

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LOT 2 LEGACY RE-PLAT 4 CONDOMINIUM**

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**DECLARATION OF  
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FOR  
LOT 2 LEGACY REPLAT 4 CONDOMINIUM**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOT 2 LEGACY REPLAT 4 CONDOMINIUM (this "Declaration") is made this *14th* day of *October* 2017, by Legacy Enchanted Travel, LLC, a Nebraska limited liability company (the "Declarant").

**RECITALS**

A. The Declarant owns all of the real property in Douglas County, Nebraska legally described on **Exhibit A** to this Declaration (the "Property").

B. Declarant owns an approximately 5500 square foot office building (the "Building") on the Property with the understanding that one Unit (as defined below) of the Building will remain under the ownership of Declarant and leased to a related entity, and one Unit of the Building will be conveyed to a third party and leased to a related entity of that third party.

C. The Property is a condominium subject to the Nebraska Condominium Act §§76-825 et. seq (the "Act"). All of the Units are restricted to nonresidential use, and, therefore, all Owners expressly agree that upon taking title to a Unit, they have waived the application of §§76-878 - 76-984 of the Act. Furthermore, the initial Owners of the Units have both participated in the development and construction of the Property, and Declarant makes no express or implied warranties related to the Property.

D. The Declarant desires that all of the Property, including any portions remaining in Declarant's ownership or conveyed by Declarant, be subject to the following easements, reservations, restrictions, liens, charges, covenants and conditions which are for the purpose of protecting the value and desirability of the Property and which will run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, personal representatives, successors and assigns.

**ARTICLE 1  
DEFINITIONS**

The following terms will have the meanings set forth below when used in this Declaration.

**1.1** Allocated Interests. There are 100 Allocated Interests in the Property. Unit 1 has 72 Allocated Interests and Unit 2 has 28 Allocated Interests. An Owner's Allocated Interests equal its undivided interest in the Common Elements and the number of votes in the Association vested in such Unit and determine the percentage of Common Expenses allocated to each Unit.

**1.2** Articles. The Articles of Incorporation of the Association which have been or will be filed with the Secretary of State of the State of Nebraska, as amended from time to time.

**1.3** Assessment. An assessment, which may be a Common Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Units pursuant to the terms of this Declaration.

**1.4** Association. The Association formed or to be formed pursuant to Section 6.1, known as Lot 2 Legacy Replat 4 Condominium Owners Association, Inc., a Nebraska non-profit corporation, its successors and assigns.

**1.5** Board. The Board of Directors of the Association.

**1.6** Building. The building located on the Property. The Building contains two Units, each separated by one or more Party Walls.

**1.7** Building Envelope. The exterior façade and structure of the Building, including the exterior brick, wood, siding, masonry, soffits, fascia, foundation, structure and similar exterior components of the Building, but not including any patio or deck of any Unit. The Building Envelope will not include the lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, or any other materials constituting any part of the finished surfaces thereof attached to, or incorporated in, the Building Envelope.

**1.8** Building Roof. The entirety of the roofing system of the Building, including the asphalt, felt, underlayment, shingles, flashing and similar components of the Building.

**1.9** Bylaws. The Bylaws of the Association, as amended from time to time.

**1.10** City. The City of Omaha, Nebraska.

**1.11** Common Assessment. An Assessment levied on all Units subject to assessment under Article 8 to fund the Common Expenses as more particularly described in Section 8.3.

**1.12** Common Elements. All real property, easements and possessory interests in property and Improvements on the Property except for the Units, including, without limitation, the Building Envelope, Building Roof, Party Wall and any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture that serves more than one Unit. The undivided interests of the Common Elements are vested in the Owners.

**1.13** Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred for the operation of the Common Elements or the Association, including, without limitation, costs of operating, managing, administering, securing, protecting, insuring, cleaning, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements, Building Envelope, Building Roof and the Association's personal property and equipment located in, or used in connection with the operation or maintenance of the Property; all costs, expenses and financial liabilities incurred by the Association related to or serving the Property that is shared with neighboring property pursuant to the Easements, Covenants and Restrictions Agreement recorded at Reception No. 2003203741 on October 21, 2003 in the Records (the "Three Lot Agreement") and the Declaration of Covenants, Conditions and Restrictions for a Part of Legacy, a Subdivision in Douglas County, Nebraska recorded at

Reception No. 2003203737 in the Records (the “Greater Legacy Agreement”); taxes on any property owned in common if not paid in conjunction with the taxes on the individual Units; general administrative costs incurred by the Association and the funding of working capital and reasonable reserves for Common Expenses.

**1.14** County. The County of Douglas, Nebraska.

**1.15** Declarant. Defined in the preamble of this Declaration. Should the original Declarant no longer own a Unit, the successor in interest to Unit 1 shall succeed to all of Declarant’s rights hereunder.

**1.16** Declaration. Defined in the preamble of this Declaration, which will be Recorded in the Records.

**1.17** Director. A member of the Board.

**1.18** Exhibits. The following exhibits are attached to and, by this reference, incorporated as part of this Declaration:

Exhibit A – Legal Description of the Property

Exhibit B – Plat

Exhibit C – List of Units and Percentage Interest of Common Elements

**1.19** First Mortgage. A Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments and mechanics’ liens).

**1.20** Improvements. All structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, the Building, and all Units located therein, the driveways, walkways, fixtures, utilities, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, fences, retaining walls, stairs, decks, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities.

**1.21** Limited Common Element. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, all exterior doors and windows, chutes, flues, ducts, wires, conduits, bearing walls, bearing columns or other fixtures designed to serve a single Unit, but located outside or partially outside the Unit’s boundaries.

**1.22** Member. A Person who is a member of the Association pursuant to Section 6.1.

**1.23** Mortgage. An unpaid or outstanding mortgage, deed of trust, deed to secure debt or any other form of security instrument encumbering the Property or a portion thereof.

**1.24** Mortgagee. A beneficiary or holder of a Mortgage.

**1.25** Owner. An owner, as reflected in the Records, regardless of type of Person, owning the fee simple interest to any Unit from time to time, including, without limitation, the Declarant. The term “Owner” will include a seller under a contract for sale and exclude a purchaser thereunder and will include a landlord under a lease affecting a Unit and exclude a tenant thereunder.

**1.26** Party Wall. A common wall, together with the underlying footings and foundation, which connects or is shared by two adjacent Units and which has been or is constructed substantially along and over a portion of the boundary separating the Units on which the Units are situated. The Party Wall will not include the lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, or any other materials constituting any part of the finished surfaces thereof attached to, or incorporated in, the Party Wall.

**1.27** Permittee. A Person, other than an Owner, who is a tenant or occupant of a Unit or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or of such tenant or occupant.

**1.28** Person. A natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

**1.29** Plat. The depiction of the Property attached to this Declaration as **Exhibit B**.

**1.30** Property. Defined in Recital A of this Declaration and legally described in the attached **Exhibit A**.

**1.31** Records. The official real property records of the County; “to Record” and “Recording” mean, respectively, to file or filing for recording in the Records, and “of Record” and “Recorded” mean having been recorded in the Records.

**1.32** Rules. The rules and regulations governing the use of the Property which may be adopted from time to time by the Association or the Board. The Rules are binding upon all Owners and their Permittees.

**1.33** Special Assessment. An Assessment levied in accordance with Section 8.4.

**1.34** Specific Assessment. An Assessment levied in accordance with Section 8.5.

**1.35** Taking. A taking by eminent domain or conveyance in lieu thereof.

**1.36** Unit. A physical portion of the Property that is designated for separate ownership pursuant to this Declaration and shown as a “Unit” on the attached **Exhibit B**. The Units include the lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, or any other materials constituting any part of the finished surfaces thereof attached to, or incorporated in, the Building Envelope. There are two Units on the Property. “Units” means the two Units, collectively, on the Property.

**ARTICLE 2  
CREATION OF THE CONDOMINIUM**

2.1 Upon the Recording of this Declaration, the Property will be a condominium named Lot 2 Legacy Replat 4 Condominium and situated in the City and the County. The Property consists of one Building with two Units, the Building Roof and the Building Envelope, and a parking lot, landscaped areas and accessways. As a condominium in the City and County, this Declaration and the Property are subject to the Act.

**ARTICLE 3  
RESTRICTIONS**

3.1 Use Restrictions. During the term of this Declaration no portion of the Property may be used for any of the following purposes without the written consent of Board:

- (a) A bowling alley.
- (b) A service station, gas station, truck stop or convenience store.
- (c) A flea market.
- (d) A school, except for a tutorial center similar to Sylvan Learning Center.
- (e) A car wash.
- (f) An adult bookstore or other establishment selling or exhibiting pornographic materials or live nudity.
- (g) A massage parlor (which does not include tanning parlor, health spas or clubs or beauty salons that offer massages as an incidental part of the tanning parlors, health and fitness and beauty services).
- (h) A skating rink.
- (i) A mortuary.
- (j) A mobile home or trailer court, labor camp, junkyard or stockyard.
- (k) A land fill, garbage dump or an area for the dumping, disposing, incinerating or reducing of garbage.
- (l) A restaurant or bar.
- (m) A liquor store.
- (n) A pet service, including a veterinarian or a grooming shop.
- (o) A residential use.

**3.2 Leasing of Units.** Any Unit may be leased only in its entirety and no fraction or portion consisting of less than the entire Unit may be leased. Any lease of any Unit must be in writing and will be specifically subject to the Articles, the Bylaws, the Rules and this Declaration and any failure of a tenant to comply therewith will be a default under such lease. The Owner will be liable for any violation of the Articles, the Bylaws, the Rules and this Declaration committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid for the tenant.

**3.3 Time-Sharing.** No Unit will be made subject to any type of time-sharing, fraction-sharing or similar program or division of ownership whereby the right to exclusive use of the Unit rotates among members of the program or fee ownership is divided in a similar fashion on a fixed or floating time schedule over a period of years.

**3.4 Prohibited Conditions.** The following conditions, structures and activities are prohibited on the Property:

(a) Window Air-Conditioning Units. No window air-conditioning units or evaporative coolers may be installed unless they are an integral and harmonious part of the architectural design of the Building and approved by the Board pursuant to Article 10;

(b) Lighting. Exterior lighting is not permitted except for: (i) lighting existing on the Property as of the date of Recording of this Declaration and replacement thereof; (ii) lighting approved for installation on a Unit pursuant to Article 10; (iii) street lights in conformity with applicable City and County regulations; and (iv) seasonal decorative lights during the holiday season;

(c) Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment may be constructed or installed unless they are an integral and harmonious part of the architectural design of the Building and approved by the Board pursuant to Article 10;

(d) Doors and Windows. No "burglar bars," steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, may be installed on the exterior of any windows or doors of the Building;

(e) Signs. No sign of any kind, including, without limitation, banners or similar items advertising or providing directional information, may be erected on the Property without the written consent of the Board, except (i) entry, directional and parking signs installed by Declarant or replacement thereof; (ii) business name signs existing as of the date of this Declaration or replacement thereof in the same size, color, lettering and placement (even though business name may change); (iii) one sign, not to exceed two feet by three feet in dimension, which may be used in connection with the sale or lease of a Unit; or (iv) American flags, services flags and political signs to the extent allowed by law; provided, however, that the Board may enact reasonable rules and regulations regarding the location and size of flags and signs and, if permission is granted to any Person to erect a sign on the Property, the Board may restrict the size, color, lettering and placement of such sign; and

(f) Improvements. No Improvements, including, without limitation, landscaping, may be constructed, installed, modified, altered or renovated, on any Unit, nor may any Improvements on any Unit be demolished or removed, except as permitted pursuant to Article 10.

**3.5** Firearms. The discharge of firearms on the Property is prohibited. The term “firearms” includes “B-B” guns, pellet guns and other firearms of all types, regardless of size.

**3.6** Parking. No motor vehicles may be driven, parked or operated upon any portion of the Property except for the paved driveways or parking lot of the Property; provided that (a) Declarant and the Association will be permitted to operate motor vehicles on the Property in connection with their respective activities under this Declaration; (b) emergency vehicles will be permitted as necessary; and (c) tractor-trailer trucks or other moving and storage trucks will be permitted on the Property as reasonably necessary for the delivery or removal of personal property to and from Units. The use, parking and storage of vehicles such as gliders, graders, boats, tractors, mobile homes, trailers, buses and campers are not allowed on the Property except in conjunction with any construction on the Property. No repair or maintenance work may be done on any vehicle, other than minor emergency repairs, on the Property.

**3.7** Animals. No animals may be (a) kept for a commercial purpose; or (b) kept in such a manner or number that it violates any federal, state or local laws or ordinances or creates a nuisance.

**3.8** Laws and Ordinances. Every Owner and Permittee will comply with all laws, statutes, ordinances and rules of federal, state and local governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board will have no obligation to take action to enforce such laws, statutes, ordinances and rules.

**3.9** Rules. In addition to the restrictions, conditions and covenants in this Article 3 concerning the use of the Property, the Board from time to time may promulgate and amend reasonable Rules not in conflict with this Declaration or the Bylaws. Prior to the adoption or amendment of any Rule, the Board must give written notice to each Owner containing the proposed Rule or amendment to a Rule and the Owners must be allowed a reasonable opportunity to be heard at the Board meeting regarding such proposed new or amended Rule.

**3.10** Occupants Bound. All provisions of this Declaration, the Bylaws and the Rules will also apply to all occupants of any Unit and to Permittees of any Owner or occupant. Every Owner will cause all occupants of its Unit and its Permittees to comply with this Declaration, the Bylaws, the Rules, the Three Lot Agreement or the Greater Legacy Agreement.

**3.11** Refuse Removal. Each Owner or Permittee will regularly remove all rubbish, garbage, debris, recyclable material and other trash from such Owner’s Unit and rubbish, garbage, debris, recyclable material and other trash is not allowed to accumulate therein. Each Owner or Permittee will store all trash, garbage, debris and other trash generated within such Owner’s Unit or awaiting removal therefrom in sanitary, enclosed containers stored within the designated area in accordance with the Rules of the Association. Notwithstanding the foregoing,



normal waste and recyclable material in covered containers may be set out up to 24 hours before a scheduled garbage or recycling pick-up.

#### **ARTICLE 4 PARTY WALLS**

##### **4.1 Party Walls.**

(a) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article 4, the general rules of Nebraska law regarding party walls or liability for property damage due to negligent, reckless or willful acts or omissions will apply thereto.

(b) Sharing of Replacement, Repair and Maintenance. Except as otherwise provided in this Article 4, the cost of replacement, repair and maintenance of any Party Wall will be borne in proportion to each Unit's Allocated Interests having the common boundary line on which such Party Wall is constructed.

(c) Intentional or Negligent Damage or Destruction. In the event that a Party Wall is damaged or destroyed due to the intentional or negligent act or omission of an Owner or such Owner's Permittee, such Owner, at its sole expense, will promptly restore and repair the Party Wall and will compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act or omission.

(d) Other Replacement, Repair and Maintenance. To the extent there are insurance proceeds for the repair or replacement of a Party Wall, each Owner will be entitled to all proceeds from its respective insurance policy over and above the amount of its share for such repair or replacement. Except as provided in Section 4.1(c), in the event that the Party Wall is damaged or destroyed, or otherwise requires maintenance or repair, the Party Wall will be repaired or rebuilt, or such other maintenance and repairs will be performed, at the shared expense of and with the cooperation of both Owners; provided, however, that each Owner will be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Party Wall located within such Owner's Unit.

(e) Party Wall Weatherproofing. Notwithstanding any other provisions of this Article 4, an Owner who, by his or her intentional or negligent act or omission, causes the Party Wall to be exposed to the elements will bear the whole cost of furnishing the necessary protection against such elements.

#### **ARTICLE 5 EASEMENTS**

**5.1 Certain Easements for the Association.** Declarant hereby establishes and grants to the Association a non-exclusive easement over each Unit for the purpose of: (a) permitting the Association reasonable and necessary access to the Property for the purpose of maintaining, repairing, replacing and improving the Property and the Improvements thereon in accordance with the provisions of this Declaration; (b) installing, maintaining, repairing, replacing and

improving the Building Envelope, Building Roof, and the landscaping, fencing, signage, driveways, walkways, entryways and other paved areas, irrigation and water distribution systems in the Common Elements in accordance with the provisions of this Declaration; and (c) permitting the Association reasonable and necessary access to any of the Units for the purpose of performing any other maintenance or repair required of the Association on such Unit in accordance with the provisions of this Declaration; provided, however, that in using such rights under the easement to access the interior of any Unit, the Association (i) will give reasonable notice to the Owner of such Unit before entering upon such Owner's Unit; provided, however that in the case of an emergency which, in the good faith judgment of the Association, necessitates the Association's immediate access to such Unit, the Association will not be required to give the Owner reasonable notice; and (ii) will not interfere with any Owner's quiet use and enjoyment of such Owner's Unit.

**5.2** Easement for Owners. Declarant hereby establishes and grants to each Owner a non-exclusive easement of use, access and enjoyment in and to the Common Elements. Any Owner may extend its rights of use, access and enjoyment to its Permittees, subject to reasonable regulation by the Board. Without limiting the generality of the foregoing, Declarant hereby grants to each Owner and its Permittees a non-exclusive easement over and across the accessways, walkways, entryways or other paved areas of the Common Elements for pedestrian or vehicular access to a Unit.

**5.3** Easements for Encroachments. If, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement on the Property or any portion of it, any Party Wall encroaches upon any part of any Unit, or any part of any Unit encroaches upon any part of another Unit, an easement exists for the continued existence and maintenance of the encroachment. The easement will continue for so long as the encroachment exists and will burden the Unit encroached upon and benefit the encroaching Unit. No easement exists for any encroachment that is materially detrimental to or interferes with the reasonable use and enjoyment of the Unit burdened by the encroachment.

**5.4** Declarant's and Association's Easements for Utilities. Declarant reserves for itself and its successors, assigns and designees (including, without limitation, the Association and its successors, assigns and designees), perpetual non-exclusive easements upon, across, over and under all of the Property (but not through any Unit) to the extent reasonably necessary for the purposes of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals, and all utilities, including, without limitation, water, sewer, telephone, gas, electricity, cable, internet and fiber optic. The designees of Declarant and the Association may include, without limitation, any governmental or quasi-governmental entities and/or utility companies. Declarant specifically grants to the local water supplier, cable television provider, internet provider, telephone company, sanitary and/or storm sewer district or company, electric company, natural gas supplier and other utility providers easements across the Units for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. The easement provided for in this Section will in no way affect, void, extinguish or modify any other Recorded easement on the Property. Any damage to a Unit resulting from the exercise of the easements described in this Section will promptly be repaired by, and at the expense of, the Person exercising its rights under the easement. The exercise of such rights

under the easement will not extend to permitting entry into any Unit, nor will it unreasonably interfere with the use of any Unit.

**5.5 Party Wall Easements.** Each Unit sharing a Party Wall is subject to a reciprocal easement benefiting and burdening the Unit and the other Unit having a common boundary line on which a Party Wall is constructed for the purpose of mutual support of the Units and enjoyment of the Party Wall, as applicable. In addition, the Owners of the Units sharing a common boundary line on which a Party Wall is constructed will have a reciprocal easement for ingress and egress to and from, across, under, upon, over and in those Units which share such common boundary line upon which such Party Wall is constructed as reasonably needed to restore such Party Wall in the event of damage or destruction in accordance with the terms of Article 4; provided, however, that in using such rights under the easement to access the interior of any Unit, Owners (a) will give reasonable notice to the Owner of such Unit before entering upon such Owner's Unit; and (b) will not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Unit.

**5.6 Right of Entry.** Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Unit: (a) for emergency, security and safety reasons; (b) to inspect any Unit for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (c) to remove nonconforming Improvements as provided in Section 10.6. Such right may be exercised by any Person given such right by the Board, and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry will include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but will not authorize entry into any Unit without permission of the occupant, except in cases of emergency. The Association will give reasonable notice to the Owner of a Unit before entering upon such Owner's Unit pursuant to this Section 5.6; provided, however that in the case of an emergency which, in the reasonable judgment of the Association, necessitates the Association's immediate access to such Unit, the Association will not be required to give the Owner reasonable notice.

**5.7 Easements Run with Land.** Except as otherwise provided in this Article 5, all easements established and granted pursuant to this Article 5 are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Units will be conveyed and encumbered subject to all easements set forth in this Article 5, whether or not specifically mentioned in such conveyance or encumbrance.

## **ARTICLE 6 THE ASSOCIATION**

**6.1 Formation; Membership.** The Association will be formed no later than the date the first Unit is conveyed to an Owner other than Declarant. Every Owner, including, without limitation, Declarant when it owns a Unit, will be a Member of the Association. When an Owner

consists of more than one Person, all such Persons will, collectively, constitute one Member of the Association and all such Persons will be jointly and severally obligated to perform the responsibilities of Owner. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association will automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer succession, disposition, foreclosure or other transfer of a Unit to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except in conjunction with a Unit. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association. In the case of a Member that is not a natural person, each such Member shall provide the Association with a written notice stating a natural person that may act for it in Association matters.

**6.2** Voting Rights. Each Member will be entitled to one vote for each Allocated Interest of the Unit owned by such Member. When more than one Person holds an interest in any Unit, the votes for such Unit will be exercised as such Persons among themselves determine, and the Secretary of the Association will be notified of such designation prior to any meeting. In the absence of such notice, the Unit's vote will be suspended in the event more than one Person seeks to exercise it. A Member may not split its votes between the multiple Persons that may hold an interest in the Unit and must exercise all of its votes together. In the case of a Member that is not a natural person, each such Member shall provide the Association with a written notice stating a natural person that may vote for it in Association matters.

**6.3** Board of Directors. The affairs of the Association will be governed by the Board, which may, by resolution, delegate any portion of its authority to an officer, managing agent or Director of the Association. Except as otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association (including, without limitation, those powers itemized in Section 6.4) without a vote of the Members. Declarant will initially appoint all Directors of the Board. There shall be three Directors of the Board. Subject to the provisions of this Section, the qualifications of Directors, the term of office of Directors, the manner in which Directors are appointed or elected and the manner in which Directors are replaced upon removal or resignation will be as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment.

**6.4** Association Powers. Subject to the rights, powers and authority reserved by and conferred upon Declarant pursuant to this Declaration, the Association will serve as the governing body of Lot 2 Legacy Replat 4 Condominium and will have the powers and duties set forth in this Declaration and the Bylaws. The Association may, but will not be obligated to:

- (a) adopt and amend the Bylaws, and make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;

- (b) adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;
- (c) hire and terminate managing agents and other employees, agents and independent contractors;
- (d) provide or contract for services for Owners or Permittees;
- (e) exercise any of the enforcement powers set forth in this Section or elsewhere in this Declaration;
- (f) institute, defend or intervene in litigation or administrative proceedings in its own name only;
- (g) make contracts and incur liabilities in accordance with the properly adopted budget;
- (h) borrow funds to cover Association expenditures and pledge Association assets as security therefor;
- (i) acquire, hold, encumber and convey in its own name any right, title or interest in or to real or personal property owned by the Association (including, without limitation, one or more Units);
- (j) obtain and maintain insurance policies for the Building, including, but not limited to, property insurance for any real or personal property, liability insurance, workers compensation and employers liability insurance, automobile insurance, Directors' and officers' insurance, and fidelity insurance;
- (k) impose and receive any payments, fees or charges for any services provided to Owners;
- (l) impose charges and interest for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after providing notice and an opportunity to be heard, as provided in the Bylaws, levy fines for violations of this Declaration, the Bylaws or the Rules;
- (m) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (n) provide for the indemnification of its officers and Directors as provided in the Bylaws or the Articles;
- (o) assign its right to future income, including the right to receive Assessments;

(p) exercise any other powers expressly conferred by this Declaration or the Bylaws or reasonably implied from or necessary to effectuate such powers;

(q) exercise all other powers that may be exercised in the State of Nebraska by a nonprofit corporation; and

(r) exercise any other powers necessary or appropriate for the governance and operation of the Association and/or the Property.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

**6.5** Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or the Act. The Bylaws may include, without limitation, provisions regarding the voting rights of the Members, the appointment or election of the Board, and the appointment or election of officers of the Association.

## ARTICLE 7 ASSOCIATION LITIGATION

**7.1** Legal Proceedings. The Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws and the Rules. Failure to commence such legal proceedings will not constitute a waiver of any such rights.

**7.2** Enforcement of Declaration, Bylaws and Rules.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner or Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner or suspend the voting rights of any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws will be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws or the Rules, it will be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred by it in such action.

(b) No Waiver. In no event may the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

**ARTICLE 8**  
**FINANCIAL MATTERS AND ASSESSMENTS**

**8.1** Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) Books and Records. The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration, the Bylaws, the Articles, the Rules, the approved budget for the current fiscal year, if any, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for at least the shorter of (i) the prior three fiscal years or (ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Mortgagee or their respective authorized representatives upon reasonable prior written request.

(b) Returns and Reports. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) Preparation of Budget. The Board may, and if levying Common Assessments will, cause to be prepared and adopted annually, not less than 30 days prior to the beginning of each fiscal year of the Association, a proposed budget for the Association. The budget will include the estimated revenue and expenses (including, without limitation, Common Expenses) of the Association for such fiscal year, in reasonable detail as to the various categories of revenue and expense. Within 30 days after adoption of any proposed budget, the Board shall provide a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than 14 nor more than 30 days after the mailing of the summary. Unless at that meeting a majority of all votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present. In the event that a proposed budget is rejected, the budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

**8.2** Creation of Assessments. There are hereby created Assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There will be three types of Assessments: (a) Common Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed for any Unit, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

**8.3** Common Assessments. The Association may subject each Unit to Common Assessments, which will be levied according to each Owner's percentage of Allocated Interests out of all the Allocated Interests. If and when the Association determines it necessary to commence assessment and collection of Common Assessments, such Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Association will set the Common Assessments for each fiscal year at a level which is expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget adopted by the Board. In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years.

(b) Reconciliation. As soon as reasonably possible after the end of each fiscal year, the Board will cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Common Assessments received by the Association from the Owners. To the extent that any Owner has paid more than its Allocated Interest of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Common Assessments for the next ensuing fiscal year. To the extent any Owner has underpaid its share of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Common Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than 30 days), or the Board may include such underpayment in such Owner's obligations for Common Assessments for the next ensuing fiscal year.

**8.4** Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any maintenance, construction, restoration, or repairs or replacements of Common Elements. Each Unit is subject to Special Assessments in the same manner as the Units are subject to Common Assessments.

**8.5** Specific Assessments. The Association will have the power to levy Specific Assessments against one or more particular Units as follows:

(a) to cover liabilities and costs particular to such Unit (including, without limitation, attorneys' fees incurred in bringing the Unit into compliance with the terms of this Declaration, the Bylaws or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Declarant or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws or the Rules by such Owner or Permittees); and

(b) to cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

**8.6** Owners' Obligations for Assessments.

(a) Lien and Personal Obligation. Each Assessment, together with interest computed from the due date of such Assessment at the maximum rate allowed under applicable law or such lower rate set by the Board, late charges in such amount as the



Board may establish by resolution, costs and reasonable attorneys' fees, will be a charge and continuing lien upon the Unit against which the Assessment is made until paid, as more particularly provided in Section 8.7. Without limiting Section 12.3, each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, and any other obligations or liabilities imposed by or pursuant to this Declaration, also will be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment, obligation or liability arose. No First Mortgagee who becomes the Owner of a Unit by exercising the remedies provided in its Mortgage will be personally liable for unpaid Assessments which accrued prior to such acquisition of title when such First Mortgage predated the date of delinquent Assessments. Nothing in this Declaration is intended or will be construed to limit the liability of a First Mortgagee (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Unit for any Assessments levied or accruing against such Unit while such First Mortgagee is the Owner of it.

(b) Terms of Payment. Except for Special Assessments and Specific Assessments, which will be paid in the manner determined by the Board, Assessments will be paid in equal monthly, quarterly or annual installments on or before the first day of each month, quarter or fiscal year, as applicable, or in such other reasonable manner as the Board may establish. The Board may grant discounts for early payment, require advance payment of Assessments at closing of the transfer of title to a Unit, and impose special requirements upon Owners with a history of delinquent payment.

(c) No Set-Off or Abatement. No Owner may exempt himself or herself from liability for Assessments by non-use of Association-maintained property, abandonment of his or her Unit or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off may be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action by the Association or the Board.

(i) Estoppel Certificate. Within 14 calendar days after receipt of a written request from any Owner or Mortgagee, or the designee of either of them, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association will furnish to such Owner or Mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by an Association officer and addressed to such Owner or Mortgagee or designee, stating any then unpaid Assessments due from, or other known defaults by, the requesting Owner or the Owner of the Unit encumbered by such Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from, or other known defaults by, such Owner, as the case may be. Such an estoppel certificate executed in favor of an Owner, Mortgagee, or the designee of either of them, who rely thereon in good faith will be conclusive upon the Association as to the matters set forth therein and such Owner's Unit will not be subject to a lien for any unpaid Assessments against such Unit arising before the date of such

certificate and in excess of any unpaid amounts stated in such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

**8.7**    Lien for Assessments.

(a)    Perfection and Priority of Lien. The Association will have a lien against each Unit to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at the maximum rate allowable under applicable law or such lower rate set by the Board), late charges in such amount as the Board may establish, costs and reasonable attorneys' fees. Assessments are delinquent 10 days after the bills are received by the Owners. If delinquent, the Association will prepare and Record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Unit encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Unit. Such lien will have a priority dating from the recordation of this Declaration and will be superior to all other liens and matters affecting the Property and recorded after the Declaration, except (a) the liens of all taxes, bonds, assessments and other levies which by law are superior, and (b) the lien or charge of any First Mortgage made in good faith and for value when such First Mortgage predates the Notice of Lien.

(b)    Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Nebraska. The Association may bid for a Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey such Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote may be exercised on behalf of the Association as Owner of such Unit; (ii) no Assessments may be levied against such Unit; and (iii) each other Unit will be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged to the Unit acquired by foreclosure had such Unit not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c)    Transfer of Unit. The sale or transfer of any Unit will not affect an existing lien for previous Assessments or relieve such Unit from any lien for subsequent Assessments. Upon sale or transfer of a Unit pursuant to foreclosure of a First Mortgage, the amount of Assessments included in any lien extinguished by foreclosure of a First Mortgage will become Common Expenses collectible as Specific Assessments levied against the Units, excluding, however, the Unit acquired through the foreclosed First Mortgage.

**8.8**    Commencement of Assessments. The obligation to pay Common Assessments, Special Assessments and Specific Assessments will commence as to any Unit when the

Association levies such Assessment against the Unit pursuant to this Declaration. Any first annual Common Assessments and/or Special Assessments levied on each Unit will be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Unit.

**8.9** Failure to Assess. Once the Association commences Assessments, failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification or release of any Owner's obligation to pay such Assessments.

## **ARTICLE 9 MAINTENANCE AND REPAIR**

### **9.1** Association Responsibilities.

(a) Maintenance and Repair of Common Elements. The Association will repair, replace, maintain and keep in good condition, repair and working order the Common Elements, which repair, replacement and maintenance may pertain, without limitation, to:

(i) All paved Improvements and facilities, if any, situated upon the Common Elements;

(ii) All signs, posts, lightpoles, lighting and similar Improvements, if any, situated upon the Common Elements;

(iii) All landscaping, lawns, trees, shrubs, bushes, flowers and other flora, edging, retaining walls, parks, open spaces, trails, stormwater detention or retention ponds, ditches and gullies and other such Improvements, including irrigations systems, equipment and time clocks, situated upon the Common Elements;

(iv) All fencing installed by Declarant or the Association situated upon the Common Elements, and such fencing, if any, located on or adjacent to the Property for which the Association undertakes maintenance responsibilities from time to time;

(v) Snow and ice removal from any paved driveways, walkways, entryways or other paved areas situated upon the Common Elements; and

(vi) Any other property or Improvements situated on the Common Elements as required by the Three Lot Agreement or the Greater Legacy Agreement.

(b) Maintenance and Repair of Units. Subject to the limitations set forth in Subsection (c) below, the Association will repair, replace, maintain and keep in good condition, repair and working order the exterior of the Building, including the Building

Roof, gutters and downspouts and the Building Envelope (but not including the patios or decks).

(c) Excluded Maintenance and Repair of Units. Unless otherwise assumed by the Association under Subsection (b) above, the obligations of the Association under Subsection (b) above will expressly exclude the following as situated on each Unit, which will be the obligation of the individual Owner of each applicable Unit:

(i) the maintenance, repair, replacement and cleaning of the exterior surfaces of windows and exterior doors, and skylights and glass and glazing components of windows, doors and garage doors;

(ii) the maintenance, repair and cleaning of the interior of such Owner's Unit;

(iii) the maintenance, repair, replacement and cleaning of any patio or deck situated on such Owner's Unit; and

(iv) the maintenance, repair and replacement of exterior signs, lighting fixtures and light bulbs attached to the Building (all lighting on the Common Elements will be maintained by the Association).

Each Owner will promptly report to the Association any defect or need for repairs for which the Association is responsible.

(d) Miscellaneous. In order to provide the maintenance services pursuant to this Section 9.1, (i) the Association may levy Common Assessments or Special Assessments against the Owners to pay for such maintenance; (ii) the Members may provide such maintenance services for the Units as the Members may cooperatively agree from time to time; or (iii) if one or more Owners or Units causes maintenance costs for such Unit(s) to be appreciably higher than for other Units due to changes or improvements to an Owner's Unit or other increased need for maintenance due to the fault of such Owner, the cost of maintenance may be separately levied against such Owners as Specific Assessments.

**9.2** Election to Perform Owners' Duties. The Association may elect to maintain or repair any Unit or portion thereof, the maintenance or repair of which is the responsibility of an Owner pursuant to Section 9.1(c), if (a) such Owner has failed, for more than 30 days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its Unit, and (b) such failure has a material effect on the appearance of such Unit when viewed from any area outside such Unit or has a material adverse effect on the use of another Unit for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorneys' fees) incurred by the Association in exercising its rights under this Section 9.2, and such costs will be levied against such Owner as a Specific Assessment. Such payment will be made upon receipt of a demand

from the Association therefor. If an Owner fails to make such payment within 30 days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

## **ARTICLE 10 ARCHITECTURAL STANDARDS**

**10.1** Restriction on Exterior Modifications. Except as provided below, no Owner will make or suffer any structural or design change (including repainting or a color scheme change) or install, construct or modify any Improvements, either permanent or temporary, and of any type or nature whatsoever, to the exterior of the Building or any portion of such Owner's Unit that is outside of the Owner's Unit without first obtaining the prior written consent thereto from the Board. If an Owner (the "Altering Owner") desires to build, renovate, excavate, improve or otherwise alter its Unit, and, if required by the foregoing sentence, such Altering Owner has obtained the written consent thereto from the Board, then the Board will cooperate to the extent reasonably necessary, but at no expense to the Board, to enable the Altering Owner to obtain, at the Altering Owner's sole cost and expense, any required building permit or similar permit or license. All such modifications must conform to the rules, regulations and restrictions of the City, County, the Greater Legacy Agreement, the Three Lot Agreement and any other restrictions affecting the Property.

**10.2** Interior Modifications. Any Owner may remodel, paint or redecorate the interior of its Unit without approval of the Board.

**10.3** Procedures.

(a) Submission of Plans. Plans and specifications showing the nature, kind, shape, color, size, materials and location, as applicable, of all proposed Improvements, alterations or removals of Improvements will be submitted to the Board for review and approval or disapproval no later than 45 days prior to the commencement of construction, alteration or removal. In addition, information concerning drainage, lighting, and other features of proposed construction will be submitted as applicable. The Board may, but is not required to, adopt specific architectural standards or guidelines as part of the Rules of the Association. The Board may condition its approval on such changes in the plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. In reviewing each submission, the Board may consider the quality of materials and design, harmony of external design with the Building, and location in relation to surrounding structures, topography and finish grade elevation, among other things. Decisions of the Board may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may change over time.

(b) Decisions. The Board will meet from time to time as necessary to perform its duties hereunder. The vote of the majority of all of the Directors of the Board, or the written consent of a majority of all of such Directors, will constitute an act of the Board.

In the event that the Board fails to approve or disapprove any application within 30 days after submission of all information and materials reasonably requested, the application will be deemed rejected.

**10.4** No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, will not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

**10.5** Limitation of Liability. Review and approval of any application pursuant to this Article 10 are made on the basis of aesthetic considerations only and the Board will not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board nor any member of any of the foregoing will be held liable for the approval or rejection of any submittal, nor any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Board and its members will be defended and indemnified by the Association as provided in the Bylaws or the Articles.

**10.6** Enforcement. Enforcement of the Board's decisions pursuant to this Article 10 will be the Association's responsibility.

(a) Removal of Improvements. Any Improvement constructed, installed, modified or renovated on or to any Unit in violation of this Article 10 will be deemed to be nonconforming. Upon written request from the Board, the Owner of the Unit on which such Improvement is located will, at such Owner's own cost and expense, remove such Improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Improvement into compliance with the requirements of the Board. Should an Owner fail to remove and restore or cure as required, then the Association, acting through the Board in accordance with Section 6.4, will have the right, to enter onto the Unit, remove the nonconforming Improvement, and restore the Unit to substantially the same condition as previously existed. All costs of any such entry, removal and restoration, together with interest at the maximum rate then allowed by law, may be assessed against the subject Unit and collected as a Specific Assessment.

(b) Completion of Work. Unless otherwise specified in writing by the Board, any approval granted under this Article 10 will be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association, acting through the Board in accordance with Section 6.4, will be authorized to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

(c) Exclusion from Property. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article 10, may be excluded from the Property. Neither Declarant, the Association, the officers, nor the Directors will be held liable to any Person for exercising the rights granted by this Section.

(d) Legal and Equitable Remedies. In addition to the foregoing, Declarant and the Association will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article 10 and the decisions of the Board.

## ARTICLE 11 INSURANCE, DAMAGE AND TAKINGS

**11.1** Association Insurance. The Association's responsibilities with respect to insurance will be as follows and, except as expressly provided to the contrary in this Declaration, the cost of all insurance maintained by the Association hereunder will be included in Common Expenses:

(a) Property Insurance. To the extent there are insurable interests in the Common Elements, the Association will maintain property insurance upon the Common Elements, including, without limitation, the Building Roof, the Building Envelope and the Party Walls in such amounts, against such risks, and containing such provisions as the Board may reasonably determine from time to time, but at a minimum obtaining the insurance required by the Greater Legacy Agreement and the Three Lot Agreement and insuring against all risks of direct physical loss as the result of fire or other hazard for 100% of the full replacement cost of the Common Elements, the Building Roof, the Building Envelope and the Party Walls less a deductible in an amount not to exceed 20% of the actual cash value of the insured property, at the time such insurance is purchased and at each renewal date. Such property insurance will be maintained in the name of the Owners, for the use and benefit of all Owners and Mortgagees, who may be named as additional insureds, as their interests may appear. In the event of an insured loss, the deductible will be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after providing notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the intentional or negligent act or omission of an Owner or such Owner's Permittee, the Association will levy a Specific Assessment upon such Owner for the deductible.

(b) Liability Insurance. To the extent reasonably available, the Association will maintain commercial general liability insurance insuring against damage, injury or death caused by the negligence of the Association or any of its Members, officers, Directors, employees or agents while acting on its behalf and/or arising out of or in connection with the use, ownership or maintenance of the Common Elements, with all Owners and First Mortgagees named as additional insureds, in such amounts and with such coverage as may be determined from time to time by the Board; provided that, to the extent reasonably available, such liability insurance will (i) have a combined single

occurrence limit of not less than \$1,000,000; (ii) contain a “severability of interest” or “cross liability” endorsement which will preclude the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (iv) provide that no act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (v) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Common Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and (vi) provide that it may not be cancelled, nor may coverage be reduced, without 30 days’ prior written notice to the Association and all additional insureds named therein.

(c) Worker’s Compensation and Employer’s Liability. The Association may maintain such worker’s compensation and employer’s liability insurance as may be determined from time to time by the Board, provided that such insurance will in no event be maintained in an amount or with coverages less than that required by applicable law.

(d) Directors’ and Officers’ Insurance. The Association may maintain directors’ and officers’ liability coverage in such amount as it determines from time to time.

(e) Fidelity Insurance. The Association may maintain fidelity insurance or bonds covering losses resulting from dishonest or fraudulent acts committed by the Association’s Directors, officers, managing agents, trustees, employees or volunteers, which may include one or more of the Owners, who handle or manage the funds collected and held for the benefit of the Association. Such policy or bond (i) must name the Association as the insured or obligee (as the case may be), (ii) include a provision requiring at least 30 days’ written notice to the Association before any cancellation of, or material modification in, such policy, (iii) provide coverage in an amount equal to the estimated maximum of funds subject to such handling or management, including reserves, but no less than three months’ Common Assessments against all Units, based on the Common Assessments most recently approved by the Board, plus the amounts held in the reserve fund; and (iv) contain waivers by the issuer of any bond or by the insurer of all defenses based on exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions. If the Association engages a managing agent that will handle funds of the Association, such managing agent must maintain fidelity insurance satisfying the foregoing requirements and provide evidence of such coverage to the Board.

(f) Other Insurance. The Association may procure and maintain such other insurance as the Board may from time to time deem appropriate to protect the Association or the Owners.



(g) Qualifications of Insurers. All policies of insurance required to be maintained by the Association will be placed with insurers that are generally accepted as reputable insurers and that are licensed in the State of Nebraska.

**11.2** Owners' Insurance. Each Owner has the following responsibilities with respect to insurance:

(a) Property Insurance. Each Owner will obtain and maintain at its expense (or will cause its Permittee to maintain at its expense) property insurance upon the Owner's Unit and all personal property within the Owner's Unit in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time; provided, however, that each Owner must, at a minimum, obtain the insurance required by the Greater Legacy Agreement and the Three Lot Agreement and insure against all risks of direct physical loss as the result of fire or other hazards that are customarily covered by the standard extended coverage endorsement and for 100% of the full replacement cost of the Unit (up to and including the drywall or sheetrock, interior paint, wall paper, molding, woodwork and other trim and finishes, or other non-structural, interior elements attached to, or incorporated in, the Unit, but not the Building Roof, Building Envelope or Party Walls and excluding land, excavations, foundations and other items normally excluded from property policies) and such personal property less a deductible in an amount not to exceed \$2500 per occurrence or a lesser amount set by the Board, at the time such insurance is purchased and at each renewal date. Such property insurance will (i) permit a waiver of claims by the Owner, and provide for a waiver of subrogation rights by the insurer as to claims, against the Association, its Directors, officers, employees and agents, the other Owners and the members of such Owners' households; (ii) insure the Association as an additional insured; and (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association carries. All insurance carried under this Section will provide that it may not be canceled, nor may coverage be reduced, without 30 days' prior notice to the Association.

(b) Liability Insurance. Each Owner will maintain at its expense bodily injury and property damage liability insurance for the benefit of the Owner and any additional insureds it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; provided that such liability insurance will (i) have a combined single occurrence limit of not less than \$100,000 or a greater amount set by the Board; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association or another Owner carries; and (iii) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership, maintenance or occupancy of the Owner's Unit.

(c) Cooperation in Obtaining Insurance. If unanimously agreed upon, the Owners may pursue property and liability insurance for the Units in conjunction with the Common Elements so that the Property as a whole and all Owners and the Association carry one policy that addresses all of the requirements of this Declaration. If so obtained,

the cost shall be paid as a Common Expense of the Association and the policy shall be maintained by the Association according to this Declaration and applicable law.

(d) Other Insurance. Each Owner may obtain additional insurance, at its own expense, affording personal property, loss of rents, personal liability and any other coverage obtainable, to the extent and in the amount the Owner deems necessary to protect its interests. Any such insurance will contain waivers pursuant to Section 11.4 and will provide that it is without contribution as against the insurance maintained by the Association.

(e) Assignment of Proceeds. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable under any policy of insurance carried by the Association due to the existence of any insurance carried by an Owner or Permittee, the Owner of such Unit is liable to the Association to the extent of the reduction and will pay the amount of the reduction to the Association upon demand; such Owner also hereby assigns the proceeds of its insurance, to the extent of such reduction, to the Association.

**11.3** Certificates of Insurance; Notices of Unavailability. Each Owner will provide to the Association at the closing of the purchase of its Unit and no less than 10 days subsequent to expiration of any coverage, certificate(s) of insurance evidencing the insurance required to be carried under Sections 11.2(a) and 11.2(b).

**11.4** Waiver of Claims. The Association will make no claim against any Owner, and no Owner will make any claim against the Association, its Directors, officers, employees or agents, or any other Owner, for any loss that is or would be covered by proceeds of any property insurance maintained or required to be maintained by the Association or the subject Owner and the foregoing constitutes a waiver of subrogation rights on behalf of and by the applicable insurers against the Association or such other Owner(s) that are the recipients of the foregoing waiver (which waiver, if requested by the Association or the benefitted Owner(s), will be specifically confirmed in the applicable policies).

**11.5** Proceeds. Except as provided in Section 11.2(e), the Association has no claim to and each Owner may receive all proceeds of any insurance policy maintained by such Owner. The Board is solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Security Holders and other Persons having an interest in any portion of the Property for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and delivering releases when claims are paid. The Association will receive all proceeds of any insurance policy maintained by the Association, except other insured parties under liability insurance policies will be entitled to proceeds arising out of their insured losses.

**11.6** Damage and Destruction.

(a) Property Insured by Association. Promptly after damage or destruction to all or any part of the Property covered by any insurance written in the name of the Association, the Board or its duly authorized agent will file and adjust all insurance

claims and obtain reliable and detailed estimates of the cost of repair or reconstruction, and proceed promptly to repair or reconstruct unless (i) the Declaration is terminated and the Property is released therefrom, (ii) repair or replacement would be illegal under any applicable health or safety statute or ordinance, or (iii) 80% of the Owners, including every Owner of a Unit of a Limited Common Element which will not be rebuilt, vote not to rebuild. Repair or reconstruction, as used in this paragraph, means the repair or restoration of the damaged property to substantially the condition in which it existed prior to the damage, allowing for changes necessitated by changes in applicable building codes. The cost of repair or reconstruction in excess of insurance proceeds is a Common Expense. If surplus funds are remaining after such repair or reconstruction, such funds shall be paid to the Owners in proportion to their Allocated Interests or credited to them to reduce their future Common Expense Assessments.

(b) Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to its Unit, the Owner will proceed promptly to repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 10. Each Owner also covenants and agrees that the Owners will reasonably cooperate with one another in determining how to proceed with the process of their reconstruction and restoration, with applicable insurance proceeds from the policies of all affected Owners to be applied to such reconstruction and restoration. The Owner will pay any costs of such repair and reconstruction that are not covered by insurance proceeds. In the event of damage or destruction of the exterior of the Building, including the Building Envelope or the Building Roof and anything required to be maintained, repaired or replaced by the Association, the Owners agree that the Association will maintain, repair or replace such item and levy Assessments against the Owners as necessary for such maintenance, repair or replacement. Furthermore, the Owners agree to pay such Assessments and separately pursue any applicable insurance proceeds as necessary to ensure that the Association can perform such maintenance, repair or replacement.

(c) Assessments Following Damage. Each Unit will continue to be subject to Assessments following any damage to any portion of the Units without abatement as a result of such damage.

**11.7** Takings of Units. In the event of a Taking of all or any part of any Unit, the Owner thereof will be solely responsible for negotiating with the condemning authority concerning the award for such Taking and will be entitled to receive such award after the liens of all Mortgagees on the affected Unit or portion thereof have been satisfied or otherwise discharged. If only part of a Unit is acquired by a Taking, the Owner of such Unit will be responsible for the restoration of its Unit as necessary to return the Unit to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Units or detract from the general character or appearance of the Property. If a Unit is reduced in size, then the Association will Record an amendment to this Declaration reducing its Allocated Interests in proportion to the reduction in size. Any such restoration must be completed in accordance with the provisions of Article 10. If a Taking occurs by which the condemning authority acquires all or any part of one or more Unit(s) in such a manner that such Unit(s) may not practically or lawfully be used for any purpose permitted by this Declaration, then the Association will Record

an amendment to this Declaration revising the allocations made among the various remaining Units hereunder.

**11.8** Taking of Common Elements.

(a) The Board will be solely responsible for negotiating, and is hereby authorized to negotiate with the condemning authority on behalf of the Owners concerning, the amount of the award for any Taking by which a condemning authority acquires any interests in and to any Common Elements, and the acceptance of such award by the Board will be binding on all Owners. Any award made for such a Taking will be payable to the Association as trustee for the Owners and disbursed as set forth below in Sections 11.8(b) and (c). Any portion of the award attributed to a Limited Common Element will be allocated to the Owners of such Limited Common Elements in proportion to their Allocated Interests.

(b) If a Taking involves a portion of the Common Elements on which Improvements have been constructed, the Association will restore or replace such Improvements on the remaining land included in the Common Elements to the extent feasible and economically cost-efficient, unless within 60 days after such Taking Members representing a majority of the total votes of the Association otherwise agree. Any such construction must be in accordance with plans approved by the Board. If the award made for such Taking is insufficient to cover the costs of restoration or replacement, the Board of Directors may levy Special Assessments to cover the shortfall.

(c) If the Taking involves property owned by the Association but not any Improvements on the Common Elements then such award or net funds will be disbursed to the Association and used for such purposes as the Board will determine.

**ARTICLE 12**  
**CONVEYANCING AND ENCUMBRANCING**

**12.1** Units. Each Unit will be legally described as follows:

Unit \_\_\_\_, Lot 2 Legacy Replat 4 Condominium, according to the Declaration of Covenants, Conditions and Restrictions of Lot 2 Legacy Replat 4 Condominium recorded on \_\_\_\_\_, at Reception No. \_\_\_\_\_ in the office of the Clerk and Recorder of Douglas County, Nebraska.

A description of any Units in accordance with the requirements of Nebraska law for the conveyance of real property will, if included in an otherwise proper instrument, be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only such Unit but also all easements, rights and other benefits appurtenant thereto as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of his or her ownership of a Unit. An Owner may encumber his or her Unit as he or she sees fit, subject to the provisions of this Declaration.

**12.2** Subdivision of Units. No Unit may be subdivided into two or more Units without the prior written consent of the Association.

**12.3** Transferee Liability. In the event of any voluntary or involuntary transfer of a Unit to any Person (other than a Person taking title through a foreclosure of a First Mortgage), the transferee will be jointly and severally liable with the transferor of such Unit for all unpaid Assessments against such Unit up to the time of transfer, without prejudice to such transferee's right to recover from the transferor any amounts paid by such transferee hereunder.

## **ARTICLE 13 GENERAL PROVISIONS**

### **13.1** Amendment.

(a) Amendment by Members. Except in the case of amendments which may be executed by the Association without a vote of the Members as provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total votes in the Association; provided, however, that any amendment which creates or increases special declarant rights, changes the number, boundaries, voting rights or Allocated Interests of any Unit, or changes the uses to which a Unit is restricted will require the vote or agreement of Members representing 100% of the total votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration will not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration will be prepared, executed, Recorded and certified by the President of the Association.

(b) Consent of Owner. Any amendment of this Declaration made in conformity with this Declaration will be conclusively presumed to have received the consent of each Owner and such Owner's Mortgagee, if applicable, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(c) Effective Date; Change in Conditions. Any amendment will become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its Recording or such amendment will be presumed to have been validly adopted. In no event may a change of conditions or circumstances operate to amend any provisions of this Declaration.

### **13.2** Duration and Termination.

(a) Perpetual Duration. Unless terminated as provided in Section 13.2(b), this Declaration will have perpetual duration. If Nebraska law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration will automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Termination. This Declaration may be terminated only by an instrument signed by Owners who represent 80% of the total votes in the Association. Any termination instrument will be Recorded. Nothing in this Section 13.2(b) may be

construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

**13.3** Indemnity. No Owner will hold or attempt to hold the Association or its employees or agents liable for, and each Owner will indemnify and hold harmless the Association, its employees and agents from and against, any and all demands, claims, liens (including, without limitation, mechanics' and materialmen's liens and claims), causes of action, fines, penalties, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs of litigation) incurred in connection with or arising from:

(a) the use or occupancy or manner of use or occupancy of any property maintained by the Association by such Owner or such Owner's Permittees;

(b) any activity, work or thing done, permitted or suffered by such Owner in or about any property maintained by the Association; or

(c) any acts, omissions or negligence of such Owner or such Owner's Permittees; except to the extent that any injury or damage to persons or property on any property maintained by the Association is proximately caused by or results proximately from the gross negligence or deliberate act of the Association or its agents or employees.

Nothing contained in this Section 13.3 will be construed to provide for any indemnification which would violate applicable laws, void any or all of the provisions of this Section 13.3, or negate, abridge, eliminate or otherwise reduce any other indemnification or right which the Association or the Owners have by law.

**13.4** Severability. In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision will be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order will in no way affect other provisions or applications of this Declaration.

**13.5** Governing Law. This Declaration will be governed by and construed under the laws of the State of Nebraska.

**13.6** Captions. Except for the definitions in Article 1, the captions and headings on this instrument are for convenience only and will not be considered in construing any provisions of this Declaration.

**13.7** Notices. Any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association or the Board will be hand delivered or sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Unit; in the case of notices to the Association or the Board, the address of the Association's registered agent. All notices will be deemed given and received three business days after such mailing, or upon receipt in the case of hand delivery. Any Owner may change its address for purposes of notice by notice to the Association in accordance with this Section 13.7. The Association or the Board may change its

address for purposes of notice by notice to all Owners in accordance with this Section 13.7. Any such change of address will be effective five days after giving of the required notice.

**13.8** Declarant Liability. No Person holding the status of, or exercising any rights or performing any obligations of, Declarant under this Declaration will be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Declarant.

**13.9** No Merger. Notwithstanding that the Declarant currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Unit, any such commonality of interests will not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by Declarant, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 26 day of OCT, 2017.

**DECLARANT:**

Legacy Enchanted Travel, LLC, a Nebraska limited liability company

By: [Signature]  
Name: KEM F. MATTHEWS  
Its: MANAGER

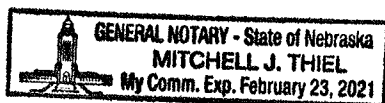
By: Lori P. Matthews  
Name: LORI P MATTHEWS  
Its: MANAGER

STATE OF NEBRASKA )  
CITY AND ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 26 day of OCT, 2017, by KEM F. MATTHEWS its MANAGER.

Witness my hand and official seal.

My Commission expires: 2/23/21



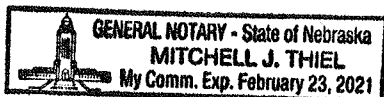
[Signature]  
Notary Public

STATE OF NEBRASKA )  
CITY AND ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 26 day of OCT, 2017, by LORI P. MATTHEWS its MANAGER.

Witness my hand and official seal.

My Commission expires: 2/23/21



[Signature]  
Notary Public



**LENDER SUBORDINATION**

The Property is subject to a Deed of Trust held by American National ("Lender") recorded at Reception No. 2016084244 on 10/11/2016 in the real property records of Douglas County, Nebraska (the "Loan"). Lender, for itself and its successors and assigns, hereby acknowledges and approves of this Declaration and subordinates its Deed of Trust to the provisions of this Declaration.

American National, a Corporation  
Bank  
By: Trevor Rotten  
Name: T. Rotten  
Its: Vice-President

STATE OF NEBRASKA    )  
CITY AND                    ) ss.  
COUNTY OF DOUGLAS    )

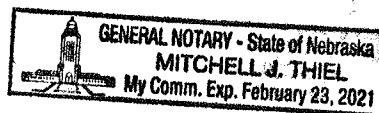
The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of October 2017, by Trevor Rotten its Vice-President.

Witness my hand and official seal.

My Commission expires: 2/23/21

[Signature]

Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

LOT 2 LEGACY REPLAT 4, BEING AN ADMINISTRATIVE SUBDIVISION OF LOT 100, LEGACY, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

**EXHIBIT B**

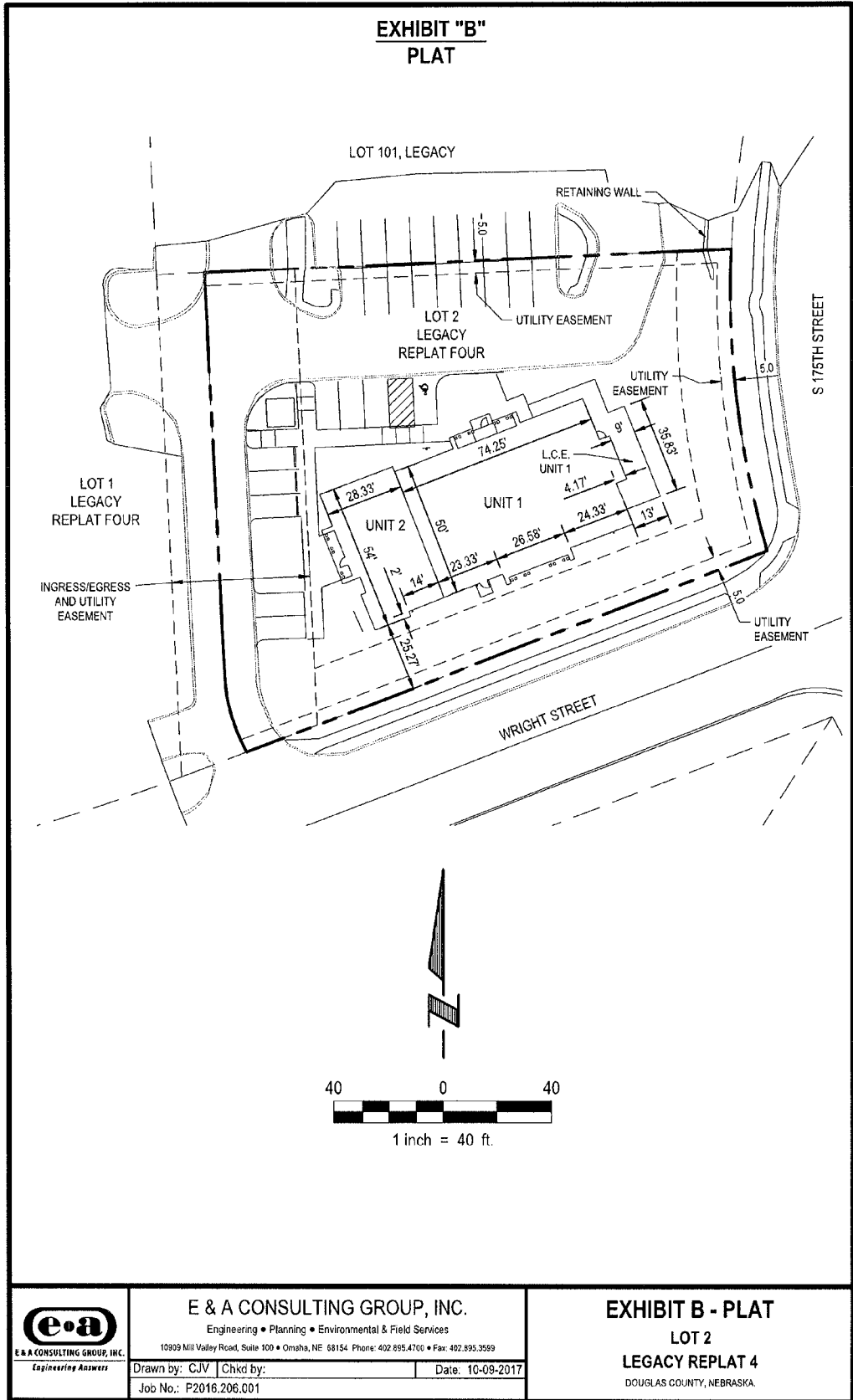
**PLAT**

[SEE ATTACHED]

S C

**LIST OF UNITS**  
**AND PERCENTAGE OF UNDIVIDED INTERESTS IN COMMON ELEMENTS**

Unit #	Percentage of Undivided Interests in Common Elements
1	72%
2	28%



 <b>E &amp; A CONSULTING GROUP, INC.</b> <small>Engineering • Planning • Environmental &amp; Field Services        10909 Mill Valley Road, Suite 100 • Omaha, NE 68154 Phone: 402.895.4700 • Fax: 402.895.3559</small>	<b>EXHIBIT B - PLAT</b> <b>LOT 2</b> <b>LEGACY REPLAT 4</b> <small>DOUGLAS COUNTY, NEBRASKA.</small>
Drawn by: CJV   Chkd by: _____   Date: 10-09-2017 Job No.: P2016.206.001	