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**DECLARATION AND MASTER DEED  
 OF THE 87<sup>th</sup> STREET SPLIT CONDOMINIUM REGIME**

This Declaration and Master Deed of the 87th Street Split Condominium Regime is made and entered into this 9<sup>th</sup> day of October, 2008, by JAJ Enterprises, L.L.C., a Nebraska limited liability company, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, pursuant to the terms of the Nebraska Condominium Act (hereinafter referred to as the "Act"), JAJ Enterprises, L.L.C., the sole record owner of the Property legally described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property") does hereby subject the Property to the condominium form of ownership as the "87th Street Split Condominium Regime," as provided for in the Act and in this Declaration and Master Deed of the 87th Street Split Condominium Regime (hereinafter referred to as the "Declaration").

WHEREAS, by virtue of the recording of this Declaration, the Property shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Declaration and the Act and every grantee of any interest in said Property, by acceptance of a deed or other conveyance of such interest, and every Owner of any portion of the Property, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of the Act and this Declaration and shall be deemed to have consented to the terms hereof.

WHEREAS, in addition to the formation of this Condominium, to be comprised of the Property aforementioned, Declarant hereby further reserves unto itself and its successors and assigns acting as Declarant, Special Declarant Rights, as defined in the Act, to include by way of example and not limitation, the right to exercise Development Rights, as defined in the Act, including the right and option, but not the obligation, in its own discretion and by its own act, to (i) relocate the boundaries of any Unit or Units, and (ii) further subdivide any one or more of the Units into additional Units, Common Elements or both, all as further provided in Article XV of this Declaration and pursuant to the terms of the Act.

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WHEREAS, in furtherance of the plan of condominium ownership and the purposes and intents thereof, Declarant, sole owner of the Property hereby submitted to the Act and this Declaration, together with all Improvements constructed thereon, hereby makes this Declaration which shall apply to, govern, control and regulate the sale, resale, or other disposition, acquisition, ownership, use and enjoyment of the Property and the Improvements located thereon, and does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Property herein described and shall be binding on the present owner of the Property and all its successors and assigns and all subsequent owners of the Property and Improvements constructed thereon, together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, Declarant, as the owner of the Property located in Omaha, Douglas County, Nebraska, and as described in Exhibit "A" attached hereto, for the purposes above set forth, does hereby declare said Property and all Improvements and facilities constructed thereon to be a condominium property regime hereunder known as the 87th Street Split Condominium Regime, under the Act and in furtherance thereof declares and provides:

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## ARTICLE I - DEFINITIONS

The following terms, as used herein or elsewhere in any of the Condominium documents relating to the 87th Street Split Condominium Regime, unless otherwise provided, are defined as follows:

1.1 Allocated Interests means the undivided interest in the Common Elements and Common Expense Liability allocated to each Unit.

1.2 Articles of Incorporation means the Articles of Organization of the Association as the same now exist or may be hereafter amended.

1.3 Association means the 87th Street Split Condominium Association, LLC.

1.4 Association's Board of Directors, Board of Directors or Board means the Board of Directors of the Association, the members of which shall be elected from time to time as provided in this Declaration and Bylaws and the Articles of Incorporation and shall be elected pursuant to the terms of the Act. The Board of Directors shall be the governing body of the Association and may sometimes be referred to as the Board or the Executive Board.

1.5 Bylaws mean the Bylaws of the Association which may be amended from time to time.

1.6 City means the City of Omaha, Nebraska.

1.7 Common Elements means all portions of the Condominium other than the Units.

1.8 Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.9 Common Expense Liability means the liability for Common Expenses allocated to each Unit pursuant to the terms of this Declaration and the Act.

1.10 Condominium, Condominium Regime or Condominium Project means the Real Estate described on Exhibit "A" attached hereto and incorporated herein by this reference, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

1.11 Declarant means JAJ Enterprises, L.L.C., and its successors and assigns that succeed to any Special Declarant Rights inclusive of the Developments Rights.

1.12 Declaration means this Declaration and Master Deed of the 87th Street Split Condominium Regime, as such may be amended from time to time.

1.13 [Intentionally Deleted]

1.14 Development Rights means any right, or combination of rights, reserved by the Declarant in this Declaration to add Real Estate to the Condominium, to create Units, Common Elements or Limited Common Elements within the Condominium, to subdivide Units or convert Units into additional Units, Common Elements or both; or to relocate the boundaries of any Unit within the Condominium Regime, including the rights reserved to Declarant as set forth in Article XV below.

1.15 Dispose or Disposition means a voluntary transfer to a Purchaser of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.

1.16 Eligible Mortgagee means any first mortgage instrument recorded or filed in the office of the Register of Deeds of Douglas County, Nebraska, encumbering a Unit or any portion thereof as security for the performance of an obligation given in good faith and for valuable consideration which is not a fraudulent conveyance under Nebraska law, but does not mean any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code or an encumbrance affecting any leasehold interest in a Unit (such as leasehold mortgage).

1.17 Identifying Number means a symbol or address which identifies only one Unit in the Condominium Project.

1.18 Improvements shall mean all buildings, structures, underground installations, slope and grade alterations, lighting, elevators, walkways, gutters, storm drains, drainageways, sewers, utilities, driveways, screening walls, walls, exterior doors, windows, window boxes, awnings, stairs, stairwells, decks, patios, balconies, plantings, planted trees and shrubs, sidewalks, poles, flags, signs, storage or display areas, loading areas, docks, fountains, water features, facilities and all other structures or improvements of every type and kind.

1.19 Limited Common Element means a portion of the Common Elements allocated by this Declaration, the Bylaws or by the Act for the exclusive use of one or more but fewer than all of the Units.

1.20 Managing Agent means the Person, company, or other legal entity who undertakes the duties, responsibilities and obligations of the management of the Association and the Condominium which Managing Agent may be employed or terminated by a vote of the Board of Directors, subject to any outstanding contract rights as might exist.

1.21 [Intentionally Deleted]

1.22. [Intentionally Deleted]

1.23 Period of Declarant Control shall commence with the recording of this Declaration and shall continue until the earlier of (i) sixty (60) days after the date by which fifty (50%) percent of the Units have been conveyed to Unit Purchasers, or (ii) two (2) years after the date the Declarant has ceased to offer Units for sale in the ordinary course of its business.

1.24 Person means a natural person, corporation, partnership, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity; provided, however, that for a land trust, "Person" means the beneficiary of the trust rather than the trustee of the trust.

1.25 Plan or Plans means the drawings that contains the information required by the provisions of the Act and as set forth on Exhibit "B".

1.26 Purchaser means any Person other than a Declarant or a Person in the business of selling Real Estate for his own account, who by a voluntary transfer acquires a legal or equitable interest in a Unit, other than (a) a leasehold interest, or (b) as security for an obligation.

1.27 Qualified Lender means any Eligible Mortgagee, its successors, assigns, affiliates or subsidiaries, a holder, insurer or governmental guarantor of an Eligible Mortgagee; provided that any such insurer or governmental guarantor has given notice to the Board, in writing, of the existence of such status.

1.28 Real Estate means any leasehold or other estate or interest in, over, or under land including structures, fixtures, and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real Estate" includes parcels with or without upper or lower boundaries, and spaces which may be filled with air or water and specifically includes the Property.

1.29 Special Declarant Rights means rights reserved for the benefit of the Declarant as defined in the Act.

1.30 Super-Majority Vote shall mean one hundred (100%) percent or more of the votes entitled to be cast by the members of the Association at any regular or special meeting of the Association called for that purpose.

1.31 Unit means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Article II, below, in the Plans and pursuant to the Act.

1.32 Unit Owner or Owner shall mean the fee simple interest owner of any Unit or Units, including, without limitation, one who is buying a Unit or Units under a recorded contract, but excluding Mortgagees and others who hold such title merely as security. Owner shall not include a Lessee of a Unit or Units.

## ARTICLE II - CONDOMINIUM UNITS

2.1 The Units. The Condominium Units shall be legally described as shown on the Plans. The Condominium Regime consists of two (2) Units. Each Unit includes an Allocated Interest that is appurtenant thereto. The Units are further identified on the Plans recorded pursuant to the terms of this Declaration and the Act. Each Unit's appurtenant percentage of undivided interest in the Common Elements shall be allocated as set forth in Exhibit "C" attached hereto and incorporated herein by this reference. The calculation of this allocation, shall be originally calculated by the Declarant as follows: the Allocable Interest, for each Unit in the Common Elements, other than the Limited Common Elements, is based upon a fraction, the numerator of which is the total square footage of the Unit, and the denominator of which is the total square footage of all of the Units. The Declarant shall calculate any reallocation of the percentage interests upon the creation of any additional Units, the relocation of the boundaries of any Units, the conversion of Units into Common Elements or the conversion of Common Elements into Units using the above described formulas. For purposes of voting, each Unit is allowed one (1) vote, regardless of the number of Persons having an interest in such Unit. The Common Expense Liability shall be based on the operation and maintenance costs for these Common Elements and the amount of the assessment will change on a yearly basis according to these costs. Each Unit may be described by its Identifying Number or symbol as shown on the Plans and as set forth in this Declaration and shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding Allocated Interests even though the same is not expressly mentioned or described therein. Ownership of each Unit and the Unit Owner's corresponding share in the Common Elements shall not be separated. Other than the Declarant, no Unit Owner may relocate the boundaries of any Unit or further subdivide or combine any one or more the Units, except as set forth in Section 6.6(a) below.



2.2 Dimension of Units. The Units and their dimensions are depicted on the Plans referred to hereinabove which Plans are incorporated herein by this reference. Except as otherwise provided herein, and as otherwise set forth in Article III, which describes the Common Elements, each Unit includes that part of the structure which lies within the following boundaries:

(a) Horizontal (Upper and Lower): The upper horizontal boundary of each Unit shall be in the horizontal plane of the lowermost unfinished surface of the roof, such that the roof, and all of its support systems shall not be deemed to be included within the boundaries of the Unit. The lower horizontal boundary of a Unit is the horizontal plane of the upper surface of the floor.

(b) Vertical (Perimetrical): The vertical boundary (perimetric) of each Unit is the unfinished interior perimeter wall surfaces of all such walls as originally constructed without taking into account any additional surfaces subsequently added by the Unit Owner; provided that where there are windows or doors, the boundary is the exterior surface of such doors and windows when enclosed, and where any such boundary separates one Unit from another Unit, the vertical boundary (perimetric) between such shall be the center line of the walls separating such Units. Repairs and finishes on such walls shall be maintained by each individual Unit. Stud replacement shall be divided equally by each adjoining Unit, unless such repair shall be caused by such Unit Owner or its occupants, guests, invitees, agents and contractors.

(c) The horizontal and vertical boundaries above identified shall be extended to their intersections with each other.

2.3 Further Definition of Units. Included in the Units are systems, equipment, installations and facilities of the Unit which are exclusively used for the benefit of a particular Unit, whether situated within or outside of a particular Unit's boundaries, including, but not limited to the following:

(a) All internal walls or partitions which are contained wholly within a Unit shall be deemed part of the Unit;

(b) All central and appurtenant installations for services such as electrical, power, light, telephone, gas, hot and cold water, sewers, heat and air conditioning (including all ducts, pipes, valves, wires, cables and conduits used in connection therewith or any replacements thereof) which exclusively service a Unit;

(c) Fans, vents and exhausts and all piping, ducts and equipment which exclusively service a Unit wherever the same may be located;

(d) All exterior windows, doors, shutters, awnings, window boxes, and glass windows which exclusively service a Unit;

(e) Light fixtures, wiring, risers, electrical feeders, switches, and electrical meters exclusively servicing a Unit;

(f) Gas meter, gas piping, risers, fittings, valves including any gas system exclusively servicing a Unit; and

(g) All other facilities or fixtures located within or immediately connected to a Unit which exclusively serve that particular Unit.

No Unit shall include any piping, wiring, ductwork, machinery, equipment or other materials used by any other Unit.

### ARTICLE III - COMMON ELEMENTS

3.1 Common Elements The Common Elements of the Condominium are as follows:

(a) The Real Estate upon which the structures containing the Units are located, and such structures themselves, including the foundations, exterior walls, bearing walls, roofs, roof support systems, vertical structural columns and beams, gutters, downspouts, chutes, chases, flues, ducts, wires, conduits, bearing columns, fire suppression and detection systems, whether situated partially within or outside the boundaries of any Unit, including without limitation all piping, fittings, valves wall hydrants, and sprinkler heads, or any other fixtures which serve more than one Unit and are not otherwise assigned or allocated to any one or more Units as a Limited Common Element.

(b) Except as may be shown on the Plans, the Common Elements shall include, without limitation, the parking lot and drive areas, the landscaped areas, the utility facilities, and irrigation system, now or hereafter erected, constructed or installed on or in the Property, and any adjacent public right-of-ways that the Association is responsible for maintaining, including without limiting the generality of the foregoing, trees, shrubs, lawns, decorative urns and planters, retaining walls, pavements, sidewalks, storm and water systems, sewage lines, and all utility installations, and pipes, wire and conduits and connections for television, electricity, light, water and plumbing and other utilities, except those items that are exclusively within and for the benefit of a particular Unit and not used to service any Unit other than that particular Unit.

(c) All other appurtenances not herein specifically designated which are not enclosed within the boundaries of a Condominium Unit as is hereinabove delineated in Article II of this Declaration.

3.2 Undivided Interest in Common Elements. The Owner of each Unit shall own an undivided interest in the Common Elements as a tenant (or tenants) in common with all the other Unit Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for the purposes incidental to the use and occupancy of said Unit, and such other incidental uses as may be permitted by this Declaration, which right shall be appurtenant to and run with such Person's or Persons' Unit. The extent and amount of percentage of such ownership shall be expressed by a percentage amount, the particular percentage amount, also sometimes referred to herein as "share", appertaining to each Unit being set forth in Exhibit "C" attached hereto and made a part hereof. The percentage interest appurtenant to the Unit may change in the event any Unit is converted to a Common Element, any Common Element is converted to a Unit or the boundaries of any Unit are relocated as authorized by the Act and this Declaration.

3.3 Allocated Share of Common Elements. The percentage interest or share allocated to each Unit shall be determined as set forth in Article II, above. Each Owner, by acceptance of the deed to a Unit, expressly agrees to the allocation and reallocation of the percentage interest set forth hereinabove or by exercise of any other Special Declarant Right. Allocations and reallocations of the percentage interest may be subject to minor variations attributable to rounding off. The respective percentage interest shall be computed to three significant figures so the sum of the percentage interests of all Units equals one hundred (100%) percent.

3.4 Limitations On Use of Common Elements. Notwithstanding anything else contained herein, Unit Owners may not alter, modify, cut, disconnect, block in, connect to, or turn off any Common Element without the written consent of the Association which may be withheld by the Association in the Association's sole discretion.

3.5 Limited Common Elements. Unless the context of this Declaration otherwise requires, Limited Common Elements shall be as provided in the Act and assigned and allocated exclusively to the Units so served as shown on the Plans. Each Unit shall have as a Limited Common Element the parking lot and drive areas and the landscaped areas shown on the Plans.

#### **ARTICLE IV - COVENANTS**

4.1 No Partition of Common Elements. As long as the Property is subject to the provisions of the Act, the Common Elements shall remain undivided, and no Unit Owner or Owners shall bring any action for partition or division of the Common Elements; and any agreement to the contrary shall be null and void. Provided, however, nothing herein contained shall prevent partition of a Condominium Unit as between any Persons who are Co-Owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

4.2 No Severance of Ownership. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and his or her corresponding Allocated Interests, including his or her share in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

#### **ARTICLE V - EASEMENTS AND LIMITED COMMON ELEMENTS**

5.1 Encroachments. In the event that, by reason of construction, settlement or shifting of any building or structure, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Condominium Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Condominium Unit it shall be necessary to a Unit Owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of an unoccupied space within the Property and adjoining his or her Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Condominium Unit and the Common Elements, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for an encroachment be created in favor

of any Condominium Owner or in favor of the Owners of the Common Elements if such encroachment occurred because of the willful conduct of said Condominium Unit Owner or the Owners of the Common Elements, as the case may be. In the event any structure is partially or totally destroyed and then rebuilt, minor encroachments of part of the Common Elements because of construction shall be permitted and valid easements for said encroachment and the maintenance thereof shall exist.

5.2 Easement to Unit Owners. Except as to the use of any Unit or Limited Common Elements that are assigned and allocated to the Unit or that are assigned and allocated exclusively to any other Unit or Units, perpetual easements are hereby established for all Unit Owners, their guests, invitees, mortgagees and employees for the use and enjoyment of all Common Elements subject to such rules and regulations as may from time to time be established by the Association herein provided. Except for the rights of the Declarant herein and except as otherwise provided herein, no Owner of a Unit shall have any right to access, occupy or use any Limited Common Elements exclusively assigned and allocated to any other Unit.

5.3 Utility Easements.

(a) The Association shall maintain all sewer and utility lines and facilities located in, on, or under the Common Elements, except for those lines and facilities maintained by utility companies (public, private or municipal) and those required to be maintained by the Owners pursuant to subsection (b), below, or the Association. The Association shall pay all charges for utilities supplied to the Condominium Property, except those metered or charged separately to the Condominium Units. The Association shall have the right to require a Unit Owner to have a separate meter installed for the water service or any other utility serving the Unit.

Accordingly, if any sewer or utility line or facility which the Association is required to maintain, inspect, repair or replace becomes clogged, stopped-up, damaged, destroyed or otherwise requires repair, the Association shall furnish such maintenance, replacement or repair, including repair of any collateral damage or loss in the Common Elements or any Improvements therein. However, if it can be determined that the cause of such clogging, stoppage, damage, destruction or repair originated in any particular Unit (or was caused by an act of an Owner or any of his/her agents, guests, whether or not such act was negligent or culpable), the Association may charge the Owner of the Unit the cost of the repair, replacement or maintenance. If one or more Owners fail to pay such costs, the Association may collect them by levying a special assessment upon the Unit or Units of the Owners who are responsible therefore under the provisions of this subsection. Except as otherwise provided herein, the Association shall not be responsible for damage to any Unit or personal property located therein caused by a damaged or defective sewer or utility line or facility.

In the event of a failure or inability of the Board to take timely action to maintain, replace or repair sewer or utility lines or facilities for which it is responsible (including repair of any collateral damage or loss in the Common Element), the Owners of any Unit or Units served by the lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon Units, Common Elements or Limited Common Elements which these lines, facilities or any portion thereof are

located to repair, replace or maintain them (including collateral damage as provided above). The Association shall reimburse the Owner(s) for the reasonable and necessary costs incurred by the Owner(s) in making such maintenance, repair or replacement. If entry onto the Common Elements, Limited Common Elements or Units is required hereunder, the party making such entry must give reasonable notice to the Association and/or Owner of such Unit as applicable.

(b) Unless maintained by a utility company, an Owner shall be deemed to own the utility lines and facilities and outlets of all sewer or utility lines and facilities located within and serving only his/her Unit, and shall be responsible for the maintenance of such utility lines, facilities and outlets.

(c) Whenever such sewer or utility lines or facilities serve more than one Unit, the Owner of each Unit served by the lines or facilities shall be entitled to the full use and enjoyment of the portions of the lines or facilities as service his/her Unit.

5.4 Easements in Gross. The Property shall be subject to a perpetual easement in gross to the Association provided herein, its successors, assigns, agents, and contractors for ingress and egress, to perform its obligations and duties as required by this Declaration. Should it be necessary to enter any Condominium Unit to inspect, maintain, repair, or replace a Common Element or Limited Common Element, the employees, agents, contractors, subcontractors, or workmen shall be entitled to entrance during reasonable hours with 24 hours prior written notice, unless it is reasonably believed by the Board or any property manager hired by the Association that an emergency exists which requires such entrance without advanced notice, by exhibiting to the Condominium Owner or any Person or Persons occupying such Unit under authority of such Condominium Unit Owner, an order signed by any member of the Board of Directors or signed by the Managing Agent.

5.5 Granting of Easements. The Association, acting through the Board shall have the power to grant rights and restrictions, in the Common Elements or Limited Common Elements, such as the rights to grant utility easements, licenses, or similar rights, including easements for cable television, under, through or over Common Elements, or Limited Common Elements, as may be reasonably necessary to or desirable for the ongoing development or operation of the Condominium.

5.6 Easements in Units. To the extent that any utility line, pipe, wire or conduit serving any Unit shall be wholly or partially within the boundaries of another Unit, such other Units shall be burdened with and there hereby is reserved and created an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to run to the benefit of the Unit or Units served by the same.

5.7 Easement for Improvements. Declarant shall have and does hereby reserve a transferable easement on and over the Common Elements for the purpose of making improvements contemplated by this Declaration on the Property, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

5.8 Effect of Easements. All easements and rights herein established shall run with the land and inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Condominium Unit Owner, Purchaser, mortgagee, or other Person having an interest in any portion of the Property herein described, whether or not such easements are maintained or described in any deed of conveyance.

5.9 Restoration of the Condominium. The benefited party of any easement granted hereunder shall have the duty and obligation to repair and restore the servient portion of the Condominium to the condition which existed prior to the exercise of such easement rights.

5.10 Driveway Easement. As shown on the Plans the Owner of Unit B has a 12 foot wide easement for the purpose of ingress and egress over the parking lot which is part of the Limited Common Elements of Unit A to access the garage door entrance which is part of Unit B. This Driveway Easement is subject to the limitations contained herein and may only be used for ingress and egress to the garage and may not be used for parking or unloading of vehicles or storage of any personal property. This Driveway Easement is not intended to be the primary means of vehicular access to Unit B and may be temporarily restricted or blocked by the Owner or occupant of Unit A for purpose of loading or unloading of vehicles or the use if the doors on the east side of Unit A. This Driveway Easement may not be used in any manner which restricts the access by the Owner or occupant of Unit A to the doors on the east side of Unit A or the parking spaces located on the Limited Common Elements of Unit A.

## **ARTICLE VI - ARCHITECTURAL CONTROL AND REGULATION OF IMPROVEMENTS**

### **6.1 Approval of Plans.**

(a) Approval Required. Except for any Improvements constructed and installed by Declarant, no Improvement shall be constructed, erected, placed, expanded, added to, maintained or permitted to remain within any Unit, and no alterations or other work which alters the exterior appearance of any Unit, Limited Common Element or Common Element, until the plans and specifications and other documentation as may be required by the Association for said Improvements and alterations, which may include, without limitation, floor plans, materials, colors, signage, exterior lighting and any other information needed to accurately describe the exterior appearance or functional characteristics of said Improvements (the "Application"), and have been submitted to and approved in writing by the Association. The Association may require the Application to include a written opinion with an affixed seal from a structural (or other engineer as designated by the Association) licensed in the State of Nebraska that the proposed improvement does not adversely affect the integrity, strength or capacity of the structure, roof, or any other component of any Common Element, Limited Common Element, or Unit. Three sets of the Application shall be filed with the Association. Improvements approved in writing by Declarant prior to the recording of this Declaration shall be deemed to have been approved by the Association.

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

(c) Governmental Regulations. All Applications for Improvements submitted to the Association hereunder shall comply with any and all laws, rules, regulations or ordinances applicable to the Property which have been promulgated by any local, state, federal or other governmental agency or authority. Copies of all applicable building permits shall be submitted to the Association before

commencement of the work. Upon completion of the improvement, a copy of the certificate of occupancy, if applicable shall be submitted to the Association.

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

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

6.2 Maintenance During Construction. All construction activities of any kind on any portion of the Property shall be governed by the provisions of this Subsection and any other written requirements of the Association. All construction activities shall be carried out in an orderly and timely manner and all partially completed Improvements shall be kept in an orderly condition during construction. Dust from all construction shall be controlled at all times in the manner required by the Association. If trucks entering and leaving the Property deposit mud or dust on any streets or walkways, the Owner of the Unit on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets and walkways (or causing the same to be maintained) in a clean condition on a daily basis. Any repairs or replacements to the Common Elements, including any Limited Common Elements, necessitated by a Unit Owner's construction shall be performed by a contractor approved by the respective Association having authority thereof.

## **ARTICLE VII - RESTRICTIONS**

7.1 Permitted Uses. Except as otherwise provided herein, and subject to all other provisions of this Declaration and any other recorded restrictions on use, all uses permitted under General Industrial zoning by the

City shall be allowed within any Unit, or portion thereof: provided, however, each such use shall be first expressly approved in writing by the Declarant during the Period of Declarant Control, and thereafter by the Association.

7.2 Prohibited Uses - All Units, Common Elements and Limited Common Elements. In addition to all restrictions now existing against said Property and all Improvements now or hereafter constructed thereon, the use, occupancy and operation of the Units, Common Elements and including Limited Common Elements is hereby expressly restricted as follows:

(a) Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Property, except that dogs, cats or other usual household pets may be kept by the respective owners in their respective Units, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner of any Unit, or any resident thereof.

(b) Use of Property. Except for the right of ingress and egress, the Owners of Units are hereby prohibited and restricted from using any property outside of their respective Units, except as may be allowed by the Association's Board of Directors or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners within the Condominium Regime and is necessary for the protection of the Owners.

(c) Roof. No television antenna, radio receiver, satellite dish, roof top units or other devices or components shall be attached to or installed on any portion of the Property without the written approval of the Association, unless contained entirely within the interior of a Unit. No radio or television signals, nor any other form of electromagnetic radiation, shall be permitted to originate from any Unit, which may unreasonably interfere with the reception of television or radio signals within the Condominium; provided, however, that Declarant and the Association shall not be prohibited from installing equipment necessary for the operation of any master antenna, security, cable television, mobile radio, or other similar systems within the Condominium.

(d) Vehicles, Etc. Unless otherwise approved by the Association, no vehicles shall be parked on the Common Elements or the Limited Common Elements, other than in authorized Parking Spaces, and no vehicle repairs shall be allowed on the Property. No vehicles shall be parked or stored on blocks or other such devices or in an inoperable condition on the Common Elements, Limited Common Elements or any other portion of the Condominium. No vehicles shall be parked so as to obstruct the fire lanes or roadways as may exist within the Condominium or hinder the enjoyment and use of the condominium by other unit owners. The Association is expressly authorized to tow away, at an offending owner's expense, any vehicle which is in violation of this Section, or which is placed on the Condominium Property in violation of the rules and regulations governing parking as may be adopted by the Board of Directors. No boats, boat trailers, campers, canoes, recreational vehicles, vehicles used primarily for recreational purposes, shall be stored, allowed to remain, or parked outside of the building on any portion of the Condominium outside of the building.



(e) Signs. Except as permitted in writing by the by the Association, no signs, billboards or objects shall be erected, placed, or permitted to remain on the Property. All signage will have to comply with the laws of the City. Each Unit shall be allocated one half of the sign budget allowed by the City for the Property

(f) Miscellaneous Prohibited Uses. No Unit shall be used for the operation and maintenance of a (i) second hand store, (ii) odd lot, closeout or liquidation store, (iii) auction house, (iv) flea market, (v) an adult book store, adult theater, or any facility selling or displaying sexually explicit or pornographic materials or providing sexually explicit entertainment, (vi) a lounge, pub, bar or tavern serving alcoholic beverages or other legally controlled substances, (vii) a residence, or (viii) tattoo parlor. No Unit shall be occupied, operated or maintained in an unsanitary or hazardous condition or in violation of any covenants or restrictions recorded against the Property.

7.3 Security and Frozen Pipes. Should a Unit become vacant, the Owner is responsible for securing the Unit while it is unoccupied, including engaging all locks, providing security lighting, and heating the interior sufficient to keep pipes from freezing. Insurance claims or costs incurred by the Association, the Board or the Association for frozen pipe damage in unheated Unit may be offset by a special assessment levied against the Unit in an amount equal to the damage claim.

7.4 Unightly Appearances. No offensive or unsightly appearance shall be maintained or allowed to exist on those portions of any Unit visible from the exterior of the Condominium or Common Areas. Provided further, however, that nothing shall be permitted which in the opinion of the Association's Board of Directors jeopardizes the structural integrity of any deck or other part of the Condominium, or which presents risk of damage to adjacent property.

7.5 Acts Affecting Insurance. An Owner shall not permit or suffer anything to be done or kept in his or her Unit which will increase the rate of insurance acquired by the Association or which will otherwise obstruct or interfere with the rights of other Owners.

7.6 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Condominium except in covered containers of a type, size and style which are approved by the Association. The Association shall have the right to subscribe to a trash service for the use and benefit of the Association and all Owners; and to adopt and promulgate rules and regulations regarding garbage, trash, trash containers and collection. The Association shall have the right to require all Owners to place trash and garbage in containers located in areas designated by the Association. No incinerators shall be kept or maintained in any Unit. All rubbish, trash, and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. If trash dumpsters are used to facilitate trash, rubbish and garbage removal, all such trash, rubbish and garbage shall be placed therein for removal from the Property.

7.7 Outside Storage. No materials, equipment, storage containers, inventory, debris, or machinery may be stored or kept outside of a Unit unless approved by the Association.

7.8 Leasing of Units. A Unit Owner may lease all or any portion of his or her Unit at any time and from time to time provided that:

- (i) No Unit may be leased for an initial term of less than ninety (90) days;
- (ii) No Unit may be leased or subleased without a written lease or sublease;
- (iii) The rights of any lessee of a Unit shall be subject to, and each such lessee shall be bound by the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease. The Lessee shall acknowledge that it is bound by the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations in the lease or by a separate writing signed by the Lessee.

Notwithstanding the foregoing, the provisions of Section 8.8 shall not apply to a holder of a Eligible Mortgage who is in possession of a Unit following a default in such mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

7.9 Lawful Use. No improper or unlawful use shall be permitted on any part of the Condominium. All valid laws, zoning ordinances, and regulations of all government bodies having jurisdiction over the Condominium shall be observed. Any violation of such laws, zoning ordinances or regulations shall be a violation of this Declaration.

7.10 Nuisances and Offensive Activity. No Owner, lessee, occupant, or other Person shall create a nuisance within the Condominium Regime, or use any portion of the Condominium Regime for any activity or purpose which is considered by the Board, its sole and absolute discretion, to be objectionable due to sound, odor, visual effect or physical impact and which in the opinion of the Board will disturb or tend to disturb other Owners or lessees in the Condominium, or which is deemed by the Board or any committee to constitute a nuisance. Included among the uses or activities prohibited because of their detrimental effect upon the general appearance, enjoyment and use of the Condominium are, without limitation, the following:

- (i) Any public or private nuisance.
- (ii) Any excessive vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness or pulsating effect.
- (iii) Any lighting which is flashing or intermittent or is not focused downward or away from any Unit within the Condominium, unless otherwise approved by the Board.
- (iv) Any air pollution, including without limitation any dust, dirt, mold, microbials or other environmental pollutants in excessive quantities.
- (v) Any emission of excessive and offensive odors, or noxious fumes.
- (vi) Any storage or release of hazardous materials as defined by federal or state law or combustible materials except for storage of such materials in compliance with such laws.
- (vii) Failing to keep the interior of a Unit sufficiently heated to prevent the freezing of pipes within such Unit.

No nuisance shall be permitted to exist or operate upon the Condominium and no activity shall be conducted upon the Condominium which is offensive or detrimental to any portion of the Condominium or any Owner or Occupants of the Condominium. No exterior speakers, horns, whistles, bells or other sound devices

except security or other emergency devices used exclusively for security or emergency purposes shall be located, used or placed on or in the Condominium.

7.11 Enforcement. This Declaration, including all restrictions set forth herein, and the rules and regulations may be enforced by any Owner or the Association by injunctive relief, specific performance or the imposition of reasonable monetary fines as provided in the Act and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or rules and regulations of the Association. Any fines so imposed shall be considered an assessment against the Unit and may be collected in the manner provided for collection of other assessments. In addition to the foregoing, if any Person shall fail to maintain its Unit in a reasonably safe and sanitary condition, the Association may, at the Board's option, and after ten (10) days written notice to the Unit Owner, perform any clean-up, repair and/or replacement to cure any such condition, and all cost and expenses reasonably incurred by the Association, plus interest thereon at the rate of sixteen (16%) per annum, shall be reimbursed to the Association by such Unit Owner within thirty (30) days after work has been completed. The Association may levy a special assessment against any such Unit, which may be enforced in accordance with Section 10.9 below.

#### **ARTICLE VIII - MAINTENANCE**

##### **8.1 Maintenance of Condominium Units and Limited Common Elements.**

(a) By the Owner. Except as provided in subsection (b) of this Section, each Owner shall have the obligation to maintain, keep attractive, keep in good repair, and replace (subject to applicable and available insurance proceeds) all portions of the Unit and the Limited Common Elements allocated to such Unit. Any maintenance, repair, replacement or upkeep required to be performed by an Owner hereunder shall be in conformance with the architectural standards as set forth by the Association.

In explanation of the foregoing and not to be construed as a limitation, each owner shall maintain, repair, and keep in good condition (subject to the Association's obligations hereinafter set forth), his or her Unit.

(b) By the Association. The Association shall maintain, keep in good repair and upkeep, and replace (subject to available insurance proceeds), as a Common Expense assessed in accordance with this Declaration, all of the Condominium property not required to be maintained and kept in good order by a Unit Owner and as otherwise set forth in this Section. The Association shall, by way of explanation and not limitation, be responsible to maintain, keep attractive, keep in good repair and replace all of the Common Elements other than the Limited Common Elements defined in Section 3.5 above. The Association shall, also, be responsible for the repair, upkeep and maintenance of all roofs and foundations in respect to Improvements containing the Units or otherwise. In the event the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or its employees, lessees, or invitees, then, the Association shall give the Owner written notice of the repair, replacement or maintenance work needed and an estimated cost to accomplish such repair, replacement or maintenance work. The Owner shall have fifteen (15) days within which to pay

the Association such estimated costs, and in the event of a failure to pay, such costs plus interest thereon at the rate of sixteen (16%) per annum shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit.

Despite any provision herein contained to the contrary, the Association shall not be liable for injury or damage to any Person or property: (i) caused by the elements or by any Unit Owner or by any other Person; (ii) resulting from any rain, water, snow or ice which may leak or flow from any portion of the Common Elements; or, (iii) caused by the leaking, failure or disrepair of any pipe, plumbing, drain, conduit, appliance, equipment or utility lines or facilities, the responsibility for the maintenance of which belongs to the Association.

In addition, the Association shall be responsible for the maintenance of sewer lines within the Units as extended from each Unit to the main sewer line connecting to on the Condominium Property.

(c) Failure to Maintain. If the Board of Directors of the Association determines that any Owner has failed or refused to discharge his or her obligations with regard to the maintenance, repair, upkeep or replacement of any items for which he or she is responsible hereunder, including, but not limited to, a failure to maintain, repair or replace a condition which may increase the possibility of fire or other loss or damage to the Condominium, then the Association (except no notice shall be required in an emergency situation in which case the Association may proceed immediately) shall provide the Unit Owner with written notice specifying the nature of the maintenance, repair or replacement and the estimated costs thereof with reasonable particularity. The Owner shall have fifteen (15) calendar days to complete any such repairs, maintenance or replacements; provided, however, the Unit Owner shall have more than fifteen (15) days if such performance cannot reasonably be completed within fifteen (15) days and the Unit Owner is diligently pursuing the completion. In the event the Owner fails, neglects or refuses to repair, maintain or replace any such items within fifteen (15) days after the receipt of the notice, then the Association, through its Board, shall have the right to cause the repairs, maintenance or replacements to be made, and the Unit Owner shall, within thirty (30) days after the completion of such work, reimburse the Association. In the event any such repair or replacements are to the Common Elements the Association shall complete all such work, and the Unit Owner responsible for such repairs, maintenance or replacements shall have thirty (30) days after demand is made to reimburse the Association. Any costs incurred by the Association under this Section shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit.

## **ARTICLE IX - ASSOCIATION AND BYLAWS, ASSESSMENTS**

9.1 General Information. The Association will administer the Condominium pursuant to the terms and conditions set forth in this Declaration and the Bylaws. The fiscal year of the Association shall be the calendar year. The Office of the Association shall be located at such location as the Board of Directors or the Managing Agent shall designate from time to time. All Unit Owners, by virtue of their ownership of a Unit in the Condominium, are automatically mandatory Members of the Association and shall be entitled to vote on all matters

upon which Members of the Association are entitled to vote, pursuant to this Declaration and in accordance with the Bylaws. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Subject to the provisions of the Condominium Documents, the Owner or Owners of each Unit shall be entitled to one (1) vote for such Unit in which the interest required for membership is held. Each Unit is allocated a vote equal in weight to each other Unit. Provided however, if a Unit Owner shall have, in the sole opinion of the Board, an unresolved financial delinquency with respect to the Association, such Owner's vote shall not be eligible and shall not be entitled to be cast or counted.

9.2 Meetings and Voting. Annual and Special Meetings of the Association, including all notice and quorum requirements and voting of the membership shall be set forth in the Bylaws.

9.3 Directors. During the Period of Declarant Control, the business of the Association shall be managed by a Board of Directors comprised of at least one (1) Director who shall be appointed by the Declarant and shall serve without compensation. Without regard to the time when the Period of Declarant Control terminates, the owner of each Unit shall appoint a member of the Board. The qualification, election, term, removal, resignation and replacement of each Board member shall be determined in accordance with the Bylaws. At end of the Period of Declarant Control, the membership of the Board shall be comprised of one board member for each Unit.

9.4 Director's Meetings. Regular and Special Meetings of the Board of Directors, including the notice and quorum requirements and voting of the Board, shall be set forth in the Bylaws.

9.5 Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Act, the Declaration of Condominium and Bylaws shall be exercised by the Board of Directors, its duly appointed agents, contractors or employees, subject only to approval by the Unit Owners where specifically required. Compensation of employees of the Association shall be fixed by the Directors. A Director may be an employee of the Association and a contract for management of the Condominium may be entered into with a Director or the Declarant.

9.6 Officers. The Bylaws may provide for: (i) the election of officers; (ii) the resignation; (iii) removal; (iv) vacancy; and (v) powers, duties and responsibilities of the officers of the Association.

9.7 Assessments.

(a) All Owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the Common Expenses. The Common Expenses of the Association shall be assessed among all of the Condominium Unit Owners in accordance with the Owner's share in the Common Elements or Limited Common Elements as set forth in Article III of this Declaration. Assessments for the estimated Common Expenses of the Association shall be due in advance of the first day of each calendar month or less frequently as may be determined by the Board of Directors.

(b) Assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board of Directors of the Association shall from time to time determine and is to be paid by all of the Condominium Unit Owners to provide for the payment of all estimated expenses growing out of or connected with the maintenance, repair, operation, additions, alterations and improvements of and to the Common Elements and those Limited Common Elements which are the responsibility of the Association,

and the Property and Improvements owned thereby, which sum may include, but shall not be limited to: management fees, expenses and liabilities incurred by the Managing Agent, taxes and special assessments (until separately assessed), snow removal, road and sidewalk repair, premiums for insurance, landscaping and care of grounds, common lighting and heating, repairs, maintenance, and renovation, wages, common water and sewer charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Managing Agent, if any, on behalf of the Unit Owners under or by reason of the Declaration and Bylaws of the Association for the creation of a reasonable contingency, reserve, working capital and sinking funds as well as other costs and expenses relating to the Common Elements or Limited Common Elements which are the responsibility of the Association.

(c) The Board of Directors may levy such assessments for the purpose of defraying the cost of repair or reconstruction of the Improvements in the event of their damage.

(d) The Association by its Board of Directors may levy a special assessment against any individual Unit or any Unit Owner for the reasonable expense incurred in the reconstruction or repair to the Common Elements, Limited Common Elements or the individual Unit for damage or destruction caused by the misconduct, negligence or infraction of the published rules and regulations of the Association by the Unit Owner or his guests, invitees.

(e) The omission or failure to fix the assessment or deliver or mail a statement for any period of time shall not be deemed a waiver, modification or release of the Owner's obligation to pay the same.

(f) The Board shall, pursuant to Section 76-873(c)(2) of the Act, have the power and authority to assess any Common Expenses benefiting fewer than all of the Units exclusively against the Units benefited thereby.

(g) The Association shall have all of the powers of the Association enumerated in the Act.

(h) Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget, which date shall not be less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting all the Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

9.8 Owner's Personal Obligation for Payment of Expenses. The amount of the Common Expenses assessed by the Association against each Condominium Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt themselves from liability for this contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements, the real property and Improvements owned by the Association or by abandonment of their Unit. The Board of Directors shall have the responsibility to take prompt action to collect any unpaid assessments which remain unpaid for more than ten (10) days from the date for payment thereof. The failure to make payment of any assessments or installment thereof related to any Unit before the tenth (10<sup>th</sup>) day after the due date shall constitute a default and such Unit Owner shall: (a) pay a late charge of five (5%)

percent on the outstanding balance; and (b) all amounts that are delinquent shall bear interest from the due date at a rate equal to sixteen (16%) percent per annum or the maximum interest rate allowed by law, whichever is less, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the assessment past due and the full assessment shall be a lien against such Unit. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing the lien nor shall such suit be construed to be a waiver of the lien.

9.9 Association Lien for Non-Payment of Common Expenses.

(a) All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Condominium Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except for (i) taxes and special assessment liens of the Condominium Unit in favor of any assessing entity, and (ii) all sums unpaid on a Eligible Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrances. To evidence such lien, the Board of Directors shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such notice of lien shall be signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

(b) Such lien may be enforced by the foreclosure of the defaulting Owner's Condominium Unit by the Association in the manner of a deed of trust or mortgage on real property upon the recording of a notice of claim thereof. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Condominium Unit being foreclosed shall be required to pay the Association the monthly assessment for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Condominium Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey and otherwise deal with the same.

(c) Any Qualified Lender holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Unit which became delinquent after the recording of the Qualified Lender's mortgage or deed of trust, and upon such payment, such Qualified Lender shall have a lien on such Unit for the amount paid of the same rank as the lien of its mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. The Association may report to the Qualified Lender of a Condominium Unit any assessments remaining unpaid for longer than sixty (60) days after the same are due; provided, however, that a Qualified Lender shall have furnished to the Association notice of its encumbrance.

(d) The recorded lien may be released by a Release of Lien signed by one of the members of the Association's Board of Directors or by one of the officers of the Association on behalf of the Association and recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

(e) Notwithstanding any of the foregoing provisions, any Qualified Lender who obtains title to a Unit pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Unit free and clear of all Common Expense assessments levied thereon prior to such transfer of title and free and clear of all liens created as a result of such assessments except for assessments which became delinquent before the Qualified Lender recorded its mortgage or deed of trust.

9.10 Ascertainment of Unpaid Common Expenses.

(a) The Unit Owners and their mortgagees, prospective mortgagees or prospective grantees, upon ten (10) business days written notice to the Board of Directors and upon payment of a reasonable fee, shall be furnished a statement of their account. The statement of account shall include the amount of any unpaid Common Expenses, the amount of the current assessments, the dates that assessments are due, the amount for any advanced payments made, prepaid items such as insurance policy premiums and reserves therefor and any deficiencies in reserve accounts such statement shall be conclusive upon the Association in favor of all persons who rely therein in good faith.

9.11 Priorities of Association Lien for Common Expenses. The Owner of a Condominium Unit may create junior deeds of trust or mortgages (junior) to the lien; provided, however, that any such junior mortgage, deed of trust, lien or encumbrance will always be subordinate to the prior and paramount lien of the Association for Common Expenses, and subject to all of the terms, conditions, covenants, restrictions, uses, limitation and obligations under this Declaration and Bylaws, and, provided, further, that the holder of any such junior encumbrance shall release its security interest in any Unit for the purposes of restoring any Improvements upon the encumbered Condominium Unit and all of the Unit Owner(s) rights, title and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

## **ARTICLE X - INSURANCE - DAMAGE, DESTRUCTION AND RECONSTRUCTION**

10.1 Scope of Coverage. Commencing not later than the date of the first conveyance of a Unit to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Elements, Limited Common Elements and Units, exclusive of any improvements and betterments installed in Units by the Owners thereof, insuring against all risk of direct physical loss commonly insured against in an amount equal to the maximum insurable replacement value of the Common Elements, Limited Common Elements and Units, as determined by the Board of Directors. The Association is not required to (i) insure against risk of loss by earthquake or other seismic activity, (ii) provide insurance coverage for loss property or income by the Unit Owner or the



relocation of the Unit Owner. A Qualified Lender may request in writing to the Association to be added as an additional insured to the insurance policy or policies of the Association.

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board of Directors, but not less than Two Million Dollars (\$2,000,000.00) per injury or injuries, including death, arising out of a single occurrence, and Fifty Thousand Dollars (\$50,000.00) property damage; or, in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than Two Million Dollars (\$2,000,000.00). The policy or policies shall cover the Association, the Association's Board of Directors and the officers of the Association, committee members, all agents and employees of the Association and all Owners and other Persons entitled to occupy any Unit or other portion of the Condominium Unit for occurrences commonly insured against, arising out or in connection with the use, ownership or maintenance of the Common Elements, Limited Common Elements, or other portion of the Condominium which the Association has the responsibility to maintain and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the owner.

(c) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

(d) The Association may also purchase blanket fidelity insurance coverage for anyone who either handles (or is responsible for) funds that it holds or administers, whether or not that individual receives compensation for services.

(e) The insurance policies purchased by the Association, to the extent reasonably available, shall contain the following provisions:

(i) Each Owner shall be an insured under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements and Limited Common Elements under Section 5.3(a) and Section 5.3(b), or their membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees, or with respect to the Owners. Each party hereby waives, releases and discharges any right of subrogation against the other for any loss arising out of damage to or destruction of all or any portion of the Property or contents thereof when such loss is caused by any perils included within either party's insurance provisions.

(iii) No act or omission by any Owner, unless acting within the scope of their authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased separately by Owners or their mortgagees or beneficiaries under deeds of trust.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

(vi) Statement of the name of the insured as the 87th Street Split Condominium Association, LLC., for the use and benefit of the individual Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance a standard mortgagee clause providing that the insurance carrier shall notify the Qualified Lender named in the policy at least ten (10) days in advance of the effective date of any reduction or cancellation of the policy.

(viii) "Agreed Amount" and "Inflation Guard" endorsements.

It shall be the duty of the Board at least annually to conduct an insurance review to determine if the policy enforced is adequate to meet the need of the Association and to satisfy the requirement of this Declaration and the Act. Such responsibility may be performed and shall be deemed reasonably performed, by the Board's Managing Agent requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association as set forth herein and satisfies the requirements of this Declaration and the Act. In all events, each Owner shall have the right to obtain additional coverage for such improvements, or betterments or personal property within the Unit as its own expense. Each policy may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost.

10.2 Certificate of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Qualified Lender who is listed as a scheduled holder of an Eligible Mortgage in the insurance policy.

10.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Expenses and shall be paid for by the Association.

10.4 Insurance Obtained by Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent an Owner from obtaining insurance for their own benefit and at their own expense covering their Unit, personal property and providing personal liability coverage.

10.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. Subject to the provisions of Section 11.6 and 11.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Elements, Limited Common Elements and Units. Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of record after the Common Elements, Limited Common Elements and Units have been completely repaired or restored, or the Declaration terminated.

10.6 Use of Insurance Proceeds. In the case of fire or any other casualty, the insurance proceeds, if sufficient to reconstruct any Improvements so damaged or destroyed, shall be applied to such reconstruction. Reconstruction of the Improvements, as used herein, means restoring the insured Improvements to substantially the

same condition in which it existed prior to the fire or other disaster, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

10.7 Procedure where Insurance Proceeds are Insufficient. In case of fire or other casualty, if the insurance proceeds are insufficient to reconstruct the Improvements and the Condominium Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Improvements within 120 days from the date of damage or destruction, the Association may record a notice setting forth such facts; and upon the recording of such notice:

(a) The Property shall be deemed to be owned as tenants-in-common by the Condominium Unit Owners;

(b) The undivided interest in the Property owned in common of each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Unit Owner in the Common Elements;

(c) Any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Condominium Unit Owner in the Property as provided herein; and

(d) The Property shall be subject to an action for partition at the suit of any Condominium Unit Owner, in which event the net proceeds of such sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund, and shall be divided among all the Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Property, but only after first paying out of the respective share of each Condominium Unit Owners, (to the extent sufficient for the purpose) all liens on the undivided interest in the Property owned by such Condominium Unit Owner.

10.8 Insurance Deductibles. If maintenance is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one (1) Unit, or a Unit and Common Elements, the cost of the deductible may be apportioned equally by the Board of Directors among the parties suffering loss in accordance with the total cost of repair.

## ARTICLE XI - MORTGAGES

### 11.1 Requirements.

(a) Any mortgage or other lien on a Unit and the obligations secured thereby shall be deemed to provide, generally, that the mortgage or other lien instrument and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the mortgagee or lien holder shall have no right (i) to participate in the adjustment of losses with insurers or in the decision as to whether or not, how to repair or restore damage to or destruction of the Property, or (ii) to receive or apply the proceeds of insurance to the reduction of the mortgage debt or otherwise, except in the event and to the extent either of a distribution of

such proceeds to Unit Owners pursuant to Section 76-871 of the Act or of insurance proceeds in excess of the cost of repair or restoration being received by the owner of the Unit encumbered by such mortgage; or (iii) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or other conditions occurring anywhere on the Property other than within the affected Unit, and the obligation secured shall be pre-payable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit. Nothing contained in Section 12.1(a) hereinabove or elsewhere in this Declaration shall give a Unit Owner, or any other party, priority over any rights of the mortgagee of a Unit pursuant to its mortgage in case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or a taking of one or more Units and/or Common Elements.

(b) No Unit Owner or purchaser of a Unit shall deliver any mortgage or other lien instrument secured by a Unit, or any obligation to be secured thereby, unless it has first notified the Board of the name and address of the proposed mortgagee or lien holder, the amount of the debt proposed to be so secured, and has submitted to the Board a copy of the form of the proposed mortgage and note or other instrument of obligation.

#### 11.2 Qualified Lenders.

(a) When a mortgage is delivered to a Qualified Lender or other lien holder, the Unit Owner shall simultaneously provide executed or conformed copies to the Board. Upon receipt of such copy of a mortgage or other lien and the written request of the Qualified Lender, the Secretary of the Board shall instruct the insurer of the property to add the name of the Qualified Lender to the mortgagee loss payable provision of the hazard insurance policy covering the property and to provide such Qualified Lender with a Certificate of Insurance showing that the Qualified Lender's name has been so added.

#### 11.3 Rights of Qualified Lenders.

(a) Upon the written request of a holder of a Qualified Mortgage on a Unit or its servicer to the Board, the mortgagee shall be entitled to receive some or all of the following notices as designated in the request:

(i) Any condemnation or casualty loss that affects either a material part of the Condominium or the Unit securing the Qualified Lender's mortgage;

(ii) Any sixty day delinquency in the payment of assessments or charges owed by the Owner of the Unit which is subject to the Eligible Mortgage; or

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

(b) The request of a Qualified Lender or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Board. The Board need not inquire into the validity of any request made hereunder by a Qualified Lender. The Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the

person making such request is not entitled to the material so requested and may establish reasonable rules to implement this Section 12.3(b).

(c) Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Board.

(d) Any Qualified Lender shall have the right, exercisable upon written request to the Board, to examine the books and records of the Association at any reasonable time.

## **ARTICLE XII - MISCELLANEOUS PROVISIONS**

12.1 Effective Covenants. Each Purchaser and each grantee of Declarant, its successors and assigns, by the acceptance of a deed of conveyance, accepts the conveyed Property subject to all restrictions, conditions, covenants, easements, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest of estate in said Property, and shall inure to the benefit of such Condominium Unit Owner in like manner as though the provisions, terms and restrictions of this Declaration were received and stipulated at length in each and every deed of conveyance.

12.2 Waiver. No covenant, restriction, condition or provision of this Declaration or in the Bylaws shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

12.3 Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration and Bylaws herein contained, as the case may be, shall not render the remainder of the Declaration invalid, nor any other part therein contained.

12.4 Controlling Instrument. In the event of a conflict between the provisions of this Declaration and the Bylaws, this Declaration shall prevail except to the extent that this Declaration is inconsistent with the Act.

## **ARTICLE XIII - AMENDMENT AND TERMINATION**

13.1 Amendments; Modifications and Terminations.

(a) Except as provided in Article XV, the prior written approval of a Super-Majority Vote of the Unit Owners shall be required to make an amendment of a material nature to the Condominium Documents. A change in the provisions of any Condominium Document directly relating to any of the following shall for this purpose be considered material:

(i) Terminate the condominium status of the Property for reasons other than substantial destruction or condemnation of the Property;

(ii) Abandon, encumber, sell or transfer any Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Elements shall not be deemed a transfer within the meaning of this subsection); or

- (iii) The use of hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property;
- (iv) A change in the schedule of Allocated Interests or a change in the schedule of Limited Common Element Allocations set forth in Exhibit "C" allocated to each Unit;
- (v) Voting rights;
- (vi) [Intentionally Omitted];
- (vii) Reserves for maintenance, repair and replacement of the Common Elements;
- (viii) Responsibility for maintenance and repairs;
- (ix) Reallocation of interests in the Common Elements or Limited Common Elements or rights to their use;
- (x) Convertibility of Units into Common Elements or of Common Elements into Units;
- (xi) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (xii) Insurance or fidelity bond requirements;
- (xii) Change of restrictions on the leasing of any Units;
- (xiv) Imposition of any restrictions of a Unit Owner's right to sell or transfer his or her Unit;
- (xv) [Intentionally Deleted];
- (xvi) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (xvii) Actions to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (xviii) The method of assessments described in this Declaration.

13.2 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Eligible Mortgage Holders, Qualified Lenders or any other person at any time during the Period of Declarant Control to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, or (ii) such amendment or supplement is made to implement expansion of the Property pursuant to Special Declarant rights reserved herein, or (iii) such amendment is necessary to correct clerical or typographical errors or to clarify Declarant's original intent, or (iv) such amendment as may be necessary to implement any changes in the Condominium Regime that is permitted to be made by Declarant under this Declaration.

IN WITNESS WHEREOF, the JAJ Enterprises, L.L.C., has caused these presents to be signed by its authorized officer, the day and year first above written.

DECLARANT:

JAJ ENTERPRISES, L.L.C., a Nebraska limited liability company

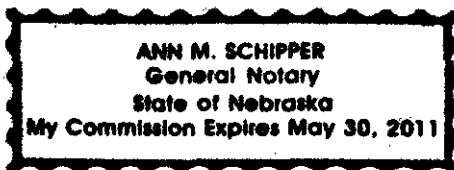
By: J. Johnson  
Its: President

STATE OF NEBRASKA       )  
                                      ) ss.  
COUNTY OF DOUGLAS     )

Before me, a notary public, in and for said county and state, personally came Jeffrey A. Johnson  
President of JAJ Enterprises, L.L.C., a Nebraska limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company.

Witness my hand and Notarial Seal this 8<sup>th</sup> day of October, 2008.

Ann M. Schipper  
Notary Public



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

The south 150 feet of the West 150 feet of Lot 1, Block 5, Cornhusker Industrial  
Park 2, an Addition to the City of Omaha, Douglas County, Nebraska.



**EXHIBIT "B"**  
**THE PLAN**

# 87th STREET SPLIT CONDOMINIUM REGIME

I HEREBY CERTIFY THAT THIS DRAWING WAS MADE UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

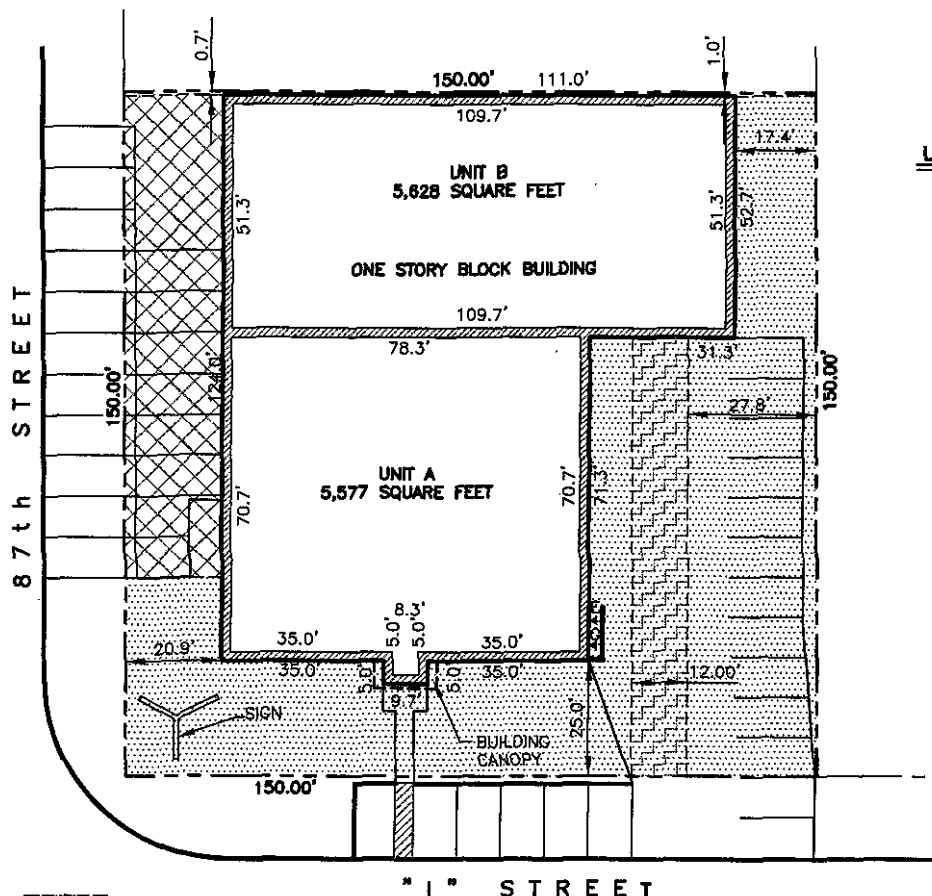
## LEGAL DESCRIPTION

THE SOUTH 150 FEET OF THE WEST 150 FEET OF LOT ONE (1), BLOCK FIVE (5), CORNHUSKER INDUSTRIAL PARK 2, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.



SEPTEMBER 4, 2008  
DAVID H. NEEF  
NEBRASKA R.L.S. 475

NOTE:  
SQUARE FOOTAGE WAS CALCULATED TO THE INTERIOR FACE OF EXTERIOR WALLS AND TO THE INTERIOR FACE OF THE WALL BETWEEN UNITS.



### LEGEND

G- GAS METER  
E- ELECTRICAL METER  
BLOCK WALL



0' 20' 40'  
SCALE IN FEET

- COMMON ELEMENT
- LIMITED COMMON ELEMENT FOR UNIT B
- LIMITED COMMON ELEMENT FOR UNIT A
- 12.00' WIDE ACCESS EASEMENT FOR THE BENEFIT OF UNIT B.

1155-122-2CR.dwg

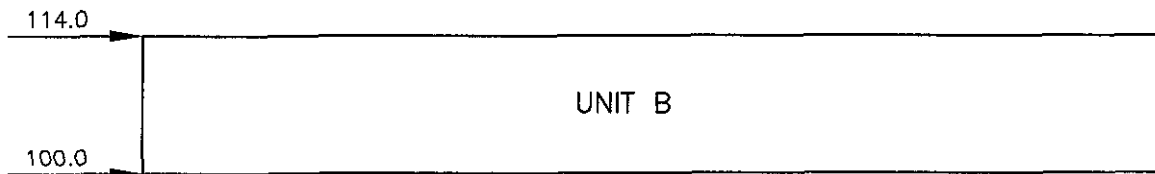
**TD<sup>2</sup> THOMPSON, DRESSEN & DORNER, INC.**  
Consulting Engineers & Land Surveyors  
10836 OLD MILL ROAD OMAHA, NEBRASKA 68154  
P: 402.330.8860 F: 402.330.5866 WWW.TD2CO.COM

SHEET 1 OF 2

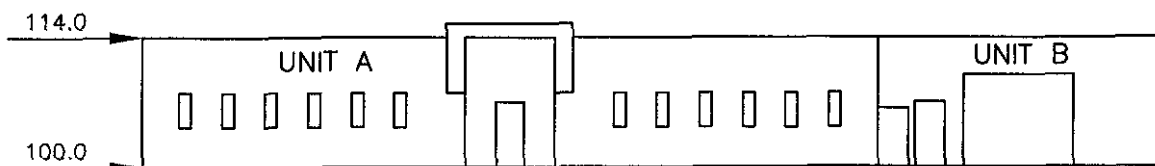
TD2 NO. 1155-122-2

DATE	09/04/08
DRAWN BY	MRS
CHECKED BY	DHN
REVISION	

# 87th STREET SPLIT CONDOMINIUM REGIME



NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION



WEST ELEVATION

1155-122-2CR.dwg

**EXHIBIT "C"**  
**ALLOCATED INTERESTS**

**Allocated Interests in Common Elements and Votes**

Unit Number	Square Footage	Common Elements	Number of Votes
A	5577	49.77%	1
B	5628	50.23	1
		<u>100.000%</u>	<u>2</u>

**Return to:**

**Michael D. Matejka**  
**Woods & Aitken LLP**  
**10250 Regency Circle , Suite 525**  
**Omaha, NE 68114**