iowa limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, "Declarant" is the owner of certain property in Des Moines, County of Polk, State of Iowa, which is more particularly described as:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDNG ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.



To be known as INGERSOLL SQUARE CONDOMINIUMS.

WHEREAS, the above property is improved with one building consisting of 138 suites, common areas thereto; and

WHEREAS, associated with said improvements is a parking garage located on:

All of Lots One (1) through Eight (8) and the East 51 feet of Lot Nine (9) in Block "B" in WEST AND BURTON'S ADDITION, an Official Plat; AND all of Lots One (1) through Nine (9) in HARDNG ROAD PLACE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa being subject to established easements of record.

AND

The 16.0 foot wide vacated easement East/West Alley Right-of-Way lying South of and adjoining Lots 1 through 8, and lying South of and adjoining the East 51.0 feet of Lot 9, in Block "B", West and Burton's Addition, an Official Plat; and which lies North of and adjoining Lots 1 through 9, Harding Road Place, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW, THEREFORE, "Declarant" hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I. DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Ingersoll Square Condominium Association, Inc., its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, except that a vendee in possession under a recorded contract of sale of any Unit shall be considered the owner instead of the contract seller. Those having an interest merely as security for the performance of an obligation shall not be considered an "Owner".

**Section 3.** "Properties" shall mean the above-described Properties (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area shall be all portions of the Properties which are not included within a Unit and not included within property owned by a municipality or municipal agency. The

Common Areas and any improvements thereon, if any, shall be conveyed to the Association prior to the sale of the first Unit.

**Section 4.** "Unit" shall mean and refer to the numbered Units as shown upon Exhibit "C" of the Declaration of Submission of Property to Horizontal Property Regime for Ingersoll Square Condominiums recorded in Polk County, Iowa. In no event shall "Unit" include any Common Area.

**Section 5.** "Declarant" shall mean and refer to High Land Co., L.C., its successors and assigns.

**Section 6.** "Association Responsibility Elements" shall mean the following, whether located upon a Unit or upon the Common Area:

- a) The exterior surface of any structure upon the Premises;
- b) The structural portion of any structure upon the Property;
- c) The roof and foundations of any structure upon the Property;
- d) Any common wall between residential Units, except the interior surfaces thereof;
- e) The sidewalk and property located between a street curb and the Property;
- f) Conduits, ducts, plumbing, wiring, pipes and other facilities within the Property but outside a Unit which are carrying any service to more than one Unit.

## **ARTICLE II. PROPERTY RIGHTS AND MAINTENANCE**

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by a majority of the members entitled to vote has been recorded.

**Section 2. Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or any guests of either. However, no more than two (2) guests per Unit shall be allowed to use the swimming pool amenity per day.

**Section 3. Association Responsibility Elements.** No person other than the Owner of a Unit and his invitees shall have the right to enter upon, use, or affect an Association Responsibility Element located on the Property, except that the Association and its designates

may enter upon and within a Unit and the residential structure located thereon at reasonable times for the following purposes:

- a) Installation, repair, maintenance, removal, replacement, or inspection of an Association Responsibility Element;
- b) Enforcement of any provision of this Declaration or the Articles of Incorporation or the Bylaws of the Association.

**Section 4. Maintenance.** The Association shall be responsible for maintenance of the Common Area and improvements thereon. Each Owner shall be responsible for maintenance of his Unit and all structures, improvements and equipment thereon, except for the Association Responsibility Elements. The Association shall not allow any of the improvements located on the Outlots area or any fences owned by the Association located on any privately owned Units to become a nuisance through lack of repair, maintenance, or replacement.

### ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership is mandatory and shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

**Section 2.** All Owners shall be entitled to the votes identified for each Unit as set forth on Exhibit "B" of the Declaration of Submission of Property to Horizontal Property Regime referred to above for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than the percentage vote be cast with respect to any Unit.

**Section 3.** Notwithstanding any other provision of this Declaration, the Declarant, its successors and assigns shall be the sole voting member of the Association until Declarant no longer owns any portion of the Properties, or until Declarant waives, in writing, this right to be the sole voting member, whichever first occurs. While the sole voting member, the Declarant, its successors and assigns shall have the right to elect all directors.

### ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (a) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and any and all assessments for Ingersoll Square Condominium Association, Inc., as more fully set out in Section 11 of this Article. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment is made. Each such

assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to the successors in title.

**Section 2. Purpose of Assessments.** The assessment levied by and for the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Units and for the improvement and maintenance of the Common Area and Association Responsibility Elements.

**Section 3. Maximum Annual Assessment.** Except as provided below, until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be not more than Three Thousand Dollars (\$3,000.00) per Unit, plus a prorata portion of the amount of real estate taxes and special assessments payable by the Association in such year.

- a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than the percentage limitation (set forth in (f) below) above the maximum assessment for the previous year without a vote of the membership;
- b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the percentage limitation (set forth in (f) below) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose;
- c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum;
- d) A Unit shall not be subject to assessment until the first day of the month following the date of occupancy thereof as a residence;
- e) The Declarant shall not be liable for annual or special assessments upon Units owned by the Declarant unless the unit is occupied as a residence; has been submitted to the Association for maintenance, insurance, or other substantial direct benefit for the Unit; or has had a certificate of occupancy issued concerning such unit by the City of Des Moines;
- f) The percentage limitation specified in sections (a) and (b) above shall be the greater of ten percent (10%) or the percentage increase in the CPI for the most recent month for which the CPI has been published over the CPI for the same month in the immediately preceding year. The CPI shall mean the Consumer Price Index (2005 Revised Consumer Price Index All Items and Major Group Figures for all Urban Consumers) published by the Bureau of Labor Statistics of the U.S. Department of Commerce or its successor index. In the event the CPI as

above described is modified, revised, or replaced by another Consumer Price Index issued by the Bureau of Labor Statistics, such modification, revision, or replacement shall be used as the CPI. If the CPI shall no longer be published or becomes no longer recognized as an appropriate measure of changes in the cost of living, then another authoritative index shall be substituted as determined by the Board of Directors of the Association.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only 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, or for any Association Responsibility Element, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of members entitled to vote who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members entitled to vote or of proxies entitled to cast 60 percent (60%) of all votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Except as provided in Sections 3(e) and 11, annual assessments, special assessments for capital improvements and insurance assessments must be fixed at a uniform rate for all Units based upon the percentage interest of each and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

**Section 8. Insurance and Insurance Assessment.** In addition to the annual assessments and the special assessments for capital improvements, the Association may levy assessments for

insurance purchased by the Association. The Association shall obtain liability and casualty insurance for the Common Area and for the Association Responsibility Elements. Unless otherwise determined by the Board of Directors of the Association, each Owner shall be responsible for obtaining homeowners' liability insurance and casualty insurance for property which is not part of the Association Responsibility Elements; the Board of Directors may require an Owner's casualty insurance to be obtained from the same insurer as the insurer under the Association's casualty insurance for the Association Responsibility Elements. In the event of casualty loss, the Association shall be responsible for repair and restoration of the Common Area and Association Responsibility Elements, and the Owner shall be responsible for repair and restoration of all other portions of the buildings and improvements upon his Unit, except to the extent that the Board of Directors of the Association has determined to obtain casualty insurance for such portions which are not part of the Association Responsibility Elements in which case the Association shall apply any insurance proceeds received for such portions to such repair and restoration of such portions.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 11. Utilities.** Each Owner shall be responsible for payment of all utility services to his Unit, including but not limited to, electricity, water, gas, telephone and sewer services.

**Section 12 Assessments for City Related Improvements.** Notwithstanding any of the provisions of this Article, the Board of Directors may establish an assessment for the maintenance, improvement, or reconstruction of sidewalks as necessary to comply with any directive of the City of Des Moines, Iowa.

#### **ARTICLE V. ARCHITECTURAL CONTROL**

No structure shall be commenced, erected, or maintained upon the Properties, nor shall any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height materials and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event

said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. This Article shall not apply to construction, improvements, or alterations made by the Declarant.

#### ARTICLE VI. EASEMENTS

Each Unit shall be subject to the following easements in favor of the Association:

- a) Every portion of a Unit which contributes to the support of any structure extending to another Unit is burdened with an easement of such support;
- b) Each Unit is burdened with an easement through the Unit of conduits, ducts, plumbing, wiring, pipes, meters and other facilities for the furnishing of utilities and services to other Units, foundation drains, sanitary sewer and water service facilities;
- c) Each Unit is burdened with an easement of ingress and egress for maintenance, repair and replacement of Association Responsibility Elements by the Association;
- d) Each Unit is burdened with an encroachment easement for minor encroachments of common walls due to settling, shifting, or inexact location during construction.

#### ARTICLE VII. FIRST LIEN HOLDERS RIGHTS

**SECTION 1. Notices of Action.** A holder, insurer, or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer, or guarantor and the Unit number), will be entitled to timely written notice of:

- (a) Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the general or limited common elements appertaining to any Unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Unit or (iv) the purposes to which any Unit or the common elements are restricted.
- (b) Any proposed termination of the covenants;
- (c) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (d) Any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;

(e) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**SECTION 2. Other Provisions for First Lien Holders.** To the extent possible under applicable law, the following protections for the benefit of first mortgage holders shall exist:

(a) Any restoration or repair of the condominium property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least 67% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

(b) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on Units to which at least 67% of the votes of Units subject to mortgages held by such eligible holders are allocated.

(c) Unless the formula for reallocation of interests in the common elements after a partial condemnation or partial destruction of the condominium project is fixed in advance by this Declaration or by applicable law, no reallocation of interest in the common elements resulting from a partial condemnation or partial destruction of the project may be effected without the approval of the eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

NOTE: As used in this section, the term "eligible holder, insurer, or guarantor" shall mean a holder, insurer, or guarantor of a first mortgage on a Unit which has requested notice in accordance with the provisions of Section VII(1) above. The rights set forth in this Article VII are in addition to and not in limitation of the other rights granted elsewhere in the Declaration to any eligible holder, insurer, or guarantor.

## ARTICLE VIII. USE RESTRICTIONS

**Section 1. Subjection of the Property to Certain Provisions.** The ownership, use, occupation and enjoyment of each Unit and Common Area shall be subject to the provisions of the Bylaws and Articles of Incorporation of the Association, and this Declaration, all of which provisions irrespective of where set forth or classified, shall have equal status and shall be enforceable and binding as a covenant, condition, restriction, or requirement running with the land and shall be binding on and enforceable against each and all Units and the Owners thereof and their respective assigns, lessees, tenants, occupants and successors in interest.

**Section 2. Use of Properties.** The use of the Properties shall be in accordance with and subject to the following provisions:

- a) All residential Units shall be occupied and utilized only in accordance with the designations, specifications, uses, limitations and requirements set forth herein



and as set forth in the Horizontal Property Regime Declaration filed as to this complex;

- b) A Unit may be leased by the Owner in accordance with the provisions relative to the same contained in the Declaration of Submission of Property to Horizontal Property Regime Ingersoll Square Condominiums filed of record in Polk County, Iowa.;
- c) Nothing shall be altered in, constructed in, or removed from the Common Area, except upon written consent of the Board of Directors of the Association, which may be given through regulations of the Association;
- d) No more than two animals may be kept by the Owner of a Unit, in any Unit. No more than two dogs or two cats; or one dog and one cat. No more than one dog which must weigh less than 75 pounds at any stage of growth, or two dogs with a combined weight not to exceed 75 pounds at any stage of growth, or two cats. No exotic, dangerous or vicious animals shall be allowed. In no event shall an Owner or its guests, family members and invitees, have or allow a pet considered vicious or dangerous, including without thereby limiting, dogs which have the appearance and characteristics or being predominately of breeds of Stafforshire terrier, American pit bull terrier or American Staffordshire terrier. Any pets shall not be left unattended by the Owners, may not be tied up in any common area and shall not be allowed to run free. All pets outside of a Unit must be on a leash and at all times accompanied by an adult. Owners shall be fully liable for any injury or damage to any person or to the common area caused by Owner's pet. Each Owner shall be responsible for cleaning up all waste of their pet(s). Any damage done by any pets, including dragging chains, digging, scratching or chewing shall be the responsibility of the Owner of such pet, including, but not limited to, any such damage done to landscaping. No owner shall be allowed to chain or otherwise confine their pets in the common area at any time. Pets are not allowed around the pool or hot tub areas. Fencing or invisible fencing is not allowed. The Association may levy a \$25.00 per incident fine for any pet waste that is not cleaned up by the Owner of such pet. The Association Board may adopt such other rules and regulations regarding pets as they may deem appropriate, and in the event that in the judgment of the Association, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Property upon written notice of such determination by the Association.
- e) No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any parking stall of the Parking Garage. In the event of violation of this provision, the Association may, after reasonable notice, remove such boat, snowmobile, recreation vehicle, or other vehicles and assess the Owner of the Unit for the cost of removal and storage;

- f) No activity shall be allowed which unduly interferes with the peaceful possession and use of the Units by the Owners nor shall any fire hazard or unsightly accumulation of refuse be allowed;
- g) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area or the Association Responsibility Elements, without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of Insurance on any Unit or any part of the Common Area or the Association Responsibility Elements, which would be in violation of any law, or which may be or become a nuisance or annoyance to the other Owners;
- h) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance modification or repair of property shall be the same as the responsibility for the maintenance and repair of the property concerned;
- i) The Board of Directors of the Association shall be the authority to adopt rules and regulations governing the use of Units, the Common Area and the Association Responsibility Elements and such rules shall be observed and obeyed by the Owners, their guests, lessees, assigns and licensees;
- j) Agents or contractors hired by the Board of Directors of the Association may enter any Unit when necessary in connection with any installation, repair, removal, replacement, or inspection of any Association Responsibility Element or in connection with landscaping or construction for which the Association is responsible, provided such entry shall be made with as little inconvenience to the Owners as practicable;
- k) An Owner shall give notice to the Association of every lien against his Unit other than permitted mortgages, taxes and Association assessments and of any suit or other proceeding which may affect the title to his Unit within ten days after the lien attaches or the Owner receives notice of such suit;
- l) An Owner shall be liable to the Association for the expense of any maintenance, repair, or replacement to the Common Area or the Association Responsibility Elements rendered necessary by his act, neglect, or carelessness, or by that of his family, guests, employees, agents, or lessees, which liability shall include any increase in insurance rates resulting therefrom;
- m) Neither the Owners nor the Association nor the use of the Common Area shall interfere with the completion of the contemplated improvements and the sale of the Units by the Declarant. The Declarant may make such use of the unsold Units

and the Common Area as may facilitate such completion and sale, including but not limited to, the maintenance of a model home, the showing of the property and the display of signs;

- n) Police, firemen, emergency units, inspectors and any other public officials or law enforcement agencies shall have the same right of entry onto and the same enforcement powers as to the Common Area as they have with respect to public streets and publicly owned parks and area;
- o) No sign shall be placed upon or within any Unit that is not in compliance with Article VI(2)(g) of the Horizontal Property Regime Declaration filed of record as to this complex;
- p) Trash receptacles shall be kept within the Unit;
- q) No tower or antennae shall be placed upon any Unit without the approval of the Board of Directors or the Architectural Control Committee;
- r) No personal property shall be stored or left outside of any Unit;
- s) Owners are not allowed to move into or out of the building on Saturday or Sunday. Moves into or out of the Units are to be scheduled Monday through Friday, 8:00 a.m. to 8:00 p.m.

**Section 3. No Waiver.** Failure of the Association or any Owner to enforce any covenant, condition or restriction, this Declaration, the Articles of Incorporation or Bylaws of the Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same thereafter.

#### **ARTICLE IX. DECLARANT'S RIGHTS**

**Section 1. Units.** Declarant reserves the right to use any of the Units as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Unit prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees and to show Units then unsold. Declarant retains the right to be considered an Owner of any Unit that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of Buildings and other improvements. Declarant reserves the right to enter upon and within any Unit and Common Area in connection with any construction activity.

**Section 2. Common Area.** Declarant reserves the right and is hereby vested with the sole control over all Common Areas. Declarant shall have the right to change the elements within the Common Area from time to time in its sole discretion.

## ARTICLE X. COVENANTS WITH CITY

**Section 1. Right of Public Access.** Officers, employees or contracted agents of the City of Des Moines, Iowa ("City") shall have the right and authority to enter upon the Common Areas and easements reserved or granted for the benefit of the Association for the administration of general public services including Emergency Fire Protection, Law Enforcement and administration of the Water Works Rules and Regulations and any applicable agreements for providing water service.

**Section 2. Indemnification and Hold Harmless of the City.** The Association, its successors or assigns, agree to defend, indemnify, protect and save harmless the City and its political subdivisions, including any of its elected officials, officers, employees or agents, from and against any judgments, awards, claims or expenses or other things whatsoever, including attorney fees, costs or disbursements, arising out of or in connection with any act or acts of negligence, causes, omissions, fault, misconduct, claims, damages, suits or other actions developed, brought or asserted by any person, firm, corporation, entity or estate, against the said City by reason of, in connection with, related to or growing out of, directly or indirectly, the duties and responsibilities which are imposed upon the Owners of the Association, its successors and assigns, with respect to its duties or obligations under this Declaration, including any rules or regulations in existence pursuant to this Declaration, or related to or growing out of, directly or indirectly, the ownership, maintaining, cleaning out, grading, repairing, construction or reconstruction of the Common Areas, or any part thereof, including but not limited to the existence of flowage or drainage of water in or out of the lakes, dam, silt basins and spillway located adjacent to the Properties, or related to or growing out of, directly or indirectly, the existence of this Declaration and the purposes for which this Declaration is executed of the approval of this Declaration.

Declarant, its successors and assigns, including all subsequent owners in the Properties, hereby covenant not to sue, demand or claim any damages or other remedies against the City, its political subdivisions and its elected officials, officers, employees or agents by reason of, in connection with, related to or growing out of, directly or indirectly, the failure of the City to exercise any rights afforded to it under this Declaration, the approval of this Declaration, the approval of any site plan or Common Areas, the issuance of a building permit for such purposes, any inspection performed relating to said permit or permits or any certification issued indicating compliance with any City ordinance regulating the issuance of said building permit or approvals.

**Section 3. Liability of City.** Neither the Declarant, owners, Association nor any other person or other entity shall place any reliance upon the approval of this Declaration by the City, the issuance of a Building Permit for such purposes, any inspections performed relating to said Permit or any certification issued indicating compliance with any City ordinance regulating the issuance of said Building Permit or approvals, as indicating the safety or quality of construction of any improvements located on the Common Areas or within the Properties. Neither the issuance of, nor any inspections or certifications made relating to the Building Permit or relating to any City ordinance or approval, including the approval of this Declaration, shall constitute an assumption by the City, or any elected officials, officers, agents or employees thereof, of any duty or responsibility of any person or entity to adequately construct, reconstruct, repair and maintain

the Common Areas and improvements located thereon or provide a safe premises or to, in any way, indicate a decrease in the risk associated with the use or existence of the improvements located on the Common Areas. A certification that the Common Areas or other structures or facilities have been inspected, pursuant to any City ordinance regulating the same shall not, in any way, constitute a representation, covenant, warranty or guaranty of the safety or quality of said improvements by the City, of any elected officials, officers, agents or employees thereof. The Declarant, its successors and assigns, hereby expressly release and discharge, and agree to hold harmless, defend and indemnify, the City, its elected officials, officers, agents and employees, from any and all duties, responsibilities, obligations, claims, demands, causes of action or liabilities arising out of or related to the issuance of a Building Permit within the Properties or any inspection performed or certification issued in connection with the Building Permit and approval of the improvements located on the Common Areas and the approval of this Declaration.

**Section 4. Amendment.** This Article shall not be amended without the prior written approval of the City.

**Section 5. Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, the City shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. City is hereby declared to be a third party beneficiary of the provisions of this Declaration.

## ARTICLE XI. GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than 90 percent (90%) of the Unit Owners and thereafter by an instrument signed by not less than 75 percent (75%) of the Unit Owners; but no amendment shall alter any rights to rent a Unit without a unanimous vote of the Unit Owners and/or alter the rights of the

Declarant or impose any additional obligations upon the Declarant without the consent of the Declarant. Any amendment must be recorded. During such time as the Declarant, or any of its Members, are a voting member of the Association, this Declaration may be amended in any manner by Declarant. No amendment to these Declarations shall be permitted affecting the specific rights of the City of Des Moines set forth in this Declaration without first obtaining the approval of the City of Des Moines, Iowa.

**Section 4. Lots Owned by City.** These covenants, restrictions and conditions shall not be applicable to property owned or dedicated to the City of Des Moines, Iowa.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**HIGH LAND CO., L.C.**

By \_\_\_\_\_  
Robert J. Caluzzi, Manager

STATE OF IOWA    )  
                          ) SS:  
COUNTY OF POLK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Caluzzi to me personally known, who being by me duly sworn, did say that he is the Manager of High Land Co., L.C., a limited liability company, executing the within and foregoing instrument; that no seal has been procured by the said limited liability company; that said instrument was signed on behalf of the limited liability company by authority of its members; and that Robert J. Caluzzi, as Manager, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa