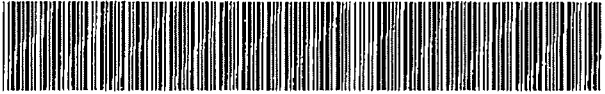


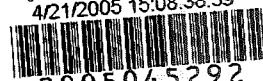


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**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
FOR SOMA DEVELOPMENT**

April 15, 2005

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TABLE OF CONTENTS

Recitals 1

Article I. Definitions..... 1

 1.1 Additional Property 1

 1.2 Architectural Control Committee 1

 1.3 Board 1

 1.4 City 2

 1.5 Common Area..... 2

 1.6 Common Expenses 2

 1.7 Common Improvements 2

 1.8 Common Utility Facilities 2

 1.9 Condominium Act 2

 1.10 Condominium Association 2

 1.11 Condominium Building 2

 1.12 Condominium Building Parcel 3

 1.13 Condominium Unit 3

 1.14 Declarant..... 3

 1.15 Declaration of Inclusion 3

 1.16 Drive Courts 3

 1.17 Homeowners' Association 3

 1.18 Member..... 3

 1.19 Open Space..... 3

 1.20 Owner 3

 1.21 Parcel 3

 1.22 Property 3

 1.23 Recorder 3

 1.24 Residence..... 3

 1.25 Residential Building 3

 1.26 Residential Parcel 3

 1.27 Rowhouse 3

 1.28 Rowhouse Assessment 4

 1.29 Rowhouse Expenses 4

 1.30 Rowhouse Parcel 4

 1.31 Share 4

 1.34 SoMa Development..... 4

 1.32 Transfer Date 4

 1.33 Transfer Meeting 4

 1.35 Utility Facilities 4

 1.35 U.P 4

 1.37 U.P. Deed Restrictions..... 4

 1.38 Vacating Amendment..... 4

Article II. Easements 5

 2.1 Access Easements..... 5

 2.2 Utility Easements..... 5

 2.3 Structural Support and Party Wall..... 6

 2.4 Easement of Unintentional Encroachments 6

 2.5 Other Easements 6

 2.6 Blanket Easement in Favor of the Declarant 6

 2.7 General Provisions..... 7

 2.8 Reserved Declarant Rights 7

Article III. Use, Maintenance and Restrictions Relating to..... 7



3.1 Use of Common Area7

3.2 Maintenance of the Condominium Building Parcels7

3.3 Maintenance by Homeowners' Association8

3.4 Landscaping and Lawn Maintenance Services8

3.5 Maintenance and Repair of Rowhouses9

3.6 Restrictions9

3.7 Remedies12

3.8 Party Walls13

3.9 Damage or Destruction13

3.10 Condominium Associations14

3.11 TIF Restrictions14

3.12 U.P. Deed Restrictions14

Article IV. Administration15

4.1 Homeowners' Association15

4.2 Membership15

4.3 Board of Directors15

(a) Election15

(b) Term15

(c) Annual Meeting16

(d) Regular Meetings16

(e) Special Meetings16

(f) Notice16

(g) Vacancies16

(h) Election of Officers16

(i) Qualifications of Board17

(j) Quorum17

(k) Removal17

(l) Open Meetings17

(m) General Provisions17

4.4 Meetings of Members17

(a) Notices17

(b) Quorum17

(c) Voting17

(d) Special Meetings18

(e) Proxies18

(f) Land Contracts18

(g) Manner of Acting18

4.5 General Powers of the Board18

4.6 Liability of the Board of Directors20

4.7 Books and Records20

Article V. Insurance20

5.1 Insurance Coverage20

(a) Commercial General Liability Insurance21

(b) Umbrella Liability Insurance21

(c) Fidelity Insurance21

(d) Other21

(e) Premium21

5.2 Insurance Carriers21

5.3 Insureds21

5.4 Insurance for Condominium Buildings and Rowhouses21

Article VI. Assessments22

6.1 Personal Obligation22



6.2 Purpose of Assessments.....22

6.3 Categories of Assessments22

6.4 Annual General Assessments/Budget.....22

6.5 Special Assessments23

6.6 Nonpayment of Assessments.....23

6.7 Proof of Payment.....24

6.8 Subordination of Lien to Mortgage24

6.9 Exemption from Assessment on Condominium Units or Rowhouses Owned by Declarant...24

6.10 General Provisions.....24

Article VII. Rights Reserved to Declarant24

7.1 Declarant's Promotional Rights24

7.2 Contracts.....25

7.3 Right to Grant and Allow Dedications and Grant Utility Easements25

7.4 Right to Dedicate or Convey Open Space25

Article VIII. Architectural Controls25

8.1 Architectural Standards25

8.2 Membership.....25

8.3 Powers and Duties25

8.4 Procedures26

8.5 Right of Appeal26

8.6 Review Criteria.....26

8.7 Final Board Approval27

Article IX. General Provisions27

9.1 Amendment by Declarant.....27

9.2 Right of Declarant to Add Additional Property.....28

9.3 Plat of Subdivision.....29

9.4 Further Assurances29

9.5 Severability.....29

9.6 Amendment29

9.7 Arbitration30

9.8 Enforcement.....30

9.9 Notices30

9.10 Duration.....30

9.11 Captions.....30

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR SOMA DEVELOPMENT ("Declaration") is made and entered into this 15th day of April, 2005, by COURTLAND PLACE NO. 1, LLC, a Nebraska limited liability company (the "Declarant").

Recitals

The Declarant is the owner in fee simple of certain property located in the City of Omaha, County of Douglas and State of Nebraska, legally described on Exhibit "A" attached hereto and made a part hereof.

The Declarant desires to construct, or cause to be constructed on such property and certain Adjacent Additional Property (as hereinafter defined) which Declarant may acquire and subject to the terms of this Declaration, a residential community consisting of condominium buildings and fee simple rowhouses (the "SoMa Development"). It is anticipated that the acquisition and development of the SoMa Development will be completed in multiple phases. The SoMa Development shall be constructed together with certain Common Area (as hereinafter defined), such as Drive Courts (as hereinafter defined), walkways and Open Space (as hereinafter defined). All fee simple rowhouses and condominiums constructed on the Property (as hereinafter defined) together with all Common Area, shall be part of the SoMa Development and shall be governed by the terms of this Declaration.

The Declarant may hereafter record with the Recorder (as hereinafter defined) with respect to one or more portions of the Property, a declaration of condominium for each condominium building constructed upon the Property, pursuant to the terms of which the real estate described in any such declaration of condominium shall be submitted to the provisions of the Condominium Act (as hereinafter defined), subject to all of the terms, covenants, easements, restrictions, charges, and liens set forth in this Declaration.

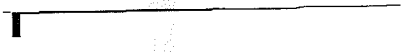
The Declarant desires to provide for the harmonious, beneficial and proper use of the SoMa Development and to facilitate the continuing care and maintenance thereof, as well as establish a body to supervise and administer the provision of necessary common services; enforce the covenants and restrictions contained herein and collect and disburse the assessments and charges hereinafter created.

NOW THEREFORE, the Declarant hereby declares that the Property is submitted to the provisions of this Declaration and shall be hereafter owned, held, transferred, sold, conveyed, occupied, mortgaged and encumbered subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which shall run with the land and be binding upon and inure to the benefit of the owners, mortgagees and any other persons from time to time having or acquiring any right, title or interest in the Property or any portion thereof.

Article I.
Definitions

As used herein, unless otherwise provided, the following words and terms shall have the following meanings:

- 1.1 **Additional Property.** Shall have the meaning ascribed in Section 9.2 hereof.
- 1.2 **Architectural Control Committee.** The architectural control committee of the Homeowners' Association created pursuant to Article VII of this Declaration.
- 1.3 **Board.** The Board of Directors of the Homeowners' Association.



1.4 City. The City of Omaha, Nebraska, a municipal corporation.

1.5 Common Area. Those portions of the Property or other real estate adjacent to the Property burdened by an easement in favor of the Property that (i) are not a part of a Rowhouse Parcel or a Condominium Building Parcel, including, but not limited to, those portions of the Property which constitute the Drive Courts and Open Space, and/or (ii) may be designated by Declarant from time to time to be devoted to the common use and enjoyment of the Owners.

1.6 Common Expenses. The proposed or actual expenses arising in connection with the ownership, operation, maintenance and replacement of all or a portion of the Common Area and Common Improvements (including reserves, if any, assessed by the Board in accordance with the terms of this Declaration), any public right-of-way adjacent to the Property which the Homeowners' Association or any Owner maintains and any common access easements which the Homeowner's Association maintains or is required to maintain. Common Expenses shall include, by way of example and not limitation, the expenses of administration of the Homeowners' Association (including management and professional services); maintenance, operation, repair and replacement of Common Area and Common Improvements; the cost of additions, alterations or improvements to the Common Area and Common Improvements; the cost of insurance required or permitted to be obtained by the Board under this Declaration; real estate taxes assessed against the Common Area and Common Area Improvements; utility expenses for the operation of the Common Improvements; performance of any duties owed under the U.P. Deed Restrictions; any expenses designated as Common Expenses by this Declaration; the cost of waste removal (if applicable), water, sewer or other necessary municipal or utility services to the Property to the extent not separately metered or charged to Owners; and any other expenses incurred by or on behalf of the Homeowners' Association for the common benefit of all of the Owners. Common Expenses shall not include (i) Rowhouse Expenses, or (ii) expenses associated exclusively with the ownership, operation, repair and maintenance of any one particular Condominium Unit, Rowhouse or Condominium Building.

1.7 Common Improvements. All improvements which are located on, under or over a Common Area, any landscaped public right of way adjacent to any Common Area which is maintained by the Homeowner's Association or any Owner, any common access easements which the Homeowner's Association maintains or is required to maintain and those improvements, facilities and appurtenances which are located on a Residential Parcel and which are used for the benefit of either of the entire Property or for the benefit of particular Parcels, including, without limitation, all Drive Courts, Open Space, Common Utility Facilities, landscaping, sidewalks, curbs, gutters, street lights, signs, visitor parking, fences, mailboxes, planters, benches, monuments, gates and other such improvements.

1.8 Common Utility Facilities. All Utility Facilities which are not owned by any utility provider and which are located on a Parcel and which provide for the distribution of utility services to at least one other Parcel or which comprise a system or are components of any system providing utility services to more than one Parcel.

1.9 Condominium Act. The Nebraska Condominium Act, as amended.

1.10 Condominium Association. A condominium association formed with respect to a Condominium Building constructed on a Condominium Building Parcel, which association shall be a Nebraska nonprofit corporation governed by the Condominium Act.

1.11 Condominium Building. Any of the buildings and improvements (including surface parking areas associated therewith) located on a portion of the Property and which contains two or more Condominium Units and which have been submitted to the Condominium Act.

1.12 Condominium Building Parcel. A Parcel which has been submitted or which Declarant may submit, to the terms of the Condominium Act, all or a portion of which is improved or which Declarant intends to improve with a Condominium Building.

1.13 Condominium Unit. A residential housing unit in any Condominium Building which is or may be constructed upon a Condominium Building Parcel, and consisting of one or more rooms which have been designed or intended for use exclusively as residential living quarters, together with any parking spaces which constitute a limited common element under the Condominium Act for the benefit of such Owner of such residential housing unit.

1.14 Declarant. Courtland Place No. 1, LLC, a Nebraska limited liability company, its successors and assigns, or such other persons or entities as it may from time to time designate.

1.15 Declaration of Inclusion. Shall have the meaning ascribed in Section 9.2 hereof.

1.16 Drive Courts. The paved areas over and upon portions of the Common Area which provide a means for ingress, egress and internal movement by vehicles and pedestrians within the Property and to and from the Property and publicly dedicated streets and rights-of-way.

1.17 Homeowners' Association. SoMa Development Homeowners Association, Inc., a Nebraska nonprofit corporation.

1.18 Member. Each person or entity who is a member of the Homeowners' Association, as provided in Article IV below.

1.19 Open Space. Those portions of the Common Area other than the Drive Courts which are improved with landscaping, walkways and sidewalks.

1.20 Owner. A record owner, whether one or more persons or entities (including the Declarant) of fee simple title to any Rowhouse or Condominium Unit, but excluding those persons or entities having such interest merely as security for the performance of an obligation.

1.21 Parcel. Each individual Residential Parcel or any portion of the Common Area which constitutes an individual parcel of land.

1.22 Property. The real property legally described on Exhibit "A" attached hereto, as amended from time to time by one or more Declarations of Inclusion for purposes of adding Additional Property to the terms of this Declaration, or by one or more Vacating Amendments for purposes of vacating and removing this Declaration from a portion of the Property.

1.23 Recorder. The Office of the Register of Deeds of Douglas County, Nebraska.

1.24 Residence. Each Condominium Unit or Rowhouse.

1.25 Residential Building. Each Condominium Building or Rowhouse.

1.26 Residential Parcel. Each individual parcel of land constituting a portion of the Property which is either a Condominium Building Parcel or a Rowhouse Parcel.

1.27 Rowhouse. A fee simple residence, including attached garage, which is or may be constructed upon a Rowhouse Parcel, and which has been designed or intended for use exclusively as single-family residential living quarters.

1.28 Rowhouse Assessment. The monthly assessment levied against the Rowhouse Owners to pay the Rowhouse Expenses for each calendar year as shown in such year's annual budget.

1.29 Rowhouse Expenses. The proposed or actual expenses arising in connection with the ownership, operation and maintenance of the Rowhouses, including reserves, if any, assessed by the Board in accordance with the terms of this Declaration, but exclusive of expenses associated exclusively with the ownership, operation, repair and maintenance of any one particular Rowhouse. Notwithstanding the foregoing, Rowhouse Expenses shall not include any portion of any management fees or costs associated with the Common Area or Common Improvements which are adjacent to the Rowhouse Parcels, which costs shall be Common Expenses.

1.30 Rowhouse Parcel. A Parcel which is improved in part or which Declarant may improve in part with a Rowhouse, which Parcel is neither a Condominium Building Parcel nor Common Area.

1.31 Share. A percentage of ownership in the Homeowners' Association assigned to each Residence based upon the ratio of the gross square footage of each such Residence (measured from the outside of any exterior wall and from the middle of any common or party wall and excluding any decks or balconies) to the aggregate gross square footage of all Residences included in the SoMa Development from time to time, which percentage of ownership shall be used for the purposes of determining the allocation of the Common Expenses and Rowhouse Expenses.

1.32 SoMa Development. Shall have the meaning ascribed in the Recitals.

1.33 Transfer Date. The earliest to occur of:

(a) the date upon which Declarant shall have sold and conveyed title to ninety percent (90%) of the total number of Residences within the SoMa Development, including any Residences Declarant anticipates building within the SoMa Development and on any Additional Property which Declarant elects to add to the terms of this Declaration from time to time pursuant to one or more Declarations of Inclusion; or

(b) ten (10) years from the date of the recording of this Declaration.

1.34 Transfer Meeting. Shall have the meaning ascribed in Section 4.3 hereof.

1.35 Utility Facilities. All components of the domestic water, fire protection, sanitary waste, storm water, electrical, gas, life safety, cable television system, master antenna, emergency power, telephone and other utility systems now or hereafter installed over, under, along and upon any portion of the Property and designed or utilized to furnish utility and other services to any other portion of the Property, including but not limited to, water mains and pipes, sewer lines, gas mains and distribution lines, telephone wires and equipment, cable television wires and equipment, and electrical conduits, wires and equipment.

1.36 U.P. Union Pacific Railroad Company, its affiliates and assigns.

1.37 U.P. Deed Restrictions. Shall have the meaning ascribed in Section 3.12 hereof.

1.38 Vacating Amendment. Shall have the meaning ascribed in Section 9.1 hereof.

Article II.
Easements

2.1 Access Easements. Declarant hereby grants the following easements:

- (a) The Owners, their tenants, guests and invitees, but not the public generally, are hereby granted (i) an easement for ingress and egress of persons and vehicles on, over and along the Drive Courts; and (ii) an easement for ingress and egress of pedestrians over, on and across the Open Space. The foregoing easements are subject to the rules and regulations which may be adopted by the Board from time to time.
- (b) The Homeowners' Association, its directors, officers, and agents, including the managing agent, if any, shall at all times have the right to ingress and egress for persons, material and equipment over, on, across and through any Parcel to the extent reasonably necessary to perform its duties and obligations under this Declaration, including, without limitation, to permit the construction, installation, repair or maintenance of all Common Improvements; provided, however, that such construction, installation, repair or maintenance shall be performed in such a manner as to cause as little disturbance in the use and enjoyment of the affected portion of the Property, including any Residential Building, and surrounding areas as may be practical under the circumstances. Except in the case of emergencies, the Homeowners' Association, its directors, officers and agents shall not enter any Residential Building without the prior agreement of the affected Owners, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary herein, the Homeowners' Association shall restore or replace the adversely affected portion of the Property to substantially the same condition as existed immediately prior to such construction, installation, repair or maintenance. The Homeowners' Association, its directors, officers, and agents, including the managing agent, if any, shall at all times have the right of ingress and egress over, on and across the Common Area in furtherance of its rights, duties and obligations hereunder.

2.2 Utility Easements. All appropriate utility providers, including the City, are hereby granted an easement for the installation, construction, repair, maintenance, operation and use for their intended purposes of all Utility Facilities (and any replacements thereof) now or hereafter located in (i) the Common Area, or (ii) any unimproved portion of a Residential Parcel (including surface parking spaces) as may be designated by Declarant, which Utility Facilities provide or shall be necessary or desirable to provide any portion of the Property with utilities or other services necessary or desirable to the operation and use of the Property as a residential community. All Owners of Parcels served by Common Utility Facilities are hereby granted an easement for the installation, construction, repair, maintenance, operation and use for their intended purpose of all Common Utility Facilities now or hereafter located on any Parcel. Such grantees shall have the right to ingress and egress for persons, material and equipment over, on, across and through any Parcel to the extent reasonably necessary to permit the construction, installation, repair or maintenance of all Utility Facilities and Common Utility Facilities granted pursuant to such easements; provided, however, that such construction, installation, repair and maintenance (i) shall be performed in a good and workmanlike manner, (ii) shall cause as little disturbance in the use and enjoyment of the affected portion of the Property, including any Residential Building, and surrounding areas as may be practical under the circumstances, and (iii) shall be performed in compliance with all applicable laws and regulations and all underlying covenants, conditions and restrictions of record. Except in the case of emergencies, such grantees shall not enter any Residential Building without the prior agreement of the affected Owners, which consent shall not be unreasonably

withheld or delayed. Notwithstanding anything to the contrary herein, the grantee of any such easement shall restore or replace, at its sole cost and expense, the adversely affected portion of the Property to substantially the same condition as existed immediately prior to such construction, installation, repair or maintenance; provided, however, any such restoration or replacement shall be performed in a good and workmanlike manner in compliance with all applicable laws and regulations and underlying covenants, conditions and restrictions of record.

2.3 Structural Support and Party Wall. Each Owner is hereby granted the following easements for support and use if and to the extent required by reason of design or construction of such Owner's Residential Building: (i) in and to all foundations, footings, structural members and supporting components of and for such Residential Building which are located on any adjoining Parcel; and (ii) in and to each exterior wall of and for such Residential Building which is located in whole or in part on any adjoining Parcel. Declarant reserves an easement for support and use in and to all foundations, footings, structural members, exterior walls and supporting components of each Residential Building to construct, install, operate, maintain, repair, renew, and replace any Common Improvements.

2.4 Easement of Unintentional Encroachments. In the event that, by reason of construction, settlement or shifting, any Residential Building, Common Improvement or other improvement originally constructed by Declarant and located on the Property encroaches or shall hereafter encroach upon any portion of any Residential Parcel, the Common Area or any other valid easements then an easement for the maintenance of such encroachment is hereby established and shall exist for the benefit of (i) in the case of a Condominium Building, the Condominium Association or the individual members of such Condominium Association, (ii) in the case of a Rowhouse, the Rowhouse Owner, or (iii) in the case of Common Improvements, the Homeowners' Association. However, in no event shall a valid easement for any encroachment be created in favor of any Residential Building if such encroachment results from the willful conduct of the Condominium Association or individual members of such Association or such Owner of a Residence so encroaching.

2.5 Other Easements. Declarant may negotiate, accept and allow access easements in, over and across neighboring property in order to provide for the ingress and egress of Owners, and each Owner's occupants, guests and licensees to the Property. Notwithstanding the foregoing, Declarant shall not exercise any of such rights in a manner so as to interfere with the rights of use and enjoyment of the Common Area as granted in this Declaration.

2.6 Blanket Easement in Favor of the Declarant. A blanket easement is created and granted in favor of the Declarant and the Declarant's representatives, agents, associates, employees, contractors, subcontractors, successors and assigns for the purpose of (i) access and ingress to and egress from the Property or any part thereof, (ii) construction, installation, repair, replacement and restoration of any improvements constructed or to be constructed by Declarant on the Property (including any Additional Property), including all Rowhouses, Condominium Buildings, Common Improvements, utilities, Drive Courts, landscaping and any other improvements on the Property or any part thereof, including the right to restrict and regulate access to the Property or any Common Improvements for the purposes of completing construction and renovation of these areas or the improvements thereon, and (iii) the installation and maintenance of signs advertising the Residences or any of the Common Improvements thereon or any part thereof, and signs directing potential purchasers to any sales office and/or models erected in connection with marketing for sale of such Condominium Units and Rowhouses, and for such purposes as described in Article VII hereof. The foregoing easements in favor of the Declarant shall continue until such time as the Declarant no longer holds legal title to, or the beneficial interest in any trust holding legal title to, any portion of the Property, or the Additional Property, at which time such easements shall cease to be of no further force and effect without the necessity of any further action.

2.7 General Provisions. All easements and rights described in this Declaration shall be perpetual non-exclusive easements appurtenant to and running with the land. They shall at all times inure to the benefit of and be binding on the undersigned, the Owners and their mortgagees from time to time of any Condominium Unit or Rowhouse and their respective heirs, administrators, executors, personal representatives, successors and assigns, subject to the rules and regulations which may be adopted by the Board from time to time.

2.8 Reserved Declarant Rights. Notwithstanding any provision herein to the contrary, the easements created under this Article shall be subject to: (i) the right of the Declarant to improve the Property in accordance with such plans and specifications as Declarant deems appropriate; and (ii) the right of Declarant to execute all documents and do all other acts and things affecting the Property which, in the Declarant's opinion, are desirable in connection with the Declarant's rights hereunder, provided any such document or act or thing is not inconsistent with the property rights of any Owner in and to such Owner's Residence.

Article III
Use, Maintenance and Restrictions Relating to
Common Area, Condominium Building Parcels and Rowhouse Parcels

3.1 Use of Common Area. Each Owner, and such Owner's tenants, guests, agents and invitees, shall have the right to use and enjoy the Common Area and Common Improvements in common with all other Owners, subject to the terms and provisions hereof. The use of the Common Area and any Common Improvements thereon shall be subject to and governed by the provisions of this Declaration, the Homeowners' Association's Articles of Incorporation, the by-laws of the Homeowners' Association, and the rules and regulations, if any, promulgated from time to time by the Board. If an Owner, a member of such Owner's family or household pet, or a guest or other authorized occupant or visitor of such Owner shall cause damage to the Common Area or Common Improvements, or cause maintenance, repairs, or replacements to be required that would otherwise be a Common Expense or a Rowhouse Expense, then such Owner shall pay for that damage and maintenance, repairs and replacements, as may be determined by the Board, to the extent not actually reimbursed to the Homeowners' Association by its insurance carrier pursuant to the terms and conditions of the Homeowners' Association's policy, or any policy endorsement in effect for the benefit of the Homeowners' Association.

3.2 Maintenance of the Condominium Building Parcels. The Owners of Condominium Units constructed on each Condominium Building Parcel, either directly or through the Condominium Association governing the Condominium Building Parcel, at such Owners' sole cost and expense, shall, subject to the provisions of Article VIII, maintain, repair and replace the interior and exterior of all improvements located on such Condominium Building Parcel, including, without limitation, painting, staining, refinishing, maintaining, repairing, replacing and tuckpointing the exterior surfaces and structural components of the Condominium Building located thereon, including, without limiting the generality of the foregoing, all sidings, outer walls, shutters, gutters, downspouts, screens, doors, glass surfaces, exterior walls, roof and foundation, keeping the same in good condition and repair and otherwise in a manner consistent with a first-class residential development. In the event the Condominium Unit Owners, or the Condominium Association governing the Condominium Building Parcel, fails to maintain or repair such Condominium Building Parcel as aforesaid, the Homeowners' Association shall have the right, but not the obligation, to enter upon such Condominium Building Parcel to perform such maintenance or repair, and such Condominium Unit Owners shall promptly pay upon demand all costs and expenses of the Homeowners' Association incurred thereby. The cost of any maintenance, repairs and replacements performed by the Homeowners' Association under this Section 3.2 shall be charged to the Owners of the Condominium Parcel benefited thereby and shall be added to the next assessment payment due from such Owners and shall bear interest at the Default Rate until paid and shall constitute the personal liability of such Owners

and shall be a continuing lien on such Condominium Building Parcel enforceable as provided in Article VI hereof.

3.3 Maintenance by Homeowners' Association. The Homeowners' Association shall be responsible for:

- (a) snow removal from all Drive Courts, sidewalks, stairways, driveways and outdoor surface parking spaces constructed on the Property, whether constituting a part of a Residential Parcel or the Common Area, provided, however, nothing herein contained shall impose upon the Homeowners' Association any greater duty with respect to snow removal than is otherwise imposed by law;
- (b) maintenance, repairs and replacement of the Common Area and Common Improvements (other than the cost thereof which any utility company may bear), including without limitation, maintenance and repair of all Common Utility Facilities located on and serving a Parcel from the point of connection on such Parcel to the Utility Facilities located in the Drive Courts;
- (c) the acquisition and construction of and payment for any additions, improvements, alterations or repairs to the Utility Facilities lying within and serving only one Residential Parcel up to the point of entry to such Parcel to the extent not undertaken by the appropriate utility provider; provided, however, that at the election of the Board, the Owner of such Parcel may be assessed the costs associated therewith as a special assessment pursuant to the provisions of Article VI;
- (d) payment of all real estate taxes or general or special assessments levied on or allocable to the Common Area, Common Improvements and upon such other items for the general benefit of the Owners;
- (e) the acquisition, construction and payment for any emergency items or other items otherwise required for the preservation and safety of the Common Area or by applicable law or ordinance or regulations promulgated pursuant thereto, or by any covenants, conditions and restrictions of record governing all or a portion of the Property, the cost of which shall be funded by charges against the reserves maintained pursuant to Section 6.4, or if sufficient funds are unavailable therefrom, then by special assessment pursuant to the provisions of Section 6.5, which special assessment shall be enforceable and collectible as provided therein; provided, however, that the Board shall not be required to secure the approval of the voting Members as set forth in Section 6.5 for any items required under this Section 3.3(e);
- (f) the items described in Sections 3.4 and 3.5;
- (g) all obligations under any access easement benefiting the Property; and
- (h) refuse removal, if applicable.

3.4 Landscaping and Lawn Maintenance Services. The maintenance and upkeep of all landscaping located anywhere on the Property shall be the responsibility of the Homeowners' Association, including all landscaped areas included on any Residential Parcel. Any change to the landscaping located anywhere on the Property shall require the prior approval of the Board. The Homeowners' Association shall cause the lawn and shrubbery, trees and plantings located on the Property to be watered as often as

may be deemed advisable and necessary by the Board. The Homeowners' Association shall be responsible for and shall have exclusive authority to perform the maintenance (including without limitation, fertilizing, spraying, weed control, mowing, trimming, pruning and cultivating) and replacement required on account of natural causes of the lawn, shrubbery, trees, evergreens or plantings on the Property. The landscaping and lawn maintenance costs shall be Common Expenses. The Homeowners' Association may assess as a special assessment as provided in Article VI for maintenance or replacement costs against any Owner where such maintenance or replacements are necessitated by reason of the act or neglect of such Owner.

3.5 Maintenance and Repair of Rowhouses. The Homeowners' Association shall maintain, repair and replace, at the expense of the Owners benefited thereby, the roof, foundation and exterior walls associated with such Rowhouses, provided, any proceeds from an insured casualty shall be made available to the Homeowners' Association for the purpose of such maintenance, repair or replacement, and provided further, any replacements or repairs which are not covered by the insurance of the affected Rowhouse Owners and which are of a capital nature may, at the discretion of the Board, be paid out of any reserve accounts established by the Board for the benefit of such Rowhouse Owners and paid by such Rowhouse Owners as part of the Rowhouse Assessment. Such maintenance, repairs and replacements shall be made when and as deemed necessary by the Board to maintain the Rowhouses in a manner consistent with a first-class residential development. Each Owner shall maintain in first-class condition and repair the interior portion of such Owner's Rowhouse and all exterior portions of such Rowhouse if and to the extent not maintained by the Homeowners' Association, including by way of example and not limitation, downspouts, gutters, trim, lighting (except for lighting in Common Area which shall be the responsibility of the Homeowners' Association), doors, decks, windows, patios, railings, planters and steel trestles. In the event any Owner fails to maintain or repair such Owner's Rowhouse as aforesaid, the Homeowners' Association shall have the right, but not the obligation, to enter upon such Owner's Rowhouse Parcel to perform such maintenance or repair and such Owner shall promptly pay upon demand all costs and expenses of the Homeowners' Association incurred thereby. The cost of any maintenance, repairs and replacements performed by the Homeowners' Association under this Section 3.5 shall be charged to the Owner(s) benefited thereby and shall be added to the next assessment payment due from such Owner and shall bear interest at the Default Rate until paid and shall constitute the personal liability of such Owner and shall be a continuing lien on such Owner's Rowhouse Parcel enforceable as provided in Article VI hereof.

3.6 Restrictions. The Property shall be subject to the following restrictions:

- (a) No animals of any kind shall be raised, bred or kept in or about the Property except that dogs, cats or other usual household pets may be kept in a Rowhouse or Condominium Unit, subject to rules and regulations from time to time adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose. Any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the SoMa Development within three (3) days after written notice from the Board. Pets shall be leashed at all times when outside any Rowhouse or Condominium Unit and shall not be leased to a Unit or otherwise kept outside the Unit without the presence of the Owner. All pet waste shall be immediately removed from any Parcel by the pet's owner and the Board may assess a \$50.00 fine per occurrence against any Owner who shall fail to do so.
- (b) No noxious, offensive or illegal activity shall be carried on anywhere on a Residential Parcel or the Common Area, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants.

- (c) No campers, trucks, mobile homes, snowmobiles, trailers, buses, commercial vehicles, vans, vehicles not bearing a current license plate, inoperable vehicles, boats, motorcycles, bicycles, sleds or other recreational vehicles shall be parked on any portion of the Common Area or any exterior parking spaces constituting a portion of the Condominium Building Parcels. All passenger vehicles shall be parked at all times in the garage facilities located on any Rowhouse Parcel or the interior and exterior parking spaces constituting a portion of the Condominium Building Parcels. All parking spaces constructed within the Common Area shall be for the temporary use of visitors only. No maintenance of any vehicle shall be performed on any portion of the Property. The foregoing restrictions shall not apply to any trucks or other vehicles owned by the Declarant, its contractors, subcontractors, material suppliers, agents and employees which may be parked on any portion of the Common Area or any Parcels owned by the Declarant during the construction and marketing of the SoMa Development or as necessary to make service calls.
- (d) No clotheslines, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of any Residential Parcel or the Common Area. All rubbish, trash and garbage shall be placed in closed plastic bags, deposited in closed trash receptacles and regularly removed from each Residential Parcel and otherwise in accordance with any rules or regulations made by the Board from time to time. All trash receptacles shall be stored in garage facilities until taken to the curb for pickup not earlier than 6:00 p.m. of the day preceding the trash pickup day.
- (e) With the exception of machinery, equipment, building materials and supplies and similar items which the Declarant may store or permit to be stored upon any Parcel during construction and marketing of the Residential Parcels, no machinery, equipment, building materials and supplies or similar items may be stored, kept or maintained outside of any Residence or on any part of the Common Area. No lawn furniture, swing sets, playpens, sandboxes or other recreational or playground equipment or barbecue grills may be placed or used on any part of the Common Area. No basketball poles or nets shall be permitted on the exterior of any Residence. No swimming pools shall be permitted on any Parcel. No statuary, sculpture or other objects purporting to be artistic in nature shall be located outside of any Residence or within the Common Area without the prior written approval of the Architectural Control Committee.
- (f) All exterior lighting and seasonal lighting and decorating on a Rowhouse Parcel shall be subject to rules, regulations and limitations of the Board. Without limiting the foregoing, seasonal lighting and decorating shall be restricted to the period between November 15 and January 15 and the Board may assess a \$50.00 fine against any Owner who shall breach such restriction.
- (g) To the extent permitted by law, satellite dishes, radio and television antennas shall not be affixed to or placed in, through or upon the exterior walls, roof or windows of a Rowhouse or Condominium Building or installed anywhere on any part of a Residential Parcel unless approved by the Architectural Control Committee. No short-wave radio or other type of radio transmitter shall be permitted in or about any Residence which may interfere with the radio or television reception in any other Residence. No Owner shall at any time install

recessed speakers in common walls or common ceilings of a Residential Building or exterior speakers outside of any Residence. In addition, the Owner of a Residence shall be responsible for the addition of any soundproofing in such Residence should it become necessary to prevent sound from audio equipment from being transmitted into adjoining Residences.

- (h) No window air conditioning unit shall be installed in any Residential Building without the prior approval of the Architectural Control Committee. Any window air conditioning unit permitted or approved pursuant to the immediately preceding sentence shall be neat, properly maintained and in keeping with the character of the community and shall be allowed only between May 1 and September 30 of each year.
- (i) No sheds, greenhouses, solariums, out buildings, storage buildings, tents or other structures or any kind shall be erected on any part of a Residential Parcel. Garages shall be used for storage of vehicles as permitted herein and for no other purpose including, but not limited to, the making of mechanical repairs to vehicles. Garage doors shall remain closed to the extent possible.
- (j) No Owner shall alter the grading of any portion of the Property from the grading originally installed by the Declarant. No Owner shall alter the landscaping originally furnished to any portion of the Property by the Declarant or remove or add any lawn, shrubbery, trees, gardens, plants, rock gardens, fountains or other elements of landscaping on the Property; provided, the foregoing shall not prohibit potted plants on any roof decks. All landscaping and maintenance thereof on the Residential Parcels and Commons Areas shall be the initial responsibility of the Declarant and become the responsibility of the Homeowners' Association upon its creation.
- (k) No sign, banner, billboard, or other display or advertising device of any character shall be erected or maintained upon any part of a Residential Parcel, except by the Declarant. Subject to applicable law, one "For Sale" sign containing no more than six (6) square feet may be exhibited on a Residential Parcel in the window of the Residence. No such "For Sale" may be exhibited on any other portion of a Residential Parcel without the prior approval of the Board.
- (l) Other than fences originally installed by the Declarant, no fence shall be erected or maintained on any portion of the Property, without the prior approval of the Board or Architectural Control Committee. No fence may be erected that differs in design, material, color or height from any fence installed by the Declarant.
- (m) No exterior addition to or exterior change or alteration in a Residential Building, including, but not limited to, structural additions, foundations, storm doors and windows, the color of all exterior doors, exterior lighting, railings, planters, benches and shutters shall be made, done or performed except in compliance with Article VIII, which provides, among other requirements, for the approval of the Board or Architectural Control Committee. Any such exterior addition to or exterior change or alteration to a Residential Building approved by the Architectural Control Committee (i) shall be of color, design, material and construction at least equal to that of the Residential Building as originally constructed, (ii) shall comply with all applicable building, fire and safety laws, statutes, ordinances and any other requirements of the City and any covenants,

conditions and restrictions of record governing all or a portion of the real property underlying such Residential Building, (iii) shall be performed in a good and workmanlike manner, and (iv) shall harmonize, to the satisfaction of the Architectural Control Committee as to design, color, location and size, with surrounding structures and topography.

- (n) No snowmobiles, all terrain vehicles, dune buggies or similar type motorized vehicles may be operated anywhere on the Property.
- (o) No planting or landscaping by an Owner shall be permitted on any portion of the Property, other than individual planters attached to a Residence with the approval of the Board. All landscaping and maintenance thereof on the Property shall be the responsibility of the Homeowners' Association, as described in Section 3.4. Landscape plants, trees, bushes and other material which shall be removed by the Homeowners' Association by reason of damage, disease, overgrowth or other reason shall be replaced in type, size and kind by the Homeowners' Association.
- (p) There shall be no obstruction of the Common Area and nothing shall be stored on the Common Area without the prior consent of the Board, except as otherwise in this Declaration expressly provided.
- (q) Nothing shall be done or kept in or upon any portion of the Property which will result in (i) an increase in premiums for any insurance secured by an Owner or the Homeowners' Association over then prevailing rates, without the prior written consent of the Board, or (ii) the cancellation of any insurance on any portion of the Property, or (iii) the violation of any law.
- (r) No waste shall be committed on the Property by any Owner.
- (s) Each Residence shall be used for private, residential purposes by a single family and for no other purposes. No industry, business, trade, occupation or profession of any kind, commercial, religious, charitable, educational or otherwise, conducted for profit, altruism or otherwise shall be conducted, maintained or permitted anywhere on the Property; provided, however, that none of the foregoing restrictions shall preclude an Owner, with respect to its Residence from (i) maintaining its personal or professional library therein; (ii) keeping its personal business or professional records or accounts therein; or (iii) handling its personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

3.7 Remedies. The violation by an Owner or its agents or invitees of any covenant, condition or restriction of record governing all or a portion of the Property, or of any rule or regulation adopted by the Board, or breach of any provision herein contained, shall give the Board the right, upon not less than ten (10) days advance written notice to the Owner responsible for the violation, to take the following actions in the event the violation is not cured within such ten (10) day period (or immediately in the event of any matter of an emergency nature which might result in damage to persons or property):

- (a) To enter upon any part of the Property where such violation or breach exists (including any Owner's Residence) and summarily abate and remove, at the expense of the defaulting Owner or any Condominium Association, any structure, thing or condition that may exist thereon contrary to the intent and

meaning of the provisions hereof, and the Declarant, or its beneficiaries, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass.

- (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.
- (c) To levy fines in such reasonable amounts and pursuant to such procedures for hearings and appeals as the Board from time to time determine against any Owner or Condominium Association.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorney fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of sixteen percent (16%) per annum (or the maximum rate permitted by law) until paid, shall be charged to and assessed against such defaulting Owner, and the Homeowners' Association shall have a lien for all of the same upon the Residence of such defaulting Owner in the same manner, and shall be enforceable, as provided in Article VI hereof. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

3.8 Party Walls. All dividing walls which are constructed on the property line between two (2) Residential Buildings and which stand partially upon and within one Parcel and partially upon and within another, and all walls which serve two (2) Residential Buildings, shall be considered party walls, and each of the Owners of said Residential Buildings (whether an individual Owner or Condominium Association) shall have the right to use said party wall along the whole length or any part of the length thereof for the support of said Residential Buildings and for the support of any Residential Building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts, conduits originally located therein or thereon. No Owner of any Residential Building shall have the right to extend said party wall in any manner, either in length, height or thickness. In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Owner (or Condominium Association in the event such party wall comprises a portion of a Condominium Building) of the Residential Building upon which such party wall may rest shall have the obligation to repair or rebuild such wall and the Owners of each Residential Building upon which such walls shall rest, be served or benefited by shall pay such Owners' proportionate share of the cost of such repair or rebuilding. All such repair or rebuilding shall be performed in accordance with the provisions of Section 3.9. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall. Notwithstanding the foregoing to the contrary, the Owner of any Residential Building (or Condominium Association in the event such party wall comprises a portion of a Condominium Building), or any other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Owner of a Residential Building (or Condominium Association in the event such party wall comprises a portion of a Condominium Building), or any other interested party, to contribution from any other person, shall be appurtenant to the land and shall pass to such Owner's or other applicable person's successors in title. The title of each Owner to the portion of each party wall within such Residential Building is subject to a cross-easement in favor of the adjoining Owner of a Residential Building for joint use of said wall. Notwithstanding any other provision of this paragraph, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against damage by such elements.

3.9 Damage or Destruction. In the event of any damage to a Residential Building by fire or other casualty, the Owner (or Condominium Association in the event such damage is to a Condominium Building) thereof shall repair, restore and rebuild the portion of such Residential Building so damaged or destroyed to its condition, as near as possible, immediately preceding such fire or other casualty and as

promptly as possible, but in all events within one hundred twenty (120) days after the occurrence of such casualty, unless prevented from doing so by inclement weather or other causes beyond such Owner's (or Condominium Association's reasonable control), in which event reconstruction shall be completed within one hundred eighty (180) days after the occurrence of such casualty. All such repairs, restoration or rebuilding shall be done in a good and workmanlike manner with materials comparable to those used in the original Residential Building and shall conform in all respects to the laws and ordinances in force at the time of such repair, restoration or rebuilding as well as all covenants, conditions and restrictions of record governing all or a portion of the real property underlying such Residential Parcel. In order to assure the proper completion of the work concerned, the Homeowners' Association shall have the right, but not the obligation to exercise such supervision and direction over any and all repair, restoration and reconstruction carried out pursuant to the provisions of this Section 3.9, and the Owner (or Condominium Association) of each Residential Building which shall have been damaged or destroyed shall fully cooperate with and abide by any and all instructions and directions of the Homeowners' Association in connection therewith. Should such Owner fail to reconstruct such Residential Building as aforesaid, the Homeowners' Association may undertake to do such construction as it deems necessary and to charge such Owner (or Condominium Association) the costs thereof. All such construction costs shall be promptly paid by Owner (or Condominium Association) upon the Homeowners' Association providing such Owner (or Condominium Association) with copies of the bills evidencing such construction costs. Any amounts so charged to an Owner (or Condominium Association) shall bear interest at the rate of sixteen percent (16%) per annum (or the maximum rated permitted by law) and constitute a lien in the same manner, and shall be enforceable, as provided in Article VI hereof.

3.10 Condominium Associations. It is Declarant's intention and expectation that one or more Condominium Associations will be formed in connection with the establishment of one or more condominiums on the Condominium Building Parcels, and that each such condominium shall be governed by, and be subject to, the terms and provisions of a separate declaration of condominium ownership creating easements, establishing restrictions and governing matters pertaining to the common elements and other rights and obligations of said condominium. The formation of such condominiums and Condominium Associations as well as the recording of appropriate declarations of condominium ownership shall be in addition to, and in no way in lieu of, the restrictions, easements and covenants contained herein. In the event of any conflict, ambiguity or contradiction between the terms of this Declaration and the terms of any such declaration of condominium ownership, the terms of this Declaration shall in all cases control and prevail.

3.11 TIF Restrictions. In connection with the development of the SoMa Development, Declarant intends to obtain tax increment financing. If such tax increment financing is obtained, and for so long as any obligation of Declarant with respect to such tax increment financing is outstanding and unpaid, each Owner covenants and agrees that it will not ever request a reduction in the assessed value of its Residence below the original purchase price paid by such Owner for such Residence. Each Owner further agrees to indemnify and hold Declarant harmless for any breach of the foregoing covenant and agreement.

3.12 U.P. Deed Restrictions. The SoMa Development was conveyed to Declarant by U.P. In the deeds of conveyance, among other things (a) Declarant acknowledged, for itself and all Owners, that the SoMa Development is adjacent to railroad right-of-way of U.P. and that railroad operations may create noise, vibration, fumes or odors and other adverse effects 24 hours per day, and (b) Declarant agreed, for itself and all Owners, that it and they would not, and waived all rights to, (i) institute legal proceedings against U.P. to reduce or lessen the noise and other effects associated with railroad operations, or (ii) to directly or indirectly participate in petition drives, lobbying efforts or other intentional acts seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the noise or other adverse effects associated with railroad operations, and with any party breaching the foregoing being obligated to reimburse U.P. for all costs incurred by U.P. to comply with any such laws

or ordinances (collectively the "U.P. Deed Restrictions"). Each Owner, by taking title to a Residence, acknowledges receipt of copy of the U.P. Deed Restrictions, agrees to observe and perform the terms and provisions of the U.P. Deed Restrictions, and covenants and agrees to indemnify and hold harmless Declarant for any breach of the U.P. Deed Restrictions by such Owner.

Article IV.
Administration

4.1 Homeowners' Association. The Homeowners' Association has been or will be formed by Declarant as a nonprofit corporation under the Nebraska Nonprofit Corporation Act. At such time as Declarant, in its discretion, shall deem it appropriate (but in no event later than the Transfer Date), Declarant shall cause to be conveyed to the Homeowners' Association by quitclaim deed fee simple ownership to the Common Area and Common Improvements shall be vested in the Homeowners' Association, through its duly elected Board, and the Homeowners' Association shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body relating to the use, maintenance and repair of the Common Area and Common Improvements.

4.2 Membership. Every Owner shall be a Member of the Homeowners' Association and such membership shall automatically terminate when such person ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Condominium Unit or Rowhouse. Each Owner, by acceptance of a deed of other conveyance of a Residence, thereby becomes a Member, whether or not this Declaration or such membership interest is made a part of, incorporated by reference, or expressed in said deed or conveyance. Termination of membership shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Condominium Unit, Rowhouse or the Homeowners' Association during the period of such ownership and membership in the Homeowners' Association. Furthermore, termination of membership shall not impair any rights or remedies which the Board or others may have against such former Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto.

4.3 Board of Directors. The affairs of the Homeowners' Association shall be managed by the Board.

- (a) Election. Until the Transfer Meeting, no Member shall have the right to elect any director of the Board. The initial Board shall be designated by the Declarant, and shall consist of three (3) directors who shall serve without compensation. The initial Board (and successors designated by Declarant) shall serve for a period commencing on the date the Homeowners' Association is formed by the filing of the Articles of Incorporation with the office of the Secretary of State of Nebraska, and ending upon the qualification of the directors elected at the first meeting of the Members following the Transfer Date (the "Transfer Meeting"). The Transfer Meeting shall be held within ten (10) days after the Transfer Date. At the Transfer Meeting, the Owners shall elect not less than three (3) and not more than seven (7) directors to serve on the Board, with each Owner entitled to one (1) vote, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. At all times from and after the Transfer Meeting, the Board shall consist of not less than three (3) and not more than seven (7) directors.
- (b) Term. A majority of the directors of the Board elected at the Transfer Meeting and receiving the highest number of votes shall serve for a term of two (2) years. The remaining directors of the Board elected at the Transfer Meeting and

receiving the fewest number of votes shall serve for an initial term of one (1) year. Thereafter, all directors of the Board shall serve two (2) year terms subsequent to election, unless the Owners elect to remove or replace such Board directors in accordance with Section 4.3(k) prior to the expiration of such term or such Board directors shall cease to be Owners prior to the expiration of such term.

- (c) Annual Meeting. At each annual meeting of the Members commencing with the Transfer Meeting, the Owners shall be entitled to vote for candidates for election of directors to the Board to fill any vacancies or expired terms, with each Owner entitled to one (1) vote and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Owners biographical and background information about candidates for election to the Board if (i) no preference is expressed in favor of any candidate, and (ii) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.
- (d) Regular Meetings. A regular meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of Members. The Board shall, by regulations which the Board may, from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.
- (e) Special Meetings. Special meetings of the Board may be called by or at the request of the President or fifty percent (50%) or more of the directors of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.
- (f) Notice. Written notice of any special meeting of the Board shall be delivered to all Members and all directors of the Board at least forty-eight (48) hours prior to the date of such special meeting. Written notice of regular meetings of the Board shall be delivered to all Members at least forty-eight (48) hours prior to the date of such meeting.
- (g) Vacancies. Vacancies in the Board shall be filled by a majority vote of the remaining directors. A director elected to fill a vacancy shall be elected for the remaining term of the office to be filled.
- (h) Election of Officers. The Board shall elect from among its directors a President who shall preside over both its meetings and those of the Members, if any, and who shall be the chief executive officer of the Board and the Homeowners' Association; a Vice President, who, in the absence of the President, shall perform the duties of the President; a Secretary, who shall keep the minutes of all meetings; a Treasurer, who shall have charge and custody and be responsible for all funds of the Homeowners' Association; and such other officers as the Board shall see fit. The officers shall be elected annually by the Board at a regular meeting of the Board. Vacancies may be filled or new offices created and filled

at any meeting of the Board. Any officer elected by the Board may be removed by a majority vote of the directors of the Board.

- (i) Qualifications of Board. With the exception of the Declarant who shall have the rights, as set forth above, to designate and select the persons who shall serve as directors until the Transfer Meeting, each member of the Board shall be an Owner.
- (j) Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, provided that, if less than a majority of the directors are present at the meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.
- (k) Removal. From and after the Transfer Meeting, any director may be removed from office by the affirmative vote of sixty-seven percent (67%) of all the Members at a special meeting called for such purpose.
- (l) Open Meetings. All meetings of the Board, whether regular or special, shall be open to the Members, except for meetings: (i) to discuss litigation when an action against or on behalf of the Homeowners' Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent; (ii) to consider information regarding appointment, employment or dismissal of an employee; or (iii) to discuss violations of rules and regulations of the Homeowners' Association or unpaid shares of Common Expenses and Rowhouse Expenses. Any vote on the aforementioned matters shall be taken at a meeting or portion thereof open to all Members.
- (m) General Provisions. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt.

4.4 Meetings of Members. Meetings of Members shall be held annually and other times at the discretion of the Board and at such place and time as shall be designated in any notice of a meeting by the Board. Any notice of an annual meeting of Members shall include a meeting agenda. Special meetings of the Members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the Members holding twenty-five percent (25%) of the total votes.

- (a) Notices. Written notices of annual or special meetings shall be delivered personally or by mail to the Members, addressed to each such Member at the address given by such Member to the Board, or if no address shall be given, addressed to such Member to the address of such Member's Residence. Notices shall state the purpose, place, day and time of the meeting and shall be mailed or delivered to each Member not less than ten (10) days before the date of such meeting and no more than thirty (30) days before the date of the meeting.
- (b) Quorum. Members holding twenty-five percent (25%) of the votes that may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of the Members, a majority of the Members present may adjourn the meeting from time to time and without further notice.
- (c) Voting. Commencing with the Transfer Meeting, there shall be one (1) vote for each Owner. If a Residence is owned by more than one person, the voting rights

with respect to such Residence shall not be divided. If only one of the multiple Owners of a Residence is present at a meeting, he or she shall be entitled to cast the vote allocated to that Residence. If more than one of the multiple Owners are present, and if any one of the multiple Owners casts the votes allocated to that Residence without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Residence, there is deemed to be majority agreement. If such multiple Owners cannot agree upon the casting of the vote allocated to such Residence, then such vote shall not be counted with respect to any such matter.

- (d) Special Meetings. Special meetings of the Members may be called by a majority of the Board or not less than twenty-five percent (25%) of the Members. All matters to be considered at special meetings of the Members called by not less than twenty-five percent (25%) of the Members shall first be submitted in writing to the Board not less than fifteen (15) days prior to the date of the special meeting of the Members called to consider such matters.
- (e) Proxies. At any meeting of the Members, a Member entitled to vote may vote either in person or by proxy executed in writing by the Member or by his or her duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution. Any proxy distributed for election of directors of the Board shall give Owners the opportunity to designate any person as the proxy holder and shall give the Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name. Any proxy must be executed in writing by the Owner (if more than one Owner of a Residence, then only one such Owner need execute the proxy) or his or her duly authorized attorney-in-fact and must bear the date of execution.
- (f) Land Contracts. In the event of a sale of a Residence pursuant to a land contract, the buyer of such Residence shall have all rights of a Member hereunder, including the right to vote for the election of directors of the Board, until the forfeiture or foreclosure of such land contract.
- (g) Manner of Acting. Except as set forth below, any action to be taken at any meeting of the Members at which a quorum is present shall be upon the vote of more than fifty percent (50%) of the Members represented at such meeting. The following matters shall require the affirmative vote of not less than sixty-seven percent (67%) of all the Members represented at a meeting duly called for that purpose: (i) merger or consolidation of the Homeowners' Association, (ii) sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, of the property and assets of the Homeowners' Association, or (iii) the purchase and sale of land on behalf of the Owners.

4.5 General Powers of the Board. The Board shall have the following general powers:

- (a) To adopt reasonable rules and regulations governing the use, operation, maintenance and administration of the Common Area, Common Improvements and Residential Parcels, and to amend them from time to time. The Board shall have all the powers necessary and incidental to the operation and management of the Homeowners' Association and to take such action as may be required to enforce the provisions of this Declaration and any rules and regulations adopted by the Board.

- (b) To prepare, adopt and distribute the annual budget of the Homeowners' Association.
- (c) To levy and collect assessments from the Condominium Association(s) or the Owners, as applicable, and to impose charges for late payments of a Condominium Association's or an Owner's assessments, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, to levy reasonable fines for violations of this Declaration and the rules and regulations of the Homeowners' Association.
- (d) To engage the services of a manager or managing agent, who may be any person, firm or corporation, on such terms and compensation as the Board deems fit, provided that the Board shall reserve the right to discharge such manager or managing agent for cause on not more than ninety (90) days written notice and the term of any such engagement shall not exceed two (2) years.
- (e) To engage the services of any persons (including but not limited to accountants and attorneys) deemed necessary by the Board at such compensation deemed reasonable by the Board and to remove, at any time, such personnel.
- (f) To enter into contracts on behalf of, and to purchase or secure in the name of, the Homeowners' Association any materials, supplies, insurance (including, without limitation, directors and officers liability insurance), equipment, fixtures and labor required by the terms of this Declaration, or which, in the reasonable opinion of the Board, shall be necessary or proper for the operation or protection of the Homeowners' Association and its Members and for the enforcement of the provisions of this Declaration.
- (g) To establish and maintain one (1) or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts) for the deposit of any funds paid to or received by the Homeowners' Association. To invest any fund of the Homeowners' Association in certificates of deposit, money market funds or comparable investments.
- (h) To pay real estate taxes, special assessments and any other special taxes or charges of any lawful taxing body, which are authorized by law to be assessed and levied upon the Common Area and Common Improvements, and to seek relief from or in connection with the assessment or levy of any real estate taxes, special assessments or charges.
- (i) To borrow money in the name of the Homeowners' Association to provide for the maintenance, repair or replacement of the Common Area and/or any Common Improvements and to secure such loan by pledging and granting a security interest in the assessments due the Homeowners' Association.
- (j) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the appropriate Members in proportionate amounts to cover the deficiency.

- (k) To enter upon, and to have its contractors, subcontractors and agents enter upon, the Common Area and Residential Parcels as may be required to exercise all of the rights and obligations granted to or imposed upon it pursuant to this Declaration or to correct any condition that in the Board's reasonable judgment is a nuisance or is damaging to the use, enjoyment, operation or maintenance of the Common Area.
- (l) To record the dedication of a portion of the Common Area to a public body for use as, or in connection with, a street or utility.
- (m) To have standing and capacity to act in a representative capacity in relation to matters involving the Common Area and Common Improvements on behalf of the Members.
- (n) To exercise any and all powers, rights and authorities provided in the Nebraska Nonprofit Corporation Act, as amended from time to time.

Nothing herein shall be construed to give the Homeowners' Association, or the Board, the authority to conduct an active business for profit on behalf of the Owners. There shall be no structural alterations, capital additions to, or capital improvements on the Common Area or to the Common Improvements (other than for purposes of repairing, replacing and restoring portions of the Common Area or the Common Improvements) requiring an expenditure in excess of \$100,000.00 which will not otherwise be reimbursed by any Owner or through any insurance proceeds without the prior approval of (i) at least sixty-seven percent (67%) of all Owners, if such expenditure relates to the Common Area or Common Improvements, and (ii) at least sixty-seven percent (67%) of all Rowhouse Owners, if such expenditure relates exclusively to the Rowhouses.

4.6 Liability of the Board of Directors. Neither the directors of the Board nor the officers of the Homeowners' Association shall be liable to any Owner for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board directors and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the directors of the Board and each of the officers of the Homeowners' Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Homeowners' Association on behalf of the Owners or arising out of their status as Board directors or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, without limitation, attorney fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any director of the Board or officers of the Homeowners' Association may be involved by virtue of having been such director or officer.

4.7 Books and Records. The books and records of the Homeowners' Association may be examined by any Owner or such Owner's mortgagee at the office where such books and records are maintained, during normal business hours for any proper purpose upon prior written notice to the Board.

Article V. Insurance

5.1 Insurance Coverage. The Board, on behalf of the Homeowners' Association, shall have the authority and duty to acquire and maintain insurance for the Common Area and Common Improvements located thereon as follows:

- (a) Commercial General Liability Insurance. Commercial general liability insurance shall cover personal and bodily injury and property damage. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than \$1,000,000.00 combined single limit per occurrence with a general policy aggregate of \$1,000,000.00 for personal and bodily injury or property damage. Such policy shall be endorsed to cover cross liability claims of one insured against the other.
- (b) Umbrella Liability Insurance. If needed, umbrella liability insurance shall be in excess of the required comprehensive commercial liability and employer liability policies in an amount deemed desirable by the Board.
- (c) Fidelity Insurance. Fidelity insurance in the form of a fidelity bond indemnifying the Homeowners' Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Homeowners' Association or its managing agent, or of any other person handling funds of the Homeowners' Association, the Board or the Owners in such amounts as shall be determined by the Board. Such bond shall delete any exclusion pertaining to persons who serve without compensation from any definition of "employee" or similar expression, and shall contain a managing agent endorsement if available. The Board may also obtain blanket crime insurance covering money and securities on and off the premises and depositors' forgery coverage in amounts as the Board shall deem desirable.
- (d) Other. The Board shall obtain such other insurance as the Board shall deem desirable, which may include, without limitation, director and officer liability insurance and worker's compensation insurance as may be necessary to comply with applicable laws.
- (e) Premium. The premiums for the above described insurance and bond shall be Common Expenses paid by the board on behalf of the Homeowners' Association.

5.2 Insurance Carriers. All insurance provided for herein shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Nebraska.

5.3 Insureds. All policies of insurance of the character described above shall name as insureds the Homeowners' Association, the Board, the managing agent, if any, and the other agents and employees of the Homeowners' Association and the Declarant in the Declarant's capacity as an Owner, and shall also provide coverage for each Owner and each Condominium Association.

5.4 Insurance for Condominium Buildings and Rowhouses. Each Owner (or Condominium Association on behalf of the Owners of Condominium Units governed by such Condominium Association) shall maintain in full force and effect, with a reputable company licensed to conduct business in the State of Nebraska, a policy of insurance covering such Owners' Rowhouse or Condominium Building against loss or damage by fire and against loss or damage by occurrences now or hereafter embraced by standard extended coverage and vandalism and malicious mischief in one hundred percent (100%) of the full insurable replacement cost of such Rowhouse or Condominium Building. Each Owner (or Condominium Association) shall file a certificate of insurance confirming such coverage with the Homeowners' Association. In the event that any Owner (or Condominium Association) shall fail to maintain the insurance required herein, the Homeowners' Association shall have the right, but not the obligation, to

obtain such insurance in the name of such Owner (or Condominium Association) and to add the cost thereof to the next monthly assessment due from such Owner or Condominium Association.

Article VI.
Assessments

6.1 Personal Obligation. The Owners, by virtue of the recording of this Declaration, whether or not it shall be so expressed in any Condominium Association declaration or in such individual Owner's deed, are deemed to covenant and hereby agree to pay to the Homeowners' Association such assessments as are levied pursuant to an annual budget adopted by the Homeowners' Association or otherwise pursuant to the provisions of this Declaration. Such assessments, together with interest thereon and costs of collection, if any, as herein provided, shall be a charge on each Residence and shall be a continuing lien on the Residence against which each such assessment is made. The Board may record with the Recorder a notice of lien against the Rowhouse Parcel or Condominium Unit of any Owner who is delinquent in the payment of any assessment. Each Owner, other than the Declarant, shall be personally liable for such Owner's share of such assessments, together with the applicable interest, costs and late fees. Personal liability for such past due assessments shall not pass to an Owner's successor in title unless expressly assumed. Each Owner shall be allocated a Share. Each Condominium Association (on behalf of the Owners of Condominium Units governed by such Condominium Association) and each Rowhouse Owner shall pay assessments on a monthly basis (or such other interval as the Board shall determine), however, the Board reserves the right to assess the Owners of Condominium Units individually for the Common Expenses allocable to a Condominium Parcel in lieu of assessing the Condominium Association as a whole. Each Owner of a Residence, by acceptance of a deed for a Condominium Unit or Rowhouse located within the Property, whether it shall be so expressed in any such other conveyance, is deemed to covenant and hereby agrees to pay to the Homeowners' Association such assessments as are levied by the Homeowners' Association. Assessments may vary based upon the actual budget adopted by the Board from time to time.

6.2 Purpose of Assessments. The assessments levied by the Homeowners' Association shall be used for the purpose of promoting the recreation, health, safety, needed services and welfare of residents of the SoMa Development and in particular for the improvement, maintenance, conservation, beautification and administration of the Common Area and Common Improvements and the establishment of such reasonable reserves, if any, as the Board deems appropriate, including but not limited to, the payment of all costs and expenses, and the provision of all services, materials and property, that the Board has the obligation or power to pay or provide.

6.3 Categories of Assessments. There shall be three (3) categories of assessments as follows: (i) the general assessment, which shall be levied monthly or at such other interval as the Board deems appropriate, to include all costs and expenses other than special assessments, (ii) special assessments, which shall be levied for the purpose of defraying, in whole or in part, the costs of any reconstruction, unexpected repair or replacement of the Common Area or Common Improvements, including the necessary fixtures, and personal property related thereto, for structural components of Rowhouses as described in Section 3.5 or for any other reason, and (iii) the Rowhouse Assessment, which shall be levied monthly or at such other interval as the Board deems appropriate, to include all Rowhouse Expenses other than special assessments.

6.4 Annual General Assessments/Budget. Each year, on or before November 1, the Board shall estimate an annual budget of Common Expenses and Rowhouse Expenses, including the total amount required for the cost of wages, materials, insurance, services and supplies that will be required during the next calendar year for the rendering of all services by the Homeowners' Association as provided herein, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, if any, and it shall also notify each Owner on or before November 5,

in writing, as to the amount of such estimate with a reasonable itemization thereof. Such Common Expenses shall be assessed to each Condominium Association (or each Condominium Unit Owner if the Homeowners' Association shall so elect) and each Rowhouse Owner in accordance with his respective Shares and such Rowhouse Expenses shall be assessed to each Rowhouse Owner in accordance with his or her respective Shares relative to the Shares of all Rowhouse Owners, all in accordance with the annual Homeowners' Association budget as determined by the Board. On or before January 1 of the next year, and on the first day of each month thereafter of said year, each Rowhouse Owner and each Condominium Association shall be obligated to pay one-twelfth (1/12th) of the estimated portion of the Common Expenses and Rowhouse Expenses, as the case may be, allocated to each for payment under the Budget. Each year the Board shall prepare an itemized accounting of the expenses for the preceding calendar year and the amounts collected. The Board may establish and maintain reasonable reserves for contingencies and replacements of the Common Area, Common Improvements and structural components of Rowhouses as described in Section 3.5. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserve. If said regular assessment proves inadequate for any reason, including nonpayment of any assessments, the Board may at any time levy a further assessment. The failure or delay of the Board in preparing or delivering the annual budget to each Owner shall not constitute a waiver or release in any manner of each Owner's obligation to pay assessments, as herein provided, whenever the same shall be determined, and in the absence of the preparation and delivery of any annual or adjusted budget, each Owner and each Condominium Association, as the case may be, shall continue to pay the annual assessment charge at the then existing monthly rate established for the previous calendar year until such new or annual or adjusted budget shall have been mailed or delivered.

6.5 Special Assessments. No special assessment may be levied by the Board for an expenditure in excess of \$100,000.00 which will not otherwise be reimbursed by any Owner or through any insurance proceeds unless such expenditure is approved by sixty-seven percent (67%) of all (i) Members in the event such special assessment shall relate to the Common Area or Common Improvements, or (ii) Rowhouse Owners in the event such special assessment shall relate exclusively to Rowhouse Owners. The due date or dates, if it is to be paid in installments, of any special assessment shall be fixed in the resolution authorizing such assessment. Written notice of any special assessment shall be delivered or mailed to every Member subject thereto not less than thirty (30) days before the effective due date thereof. Special assessments shall be allocated to each Owner in accordance with their respective Shares unless the Board shall determine that the expenditures which necessitate any such special assessment accrue to the benefit of less than all Owners, or to certain Owners to a greater degree than to other Owners, in which case the Board shall serve notice to the appropriate Owners of any such special assessment, which notice shall consist of a written statement setting forth the amount of such special assessment.

6.6 Nonpayment of Assessments. Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the due date, such assessments shall bear interest at the rate of sixteen percent (16%) per annum (or the highest rate permitted by law, whichever is lower) from the delinquency date, and the Board may impose a flat fee of \$25.00 per month (or such other amount as the Board may determine from time to time) to reimburse itself for the administrative costs and inconvenience of collection of such delinquent assessment. Such fees and costs, including attorney fees incurred in connection thereto, shall constitute a lien and personal obligation discussed in Section 6.1 above. The Board shall, in the name of and on behalf of the Homeowners' Association, have all rights and remedies with respect to the collection of the same as shall from time to time be permitted by law, including bringing an action at law or in equity against each such Owner for their proportionate share of the delinquent assessment and foreclosing the aforesaid liens. All expenses of the Homeowners' Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorney fees and court costs and other fees and expenses, shall be charged to and assessed against such defaulting Member and shall be added to and deemed part of the assessments due

therefrom and the Homeowners' Association shall have a lien for all of the same upon the respective Residence (or Residential Parcel) of such Owner.

6.7 Proof of Payment. Upon written demand of a Condominium Association, or an Owner or mortgagee at any time, the Homeowners' Association shall furnish such Condominium Association, Owner or mortgagee with a written certificate signed by an officer of the Homeowners' Association setting forth whether there are any unpaid annual or special assessments levied against such Condominium Association generally or Owner's Condominium Unit or Rowhouse. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

6.8 Subordination of Lien to Mortgage. Any mortgage or trust deed made, owned or held by a bank, savings and loan association, or other institutional lender, and recorded against a Rowhouse Parcel or Condominium Unit before the recording of a notice of lien by the Board against such Rowhouse Parcel or Condominium Unit of an Owner who is delinquent in the payment of assessments shall be superior to the lien of such unpaid assessment set forth in said notice and to all assessments that become due and are unpaid subsequent to the date of recording of such first mortgage or trust deed; provided, however, such mortgage or trust deed shall be subject to the lien of unpaid assessments that are due and payable after the date when such holder takes possession of a Condominium Unit or Rowhouse, or accepts a conveyance of such Condominium Unit or Rowhouse, or has a receiver appointed in a suit to foreclose the lien of such mortgage or trust deed.

6.9 Exemption from Assessment on Condominium Units or Rowhouses Owned by Declarant. It is expressly provided that no Condominium Unit or Rowhouse owned by the Declarant shall be subject to the assessments, charges and liens provided for herein until the date upon which such Condominium Unit or Rowhouse shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefore or sold pursuant to an installment contract. However, the Declarant shall remain responsible for any necessary maintenance, repair and utility costs directly resulting from Declarant's construction work being performed on the Property. Upon the conveyance or leasing by Declarant of any Condominium Unit or Rowhouse which was theretofore entitled to the foregoing exemption from assessments, such Condominium Unit or Rowhouse, and the Owner thereof, shall immediately become subject to the payment of all assessments and other charges provided herein which shall accrue on the first day of the first month after the date of closing.

6.10 General Provisions. The Board shall keep full and correct books of account on such basis as the Board shall determine. Upon request of any Condominium Association, Owner or such Owner's mortgagee, such books of account may be inspected by such requesting person or its representative, duly authorized in writing, at such office and at such reasonable time or times during normal business hours, as the Board shall designate in writing. No Condominium Association or Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Common Improvement or abandonment of the Owner's Condominium Unit or Rowhouse. Declarant may collect a fee from each purchaser of a Condominium Unit or Rowhouse at the closing of such transaction equal to two (2) times the monthly general assessment and Rowhouse Assessment (with respect to Rowhouse Owners only) to create an initial reserve fund for the Homeowners' Association, which fee shall be collected from each and every purchaser of a Condominium Unit or Rowhouse at the closing of such transaction, and which sum shall be deposited into an account for the benefit of the Homeowners' Association and which account shall be turned over to the Board at the Transfer Meeting.

Article VII.

Rights Reserved to Declarant

7.1 Declarant's Promotional Rights. The right is reserved to the Declarant to place and maintain on any portion of the Common Area, construction trailers, sales offices, fencing, flag poles,

advertising signs, banners and lighting in connection therewith, and other promotional facilities at such locations and in such forms as shall be determined by the Declarant for construction, sales and leasing purposes. There is also reserved to the Declarant, its agents, employees and prospective purchasers and tenants, the right of ingress, egress and transient parking in and throughout the Property for such sales and leasing purposes. The Declarant also reserves the right to maintain on the Property without charge (a) a general office for the purpose of exercising the rights reserved herein, (b) a general construction office for Declarant's contractors and subcontractors, and (c) appropriate parking facilities for the employees of Declarant's agents and contractors. Declarant's aforesaid reserved rights shall continue for so long as Declarant or any successor owner of the Property or any Parcel therein is engaged in the construction, sale or leasing of Condominium Units or Rowhouses on any portion of the Property.

7.2 Contracts. The Declarant shall have the right to enter into contracts on behalf of the Homeowners' Association prior to the Transfer Meeting; provided, however, any such contracts shall be terminable by the Homeowners' Association without penalty on not more than ninety (90) days prior notice. Declarant reserves the right to engage an initial manager for the Homeowners' Association, and in furtherance of such right, to enter into a contract with any such management company for such purposes, provided that the contract expires no later than two (2) years from the Transfer Date. Such management contract, if any, shall be paid for as a Common Expense.

7.3 Right to Grant and Allow Dedications and Grant Utility Easements. Until the Transfer Date, Declarant hereby reserves, for itself and its successors and assigns, the following: (a) the right to grant and allow the dedication of space in the Common Area to any public or quasi-public utility or to any governmental authority for the location of utilities serving any portion of the Property, and (b) the right to grant and allow easements in, over, under and across the Common Area for ingress and egress to, and for installation, construction and maintenance of, any or all such utilities; provided, however, that Declarant shall not exercise any of such rights in a manner so as to prevent the exercise of the rights of use and enjoyment of the Common Area as granted in this Declaration.

7.4 Right to Dedicate or Convey Open Space. Declarant reserves the right to dedicate or convey portions of the Open Space constituting Common Area to the City.

Article VIII.

Architectural Controls

8.1 Architectural Standards. All Residential Buildings, accessory structures, landscaping and any other exterior aspect of a Parcel, whether original or replacement, temporary or permanent, shall be constructed, altered, restored, maintained, placed or installed (a) in compliance with all requirements of this Article VIII and any other applicable provisions of this Declaration, as well as all applicable governmental ordinances and codes, and any covenants, conditions and restrictions of record governing all or a portion of the Property, and (b) in such manner so as to preserve the architectural and aesthetic appearance of the Property and so as to not impair the value of the property of all Owners, and shall be undertaken in a manner that is consistent with the use of the Property as a quality residential development.

8.2 Membership. The Architectural Control Committee shall consist of three (3) persons who shall be appointed by the Board. Until the Transfer Meeting, the Declarant shall designate the members of the Architectural Control Committee. After the Transfer Meeting, all three (3) members shall be appointed by the Board. Except for members designated by the Declarant, each member of the Architectural Control Committee shall be an Owner and shall reside in a Residence. Any member of the Architectural Control Committee may also serve as a director on the Board.

8.3 Powers and Duties. The Architectural Control Committee shall have the following powers and duties:

- (a) to review requests by the Owners (or Condominium Associations on behalf of Owners of Condominium Units) for approval of any exterior addition to or modification or alteration to a Residential Building or other matter described in this Declaration as requiring approval of the Architectural Control Committee and, subject to final approval thereof by the Board, to render decisions thereon;
- (b) to propose to the Board rules, regulations and procedures concerning exterior maintenance, repair, landscaping, fences, trash removal and the enforcement of the provisions of this Declaration in relation thereto; and
- (c) such other powers and duties as the Board shall from time to time delegate.

8.4 Procedures. Any matter requiring the approval of the Architectural Control Committee shall be submitted to the Architectural Control Committee in writing and, if approval of any alteration or addition to a Residential Building shall be requested, shall include preliminary design drawings, plans and specifications, elevations, landscaping schemes and descriptive materials showing the size, color, design, configuration, height, shape and materials of such alteration or addition. Within a reasonable time not to exceed thirty (30) days after receipt of all such items, the Architectural Control Committee shall advise such Owner (or Condominium Association on behalf of Owners of Condominium Units) and the Board in writing:

- (a) whether the request of such Owner (or Condominium Association on behalf of Owners of Condominium Units) has been approved or denied, and if denied, the specific reason therefore; or
- (b) whether the Architectural Control Committee requires additional information, plans or other materials to render a decision, in which case such additional items shall be furnished as expeditiously as possible.

If additional items shall be required pursuant to subsection (b) above, within a reasonable period of time not to exceed ten (10) days from the date of receipt of all such items, the Architectural Control Committee shall advise such Owner (or Condominium Association on behalf of Owners of Condominium Units) and the Board in writing whether such request has been approved or denied, and if denied, the specific reason therefore. If such request for approval shall have been denied, such Owner (or Condominium Association) shall have the right to appeal the decision of the Architectural Control Committee to the Board pursuant to Section 8.5 hereof.

8.5 Right of Appeal. Any adverse decision of the Architectural Control Committee may be appealed to the Board, which shall render a final decision as to the matter in question. An Owner (or Condominium Association on behalf of Owners of Condominium Units) desiring to appeal shall so advise the Board in writing. The Board shall consult with the Architectural Control Committee and such Owner (or Condominium Association), shall review the plans and other materials submitted by such Owner (or Condominium Association), and shall render a written decision as to the matter under consideration as expeditiously as practical. In rendering its decision, the Board shall taken into consideration the criteria set forth in Sections 3.6(m), 8.1 and 8.6, the manner in which the Architectural Control Committee has applied such criteria to the matter under review, and such other factors as the Board deems relevant in respect to the overall enhancement and preservation of the value and desirability of the SoMa Development.

8.6 Review Criteria. In evaluating requests by Owners (or Condominium Associations on behalf of Owners of Condominium Units) for approvals required of the Architectural Control Committee

hereunder, the factors to be considered by the Architectural Control Committee shall include those set forth in Section 3.6(m) and 8.1, and the following:

- (a) the architectural integrity and compatibility of any proposed exterior modification to a Residential Building with the design, color scheme and materials of such Residential Building as originally constructed, in regarding to which the Architectural Control Committee shall not have the authority to approve an exterior alteration or addition that:
 - (i) changes color schemes or architectural styles from those originally constructed by the Declarant,
 - (ii) substitutes materials of lesser quality than those originally furnished by the Declarant, or
 - (iii) results in a change in the grade of a Residential Building or the elevation, size or basic exterior design from that originally provided by the Declarant, including, by way of example and not limitation, changes in door and window placement or addition of a penthouse not part of the original construction of a Residential Building.
- (b) the aesthetic effect of any proposed modification to exterior fences or exterior lighting; and
- (c) such other factors as the Architectural Control Committee deems relevant in assessing the overall effect of the Owner's request upon the maintenance and operation of the Parcel.

8.7 Final Board Approval. There is hereby reserved to the Board the power to modify or reverse any decision of the Architectural Control Committee, whether approving or denying the request of an Owner (or Condominium Association on behalf of Owners of Condominium Units), if, in the Board's judgment, which shall not be subject to challenge or review, the Architectural Control Committee, in rendering such decision, has failed to correctly apply the criteria set forth in Sections 3.6(m), 8.1 or 8.6.

Article IX.
General Provisions

9.1 Amendment by Declarant. Declarant hereby reserves to itself, its successors and assigns, the following rights:

- (a) Until the Transfer Meeting, Declarant or its successors and assigns shall have the right to change or modify this Declaration and any exhibits hereto, provided the rights of any Owner or any person or entity who has signed a contract to purchase a Residence from Declarant shall not be materially adversely affected and provided further, the provisions of Article VI shall not be amended or modified without the consent of all of such mortgagees holding valid mortgages on the Residences.
- (b) Until the Transfer Meeting, Declarant or its successors and assigns shall have the right to remove from this Declaration, and have this Declaration vacated with respect to, any portion of the Property then owned by Declarant, including Common Area and Common Area Improvements except for all Drive Courts

then constructed or required to be constructed to provide access and fire protection lanes to Owners of the Residences. Declarant may remove such Property and vacate this Declaration with respect to such Property by filing an amendment with the Recorder ("Vacating Amendment").

- (c) Declarant shall have the right and power to record a special amendment to this Declaration for purposes of conforming to any requirements of the City.
- (d) In furtherance of the foregoing rights, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to an amendment to this Declaration pursuant to this Section 9.1 on behalf of the Owner of each Condominium Unit or Rowhouse Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Condominium Unit or Rowhouse, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record special amendments to this Declaration. The reserved rights of the Declarant under this subsection shall terminate at such time as the Declarant no longer holds title or controls title to any part of the Property, including, without limitation, the Additional Property, or in the event the Declarant has not acquired the Additional Property, within ten (10) years after the date hereof. Any such amendments shall become effective upon the recording with the Recorder.

9.2 Right of Declarant to Add Additional Property. Declarant may, in its sole discretion, at any time and from time to time and without having to obtain the consent, approval or signature of any party (other than the titleholder of such Additional Property), elect to subject to the terms of this Declaration one or more parcels of additional property now owned or hereafter acquired by Declarant from time to time and which is currently legally described as Lot 3, Courtland Place Replat 2 (being a replat of Lot 1, Courtland Place Replat), an Addition to the City of Omaha, Douglas County, Nebraska (the "Additional Property"); provided, however, that subjecting any Additional Property must be consistent with the general purposes of this Declaration. Declarant is not obligated in any manner by this Declaration to add Additional Property to the Property or to add any particular tract, or to add tracts in any particular sequence, or to add contiguous tracts, it being the intention hereof that Declarant may decline to exercise the rights granted in this Section 9.2 or may elect to exercise such rights only to a limited extent. Notwithstanding any language to the contrary contained herein, no real property shall become Additional Property or be included within the jurisdiction of this Declaration without the prior express written consent and approval of Declarant.

The additions of the Additional Property authorized by the provisions of this Section 9.2 shall be made by recording with the Recorder (a) a declaration of inclusion ("Declaration of Inclusion") with respect to any Additional Property, which shall extend the terms and conditions of this Declaration to govern the Additional Property to be so annexed and shall be executed by Declarant; and (b) if any Common Area are to be created with respect to any portion(s) of the Additional Property (i) pursuant to Section 4.1 a quitclaim deed conveying fee simple title to said newly-created Common Area to the Homeowners' Association, or (ii) if such Common Area shall constitute Open Space, then pursuant to Section 7.4 a quitclaim deed conveying fee simple title to said newly-created Open Space to the City. The following shall apply to each Declaration of Inclusion:

- (a) the provisions of this Declaration applicable to the Common Area, and the rights of Declarant with respect thereto, and all other rights, easements, covenants, restrictions, burdens, uses and privileges appurtenant to the Common Area shall

include and apply to the Common Area as created by such Declaration of Inclusion;

- (b) every person or entity who shall become the Owner of a Residence in such Additional Property shall be and become a Member of the Homeowners' Association on the same terms and conditions, and subject to the same qualifications and limitations, as are applicable to the Owners who are then Members;
- (c) Declarant shall have and enjoy in such Additional Property all easements and exercise all rights, privileges and immunities reserved to it in this Declaration in the same manner and with the same force and effect as though the term "Property" as used in this Declaration prior to the recording of the Declaration of Inclusion included such Additional Property; and
- (d) in all other respects, all the provisions of this Declaration shall include and apply to such Additional Property and to the Owners of Residences located therein and thereon in the same manner and with the same force and effect as though such Additional Property had originally been subjected to the provisions of this Declaration.

9.3 Plat of Subdivision. As of the date of the initial recording of this Declaration, Declarant has submitted or anticipates submitting to the City one or more proposed plats of subdivision which purport to subdivide or re-subdivide the Property and portions of the Additional Property in accordance with applicable law and which plat or plats (each a "Subdivision Plat") may include the grant of utility easements which are required to service the SoMa Development. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to act on behalf of and in the name of each Owner for purposes of recording any Subdivision Plat or amendment thereto, as Declarant deems reasonably necessary to cause the orderly subdivision of the Property and Additional Property, and the development of the SoMa Development. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Condominium Unit or Rowhouse, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record any such Subdivision Plat. The reserved rights of the Declarant under this subsection shall terminate at such time as the Declarant no longer holds title or controls title to any part of the Property, including without limitation, the Additional Property, or in the event Declarant has not acquired the Additional Property, within ten (10) years after the date hereof.

9.4 Further Assurances. Notwithstanding anything contained herein to the contrary, each Owner, upon the written request of Declarant, shall execute such documents and instruments, including any power-of-attorney, reasonably requested by Declarant, in order to confirm the rights reserved to Declarant with respect to the amendment of this Declaration pursuant to Section 9.1 or the recordation of any Subdivision Plat pursuant to Section 9.3.

9.5 Severability. The invalidity of all or any portion of any of the covenants, restrictions, easements, conditions, reservations, liens and charges imposed by this Declaration, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect and are hereby declared to be severable.

9.6 Amendment. The provisions of this Declaration may be amended by an instrument executed and acknowledged by the Board, approved by not less than seventy-five percent (75%) of the Members of the Homeowners' Association and, if prior to the Transfer Date, approved by Declarant. No amendment shall be effective unless recorded in the office of the Recorder. Those provisions of this

Declaration relating to the rights, privileges or obligations of the Declarant may only be amended upon the prior written consent of the Declarant.

9.7 Arbitration. Any controversy between Owners or any claim by an Owner against the Homeowners' Association or another Owner, or against a Condominium Association by another Condominium Association, arising out of or relating to the Declaration or rules and regulations of the Homeowners' Association, may be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

9.8 Enforcement. Enforcement by the Homeowners' Association or any Owner or Condominium Association of the covenants and restrictions contained in this Declaration shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain such violation or to recover damages; and failure by the Homeowners' Association or any Owner or Condominium Association to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

9.9 Notices. Any notice required to be sent to any Member of the Homeowners' Association or to an Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member of Owner as it appears on the records of the Homeowners' Association at the time of such meeting.

9.10 Duration. The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of fifty (50) years from the date of the recording of this Declaration and may be enforced by the Homeowners' Association or any Owner or Condominium Association through any proceeding in law or in equity. After the expiration of said fifty (50) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by an instrument in writing which is executed by not less than seventy-five percent (75%) of the Members and recorded in the office of the Recorder. Except in the case of condemnation or destruction of a substantial portion of the Condominium Units and Rowhouses, the legal status of the Homeowners' Association shall not be terminated without the affirmative vote of not less than seventy-five percent (75%) of the holders of mortgages on the Condominium Units and Rowhouses.

9.11 Captions. The article and section headings used herein are intended for convenience only and shall not be construed with substantive effect in this Declaration.

Courtland Place No. 1, LLC
By: Bluestone Development, LLC, Manager

By 
Christian Christensen, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 15th day of April, 2005, before me, a notary public in and for said county and state, personally came CHRISTIAN CHRISTENSEN, Manager of BLUESTONE DEVELOPMENT, LLC,

Manager of COURTLAND PLACE NO. 1, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability companies.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]

Robert W. Rieke

Notary Public

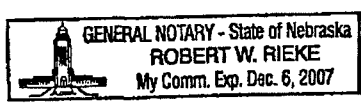


EXHIBIT "A"

Lots 1 through 23, inclusive, and Outlot A, the Rows at SoMa, a cluster subdivision, an Addition to the City of Omaha, Douglas County, Nebraska.

Lots 24 through 71, inclusive, and Outlots A, B and C, the Rows at SoMa Replat 1, a cluster subdivision, an Addition to the City of Omaha, Douglas County, Nebraska.