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DECLARATION  
FOR  
902 DODGE CONDOMINIUM

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DECLARATION  
FOR  
902 DODGE CONDOMINIUM

**ARTICLE I.  
CREATION; DEFINED TERMS**

Section 1.1. Creation of the Condominium. Pursuant to the provisions of the Nebraska Condominium Act, Nebraska Revised Statutes § 76-801, et. seq. (hereinafter the "Act"), Downtown Dodge Developers, L.L.C., a Nebraska limited liability company (hereinafter "Declarant") hereby creates a Condominium comprised of the real estate described below, together with all of the other improvements located thereon, all estates, rights, interests and privileges appertaining thereto, subject to easements, covenants and restrictions of record, and all furniture, appliances, fixtures, machinery, equipment, supplies and other personal property owned by Declarant located on, attached to or used in connection with the occupation, maintenance and operation of such real estate ("Property"), to-wit:

Lot 8, Block 93, Original City of Omaha, as surveyed, platted and lithographed, in Douglas County, Nebraska. See also Exhibit "A" attached hereto and incorporated herein by this reference.

Section 1.2. Defined Terms. Except as otherwise more specifically defined herein, all terms used in the Condominium instruments shall have the meanings specified in Section 76-827 of the Act.

Section 1.2.1. The following terms are used or defined in general terms in the Act and shall have specific meanings herein as follows:

- (a) "Association" shall mean the 902 Dodge Condominium Association, a Nebraska non-profit corporation, created pursuant to Section 76-859 of the Act.
- (b) "Building" means the six story structure and basement located on the Property.
- (c) "Bylaws" means the instrument identified by that name and adopted by the Association, as such instrument may be amended from time to time (Exhibit F hereto).
- (d) "Commercial Unit" means the Unit located on the first floor of the Condominium used or occupied as a commercial use and shall include any additional unit created by dividing this Unit. Further, the sixth floor Units may be used either as Commercial Unit(s) or Residential Unit(s) as determined by the Declarant or by the Executive Board.
- (e) "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves and includes all the expenses properly incurred by the Association for or relating to the Condominium and all expenses for which Unit Owners are liable to the Association and shall include, but are not limited to, the following:

(1) Costs and expenses of administration of the Condominium and the Association and costs and expenses of maintenance, operation, management, repair and/or replacement of Association Property, if any, and the Common Elements (including the Limited Common Elements, *except-as otherwise provided in this Declaration*), and of all portions of the Units to be maintained by the Association, including but not limited to:

(i) Fire, other casualty, flood, liability, Worker's Compensation and other insurance as provided herein or as authorized by the Articles or by the Bylaws.

(ii) Administrative costs and expenses of the Association, including professional fees and expenses.

(iii) Costs and expenses of snow removal, sewage disposal and treatment services to the Common Elements and electricity to service the Common Elements and the Association Property, cost and expenses of pest control service to the Common Elements and Units, cost and expense of garbage disposal and trash removal service to the Units and the Common Elements, and the costs and expenses of other utilities which are not metered or submetered to the individual Condominium Units.

(iv) Labor, materials, and supplies used for or in conjunction with the maintenance, operation, repair and replacement of Association Property and the Common Elements and Limited Common Elements except as may otherwise expressly be provided herein.

(v) Costs and expenses of repairing damages to the Condominium Property in excess of insurance coverage.

(2) Costs and expenses of management of the Condominium, including the following:

(i) Salary of a manager, if any, his or her assistants and agents, and related employer taxes and employee benefits, if any,

(ii) Management fees payable to a management company, if any, and

(iii) Other expenses incurred in the management of the Condominium Property.

(3) The cost and expense of acquiring, owning, managing, operating, maintaining, repairing and replacing all land, improvements and personal property owned or leased by the Association and such additional land, improvements and personal property as may be purchased by the Association through action of the Board of Directors.

(4) All outlays, costs and expenses, if any, incurred by the Association in connection with the purchase, ownership, rental, operation, maintenance, repair, and/or replacement of any Unit acquired by the Association, including without limitation, all down payments and closing costs, debt service, utilities, taxes, insurance premiums, the share of common expenses allocable to such Unit, and other expenses related thereto.

(5) All other costs and expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, repairing, replacing, protecting, managing and conserving the Condominium Property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration or the Bylaws.

(6) All other costs and expenses declared Common Expenses by provisions of the Condominium Act, this Declaration or the Bylaws.

(7) Any valid charge against the Condominium Property as a whole.

(8) The cost and expense of maintaining, repairing, servicing and replacing all heating and air-conditioning equipment serving a particular Unit and located either within a Unit or in the mechanical room(s) or area(s) serving that Unit and the cost and expense of maintaining, repairing, servicing and replacing all lines and conduits running from any such heating and air-conditioning equipment to the Units being served by such equipment shall not be a Common Expense but shall be the individual expense of the Owner(s) of the Unit being served by such equipment, lines and conduits.

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

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

(h) "Common Elements" means all portions of the Condominium other than the Units.

(i) "Declarant" means the named Declarant, except that any successor to such named Declarant as to Special Declarant Rights shall, as to such Special Declarant Rights, be the "Declarant".

(j) "Declarant Control Period" means the time period commencing on the date of recordation of this Declaration and ending the earlier of: (i) Sixty (60) days after conveyance of fee title to ninety percent (90%) of the Units which may be created to Unit Owners other than the Declarant, or (ii) two (2) years after the Declarant has ceased to offer units for sale in the ordinary course of business.

(k) "Declaration" means this document and the attached Exhibits, as the same may be amended from time to time.

(l) "Development Rights" means any right or combination of rights reserved by the Declarant to (i) add real estate to the Condominium; (ii) create Units, Common Elements, or Limited Common Elements within the Condominium; (iii) subdivide or convert Units into Common Elements; or (iv) withdraw real estate from the Condominium.

(m) "Executive Board" means the Executive Board of the Association.

(n) "Limited Common Element" means a portion of the Common Elements allocated by this Declaration, the By-Laws or by the Act or as designated herein or on the Plat and Plans for the exclusive use of one or more but fewer than all of the Units.

(o) "Parking Facility" shall mean the basement level of parking located in the Building consisting of enclosed parking stalls and storage area.

(p) "Parking Spaces" shall include the parking spaces located within the Parking Facility.

(q) "Plat and Plans" means the Plat (Exhibit A hereto) and Plans (Exhibits B-1 through B-12 hereto) of "902 Dodge Condominium" being recorded pursuant to the Act simultaneously with this document and constituting a part of the Declaration, as the same may be amended from time to time.

(r) "Purchaser" means any Person other than a Declarant or a Person in the business of selling Real Estate for his own account, who by a voluntary transfer acquires a legal or equitable interest in a Unit, other than (a) a leasehold interest, including renewal options of less than twenty (20) years, or (b) as security for an obligation.

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

(t) "Residential Unit" means any of the Units located on the second through sixth floor of the Condominium used or occupied as a single-family residence; provided, however, that the sixth floor Unit(s) may be used as Commercial Units or Residential Units.

(u) "Rules and Regulations" means such rules and regulations as are promulgated by the Executive Board from time to time with respect to various details of the use of all or any portion of the Property which either supplement or elaborate upon the provisions in the Declaration or the Bylaws.

(v) "Special Declarant Rights" herein means only the following Special Declarant Rights reserved to the Declarant: (1) to complete improvements indicated on the Plat and Plans; (2) to exercise any Development Rights; (3) to maintain sales and management offices in Units owned by Declarant; (4) to maintain an unlimited number of exterior and interior advertising signs on the Common Elements while Declarant is selling Units in the Condominium; (5) to lease Units owned by Declarant to tenants approved by Declarant and (6) to appoint or remove any officer of the Association or any Executive Board Member during the Declarant Control Period, except for Board Members elected by Unit Owners other than Declarant or an affiliate of Declarant at the Transition Election and thereafter.

(w) "Transition Election" means the election of two (2) additional Executive Board members to the initial three (3) person Executive Board, such election to be held within sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, or an affiliate of Declarant, as defined in Section 76-827(1) of the Act.

(x) "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are as described in this document, in the Plat and Plans and pursuant to the Act.

Section 1.2.2. The following terms when used herein shall have the meaning set forth below:

(a) "Condominium Documents" consist of this Declaration, including the Plat and Plans, the Bylaws, and the Rules and Regulations.

(b) "Eligible Mortgage" means any of the following: (i) Any first mortgage; or (ii) Any junior mortgage which is to the Declarant, or to the seller of a Unit, or is approved by the Executive Board as an eligible mortgage. A holder, insurer or governmental guarantor of an eligible mortgage is referred to herein as an "Eligible Mortgagee". The term mortgage as used herein shall include deeds of trust.

(c) "Common Element Interest Allocation" means the undivided ownership interest in the Common Elements and the liability for common expenses allocated to each Unit as set forth in the Common Element Interest Allocation Table, as set forth on Exhibit C attached hereto.

Section 1.3. Provisions of the Act. The provisions of the Act and those amendments thereto which by their terms would be applicable to this Condominium shall apply to and govern the operation of the Condominium, except to the extent that contrary provisions, not prohibited by the Act as so amended, are contained in this Declaration (including the Plat and Plans) or the Bylaws.

## **ARTICLE II.** **BUILDINGS ON THE LAND; UNIT BOUNDARIES**

Section 2.1. Location and Dimensions of Buildings. The location of the building on the Property is depicted on the Plat and Plans which is attached hereto, marked as Exhibits A through B-12 and incorporated herein.

### Section 2.2. Units.

(a) The Condominium Project consists of eighteen (18) Residential Units, four of which are located on each of the Second, Third, Fourth and Fifth floors, and two of which are located on the Sixth floor. The Condominium Project also consists of one (1) Commercial Unit located on the First floor. The Declarant reserves the right to further subdivide or convert the First floor Commercial Unit into additional Commercial Units. Further, the Declarant reserves the right to subdivide or convert the Sixth floor Residential Units into additional Residential Units or into Commercial Units. The Units are further identified on the Plans recorded pursuant to the terms of this Declaration and the

Act. Each Unit includes an appurtenant percentage of undivided interest in the Common Elements and the respective Limited Common Elements (hereinafter the "Allocated Interest") as set forth in Exhibit "C" attached hereto and incorporated herein by this reference. For purposes of voting, each Unit is allowed that number of votes equal to the Association Voting Interests of such Unit as set forth in Exhibit "D" (hereinafter the "Voting Interest"), regardless of the number of Persons having an interest in such Unit. The Common Expense Liability shall be based on the operation and maintenance costs for these Common Elements and the amount of the assessment will change on a yearly basis according to these costs. Each Unit may be described by its Unit number as shown on the Plans and as set forth in this Declaration and such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding Allocated Interests even though the same is not expressly mentioned or described therein. Ownership of each Unit and the Unit Owner's corresponding share in the Common Elements shall not be separated. Other than the Declarant, no Residential Unit Owner may relocate the boundaries of any Residential Unit or further subdivide or combine any one or more the Units unless approved by the Declarant or by the Executive Board.

(b) The location of Units within the building and their dimensions are shown on the "Plans" attached hereto, consisting of twelve (12) pages, marked Exhibits B-1 through B-12, inclusive, and by this reference incorporated herein.

(c) The Common Element Interest Allocation Table attached as Exhibit "C" hereto and by this reference incorporated herein is a list of all Units, their identifying numbers, location (all as shown more fully on the Plat and Plans), type and the common element interest allocated to each Unit determined on the basis of size.

(d) The "size" of each Unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plat and Plans, but subject to the following modifications thereof:

(i) On all end Units (e.g. Unit 204 shown on Exhibit B-4), the dimension of the Unit is shown as measured to the exterior face of the brick wall, whereas the actual dimension of such Unit extends in fact only to the interior face of the surface of the studs which support the drywall or plaster of the perimeter walls bounding such Unit.

(ii) On all other Units the dimension of each Unit is shown as measured to the center of the studs which support the drywall or plaster perimeter walls bounding the Unit, whereas the actual dimension of such Unit extends in fact only to the interior surface of such studs.

(iii) The size of each Unit shall not take into account the square footage of the individual parking stall which will be allocated to each Unit as a Limited Common Element, pursuant to a Licensing Agreement.

Section 2.3. Dimensions of Units. The Units and their dimensions are depicted on the Plans referred to hereinabove which Plans are incorporated herein by this reference.

(a) Boundaries. Except as otherwise provided herein, and as otherwise set forth in Article III, which describes the Common Elements, the boundary lines of each Unit are situated as shown on the Plans and are formed by the following planes:

(i) The Unit-side surface of all doors, and their sills and hardware, leading from such Unit to interior corridors of the Building or directly to the outside of the Building and the Unit-side surface of the door frames in which such doors are set;

(ii) The Unit-side surface of the sashes of windows which are set in the exterior walls of such Unit, the exterior surfaces of the panes of such windows and the Unit-side surface of the frames and sills for such windows;

(iii) The Unit-side surface of the portion of the structure to which the plaster or plasterboard is attached, with respect to ceilings and perimeter walls located at the perimeter of such Unit that are not Party-Walls;

(iv) The center line of Party-Walls;

(v) The Unit-side face of the subfloor of each such Unit;

(vi) The Unit-side surface of the furring as extended, around columns and "stacks" containing pipes, ducts, wires, conduits, chutes and flues that are either Common Elements or Limited Common Elements; and

(b) Each Unit consists of all portions of the Building within the aforesaid boundary lines, except the air space displaced by:

(i) structural members and bearing columns within or passing through such Unit which are deemed to be Common Elements; and

(ii) other Common Elements within such Unit including, without limitation, chutes, flues, ducts, wires, conduits and pipe runs which serve more than one Unit. With respect to such chutes, flues, ducts, wires, conduits and pipe runs, the provisions of Section 76-839(2) of the Act shall apply.

(c) Those portions of any heat pump/air conditioning condensing units, water heaters, lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grilles and similar fixtures which serve only such Unit whether or not located within the boundary lines of a Unit, shall be deemed to be a part of such Unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows, or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Section 2.4. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units and subdivision of Units is permitted subject to compliance with the provisions of the Bylaws and in Sections 76-849 and 76-850 of the Act.



Section 2.5. Maintenance Responsibilities. The Units and Common Elements shall be maintained and repaired by each Unit Owner and by the Association in accordance with the provisions of Section 76-865 of the Act, except as expressly set forth to the contrary in this Section 2.5. All Common Expenses associated with the maintenance, repair and replacement of a Limited Common Element shall be assessed equally against the Units to which such Limited Common Element was assigned at the time the expense was incurred.

Section 2.6. Further Definition of Units.

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

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

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

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

(iv) All exterior windows, doors, shutters, awnings, window boxes, balconies, decks and glass windows which exclusively service a Residential Unit;

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

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

(vii) All other facilities or fixtures located within or immediately connected to a Residential Unit which exclusively serve or benefit or are necessary for the existence, maintenance, operation or safety of the particular Residential Unit.

(viii) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors, or ceilings within the designated boundaries of any Residential Unit are a part of that Residential Unit.

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

(b) Commercial Unit: Included in the Commercial Unit are systems, equipment, installations and facilities of the Commercial Unit which are exclusively used for the benefit of the Commercial Unit, whether situated within or outside of a particular Unit's boundaries, including, but not limited to the following:

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

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

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

(iv) All exterior windows, doors, shutters, awnings, window boxes, balconies, and glass windows which exclusively service the Commercial Unit;

(v) Light fixtures, wiring, risers, electrical feeders, switches, and electrical meters exclusively servicing the Commercial Unit;

(vi) Gas meter, gas piping, risers, fittings, valves including any gas system exclusively servicing the Commercial Unit;

(vii) All other facilities or fixtures located within or immediately connected to the Commercial Unit which exclusively serve or benefit or are necessary for the existence, maintenance, operation or safety of the Commercial Unit.

(viii) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors, or ceilings within the designated boundaries of any Commercial Unit.

The Commercial Unit shall not include any piping, wiring, ductwork, machinery, equipment or other materials used exclusively by any of the Residential Units.

**ARTICLE III.**  
**DESCRIPTION, ALLOCATION AND RESTRICTION OF COMMON ELEMENTS**  
**AND LIMITED COMMON ELEMENTS**

Section 3.1. Common Elements. All portions of the Condominium other than the Units, including the roof-top patio area, are Common Elements. The locations of the Common Elements to which each Unit has direct access are shown on the Plat and Plans and are further described below. The allocation of each Unit Owner's ownership interest in the Common Elements is determined based upon the square footage of each Unit and is set forth in the Common Element Interest Allocation Table attached hereto as Exhibit C.

The Common Elements of the Condominium are as follows:

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

(b) The Common Elements shall include, without limitation, each and every outside stairway or fire escape, rooftop patio area, utility installations including service utility or mechanical areas located on or in the Property, and pipes, wire and conduits and connections for television, electricity, light, water and plumbing and other utilities, except those items that are exclusively within or for the benefit of a particular Condominium Unit and not used to service any Unit other than that particular Condominium Unit and public right-of-ways adjacent to the Property that the Association is responsible for maintaining including without limiting the generality of the foregoing, trees, shrubs, lawns, decorative urns and planters, pavements, sidewalks, storm and water systems, sewage lines.

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

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

Section 3.3 No Partition of Common Elements. As long as the Property is subject to the provisions of the Act, the Common Elements shall remain undivided, and no Unit Owner or Owners shall bring any action for partition or division of the Common Elements and any agreement to the contrary shall be null and void. Provided, however, nothing herein contained shall prevent partition of a Condominium Unit as between any Persons who are Co-Owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

Section 3.4 Allocated Share of Common Elements. The percentage interest or share allocated to each Unit shall be determined as set forth in Article II, above. Each Owner, by acceptance of the deed to a Unit, expressly agrees to the allocation and reallocation of the percentage interest set forth hereinabove or by exercise of any other Special Declarant Right. Allocations and reallocations of the percentage interest may be subject to minor variations attributable to rounding off. The

respective percentage interest shall be computed to five significant figures so the sum of the percentage interests of all Units equals one hundred (100%) percent.

Section 3.5 Allocated Share of Residential Units-Limited Common Elements. The percentage interest or share allocated to each Residential Unit for the purposes of a Residential Unit-Limited Common Element (as defined below) shall be calculated based upon a fraction, the numerator of which is the total square footage of the Residential Unit, and the denominator of which is the total square footage of all of the Residential Units within the Condominium Regime; provided, however, the Declarant shall calculate any reallocation of the percentage interests upon the creation of any additional Residential Units, the relocation of the boundaries of any Residential Unit, the conversion of any portion of a Residential Unit into Common Elements or Limited Common Elements or the conversion of any designated Common Elements or Limited Common Elements into a Residential Unit or Units. Each Residential Unit's initial appurtenant percentage interest in the Residential Units—Limited Common Elements shall be allocated as set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 3.6 Allocated Share of Commercial Units-Limited Common Elements. The percentage interest or share allocated to each Commercial Unit for the purposes of a Commercial Units-Limited Common Element (as defined below) shall be calculated based upon a fraction, the numerator of which is the total square footage of the Commercial Unit, and the denominator of which is the total square footage of all of the Commercial Units within the Condominium Regime; provided, however, the Declarant shall calculate any reallocation of the percentage interests upon the creation of any additional Commercial Units, the relocation of the boundaries of any Commercial Unit, the conversion of any portion of a Commercial Unit into Common Elements or Limited Common Elements or the conversion of any designated Common Elements or Limited Common Elements into a Commercial Units. Each Commercial Unit's initial appurtenant percentage interest in the Commercial Units-Limited Common Elements shall be allocated as set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 3.7 Limited Common Elements.

Section 3.7.1 Unless the context of this Declaration otherwise requires, Limited Common Elements shall be as provided in the Act and assigned and allocated exclusively to the Units so served as follows:

- (a) Doors leading from Units to Limited Common Elements, and their related frames, sills and hardware;
- (b) Doors leading from Units to Common Elements, and their related frames, sills, and hardware; and
- (c) Windows and doors and their related frames, sills, and hardware, which are not part of the Unit, but which are adjacent to and serve only such Unit;
- (d) Those Limited Common Elements described as such in Sections 2.3 above.

(e) The approximately Eight Hundred Forty-One (841) square foot patio area located outside the first floor Commercial Unit is a Limited Common Element of that Commercial Unit.

(f) The signage and satellite television dish as described in Sections 13.2 and 13.3, respectively, as well as any materials used to attach the same to the building are Limited Common Elements of those Commercial Units serviced or benefited by these items.

(g) The following described Limited Common Elements shall be assigned and allocated to all of the Residential Units including, but not necessarily limited to: water supply, elevators, elevator equipment, elevator shafts, cooling systems, trash chutes, the storage room located in the Parking Facility of the Condominium, the entryway, lobby, mail room, and vestibule located on the First floor of the Condominium, the common hallways located on the Second through the Sixth floors of the Condominium, any enclosed stairways located in the Parking Facility and floors One through Six of the Condominium and the ramp, driveway entrance, garage door into the Parking Facility (including the concrete floor) and related systems and facilities, including, without limitation, any security and access systems installed for the use and benefit of the Residential Unit Owners

(h) Pursuant to a License Agreement, which shall be in a form acceptable to Declarant during the Declarant Control Period and thereafter by the Executive Board. In furtherance of the foregoing, a valid exclusive easement is hereby declared and established for the benefit of each Licensee consisting of the non-exclusive right to use and enjoy the Limited Common Elements hereby established, as set forth in the Licensing Agreement attached hereto as Exhibit E. Any Licensee may, with the prior written consent of the Executive Board, which consent shall not be unreasonably withheld, reallocate, convey and transfer parking spaces among or between any Units by assignment, lease, easement or license; provided, however, any such assignment shall be subject to all rules and regulations adopted by the Executive Board from time to time. Notwithstanding the foregoing, any parking space within the parking garage may be licensed, used or occupied by a Licensee or their Authorized Users (as defined in the License Agreement). The Executive Board shall not reassign or reallocate any parking space held by a Licensee without the prior written consent of the Licensee affected thereby. Nothing in the foregoing paragraph or in the Declaration shall be construed to create or convey a separate ownership interest in a parking space to any Unit Owner.

Section 3.8 The exclusive use of the Limited Common Elements by a Residential Unit Owner to which it is assigned, shall be limited to lawful uses normally associated with property serving residential apartments. The exclusive use of the Limited Common Elements by a Commercial Unit Owner to which it is assigned, shall be limited to lawful uses normally associated with property serving commercial properties. The Executive Board shall have the right to promulgate Rules and Regulations regarding the use of the Limited Common Elements that are consistent with the provisions of the immediately preceding sentence, and in any event no alteration of any portion of any Limited Common Element may be performed without the prior written consent of the Executive Board.

#### ARTICLE IV.

## EASEMENTS

Section 4.1. Additional Easements. In addition to and in supplementation of the easements provided for by Sections 76-851, 76-852, and 76-853 and other provisions of the Act, the Condominium shall be subject to the following easements and restrictions:

### Section 4.1.1. Declarant's Use for Sales Purposes.

(a) Declarant shall have an easement to maintain sales offices, management offices, and models in any Units owned by Declarant, and to maintain an unlimited number of interior and exterior advertising signs on the Common Elements while the Declarant is selling Units in the Condominium.

(b) Declarant may from time to time relocate models, management offices and sales offices to different Units owned by Declarant within the Property. Upon the relocation of a model, management office or sales office, Declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed Common Elements, and any personal property not so removed shall be deemed the property of the Association.

(c) So long as Declarant shall be selling Units in the Condominium, Declarant shall have the right to restrict the use of the Common Element parking spaces, if any. Such use shall include reserving such spaces, if any, for use by prospective Unit purchasers, Declarant's employees and others engaged in sales, maintenance, construction or management activities.

Section 4.1.2. Utility and Other Easements. The Units, Common Elements and Limited Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under any Condominium Document and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment, including security systems, as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 4.1.2. shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them, to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), security systems, electrical wires, conduits and equipment, ducts, chimneys, flues, vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 4.1.2., unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

### Section 4.1.3. Declarant's Easements.

(a) Declarant reserves an easement (until Declarant shall have satisfied all of its obligations under any Condominium Document and all commitments in favor of any Unit Owner and the Association) to use portions of the Common Elements, Limited Common Elements and any Units owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures and the performance of work respecting the Property.

(b) Declarant reserves an easement (until Declarant shall have satisfied all of its obligations under any Condominium Document and all commitments in favor of any Unit Owner and the Association) on, over and under those portions of the Common Elements not located within the Building for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Section 4.1.3(b) expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary, following which the Declarant shall restore the affected portion of the Property as closely to its original condition as practicable.

(c) During the Declarant Control Period, the Declarant shall have an easement through the Units for any access necessary to complete any renovations or modifications to be performed by Declarant.

Section 4.1.4. Easement for Ingress and Egress Through Common Elements, Access to Units and Support.

(a) Each Unit Owner is hereby granted an easement in common with each other Unit Owner for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Association. Each Unit is hereby burdened with and subjected to an easement for ingress and egress through all Common Elements by persons lawfully using or entitled to the same.

(b) To the extent necessary, each Unit shall have an easement for structural support over every other Unit in a building, the Common Elements and the Limited Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in a building, the Common Elements and the Limited Common Elements.

Section 4.1.5. Common Elements Easement in Favor of the Association. The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to an easement in favor of the Association and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of the Common Elements (including, but not limited to, the Limited Common Elements).

Section 4.1.6. Common Elements Easement in Favor of Unit Owners. The Common Elements (including, but not limited to, the Limited Common Elements) shall be and are hereby made subject to the following easements in favor of the Unit benefited:

(a) For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone and other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

(b) For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(c) For driving and removing nails, screws, bolts and other attachment devices into the Unit side surface of the stone, block, brick or other masonry walls bounding the Unit and the Unit side surface of the studs which support the drywall or plaster perimeter walls bounding the Unit and the bottom surface of floor joists above the Unit to the extent the nails, screws, bolts and other attachment devices may encroach into a part of a Common Element adjacent to such Unit; provided that any such action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of the Building or impair or structurally weaken the Building.

(d) For the maintenance of the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grills and similar fixtures which serve only one Unit but which encroach into any part of any Common Elements or Limited Common Elements on the date this Declaration is recorded or was thereafter installed by Declarant.

Section 4.1.7. Units and Limited Common Elements Easements in Favor of Association. The Units and the Limited Common Elements are hereby made subject to the following easements in favor of the Association and its agents, employees and independent contractors:

(a) For inspection of the Units and Limited Common Elements in order to verify the performance by Unit Owners of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of the Common Elements or the Limited Common Elements situated in or accessible from such Units or Limited Common Elements, or both;

(c) For correction of emergency conditions in one or more Units or Limited Common Elements, or both, or casualties to the Common Elements, the Limited Common Elements and/or the Units.

Section 4.2 Encroachments. In the event that, by reason of construction, settlement or shifting of any building or structure, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Condominium Unit encroaches or



shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Condominium Unit it shall be necessary to a Unit Owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of an unoccupied space within the Property and adjoining his or her Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Condominium Unit and the Common Elements, as the case may be, so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Condominium Owner or in favor of the Owners of the Common Elements if such encroachment occurred because of the willful conduct of said Condominium Unit Owner or the Owners of the Common Elements, as the case may be. In the event any structure is partially or totally destroyed and then rebuilt, minor encroachments of part of the Common Elements because of construction shall be permitted and valid easements for said encroachment and the maintenance thereof shall exist.

## ARTICLE V. AMENDMENT OF DECLARATION

### Section 5.1. Amendment Generally.

(a) This Declaration may be amended only in accordance with the procedures specified in Section 76-854 of the Act or referred to in Section 76-854 thereof and the express provisions of this Declaration.

(b) No amendment shall be made to this Declaration during the Declarant Control Period without the written consent of the Declarant. No amendment to this Declaration shall diminish or impair the rights of Declarant under this Declaration without the prior written consent of the Declarant. No amendment may modify this Article or the rights of any person under this Article. Except as specifically provided in this Declaration or the Act, no provision of this Declaration shall be construed to grant to any Unit Owner, or to any other Person, any priority over any rights of Mortgagees.

## ARTICLE VI. USE RESTRICTIONS

### Section 6.1. Rules and Regulations.

(a) The occupancy and use of the Units and Common Elements (including Limited Common Elements) shall be subject to the following restrictions:

(i) The Units and Common Elements (including Limited Common Elements) in the Condominium (with the exception of any Units during the time period when they are being used by the Declarant as sample, model, management or sales offices) are restricted to single family residential use and may not be used for any other purposes by the Unit Owner or any future Unit Owner. No Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

(ii) Notwithstanding paragraph (a)(i) of this Section 6.1, the Unit located on the first floor, including the approximately 750 square foot outdoor patio area, and owned by Robert P. Linstroth or any entity to which he has assigned his ownership rights, (the "Original Owner") may be used as a retail restaurant/delicatessen with liquor service with general hours of operation of 11:00 a.m. to 1:00 a.m. Further, upon complete divestiture of said first floor Unit by the Original Owner, said first floor unit may continue to be used as a retail restaurant/delicatessen with liquor service. Upon such complete divestiture, said first floor Unit may be used for a different commercial purpose, subject to the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners. The Unit(s) and Common Elements located on the sixth floor may be used as light office space, subject to the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners.

(iii) A Unit Owner is prohibited from making any alteration, installation, removal, reconstruction, or repair to his Unit or Units which will impair the structural integrity of the Building or any mechanical or electrical system therein; or adversely affect either the thermal or acoustical character of the building; or lessen the support of any portion of the Building; or violate any applicable law, ordinance or governmental rule, regulation or order.

(b) Reasonable Rules and Regulations, not in conflict with the provisions of this Declaration, concerning the use and enjoyment of the Property, may be promulgated from time to time by the Executive Board, subject to the right of the Association to change such Rules and Regulations. Copies of the then current Rules and Regulations and any amendments thereof shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereto.

Section 6.2. Exception to Use Restrictions. Notwithstanding the foregoing Rules and Regulations in Section 6.1, a Unit Owner may lease his or its Unit to Declarant, to the Association or to a managing agent acting on behalf of either the Declarant or the Association for the uses specified in Section 8.2, infra.

## ARTICLE VII. MORTGAGES

### Section 7.1. Requirements.

(a) Any mortgage or other lien on a Unit and the obligations secured thereby shall be deemed to provide, generally, that the mortgage or other lien instrument and the rights and obligations of the parties thereto shall be subject to the terms and conditions of the Act and this Declaration and shall be deemed to provide specifically, but without limitation, that the mortgagee or lien holder shall have no right (i) to participate in the adjustment of losses with insurers or in the decision as to whether or not or how to repair or restore damage to or destruction of the Property, or (ii) to receive or apply the proceeds of insurance to the reduction of the mortgage debt or otherwise, except in the event and to the extent either of a distribution of such proceeds to Unit Owners pursuant to Section 76-871 of the Act or of insurance proceeds in excess of the cost of repair or restoration being received by the owner of the Unit encumbered by such mortgage; or (iii) to accelerate the mortgage debt or to have any other remedies by virtue of waste or alleged waste or

other conditions occurring anywhere on the Property other than within the affected Unit, and the obligation secured shall be prepayable, without penalty, upon the happening of any termination of the Condominium or determination not to restore or replace the affected Unit.

(i) Nothing contained in Section 7.1(a) hereinabove or elsewhere in this Declaration shall give a Unit Owner, or any other party, priority over any rights of the mortgagee of a Unit pursuant to its mortgage in case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for loss to or a taking of one or more Units and/or Common Elements.

(b) No Unit Owner or purchaser of a Unit shall deliver any mortgage or other lien instrument secured by a Unit, or any obligation to be secured thereby, unless it has first notified the Executive Board of the name and address of the proposed mortgagee or lien holder, the amount of the debt proposed to be so secured, and has submitted to the Executive Board a copy of the form of the proposed mortgage and note or other instrument of obligation. When a mortgage other than (i) a first mortgage or (ii) a junior mortgage to the Declarant or Seller of a Unit is delivered to the Executive Board, the Executive Board shall promptly notify the proposed mortgagee whether such mortgage has been approved by the Executive Board as an Eligible Mortgage.

#### Section 7.2. Eligible Mortgagees.

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

(b) The Secretary shall maintain a register of Eligible Mortgages, showing the names and addresses of the Eligible Mortgagees, the amount secured by each Eligible Mortgage, and whether it is a first Mortgage.

#### Section 7.3. Rights of Eligible Mortgagees.

Section 7.3.1. Upon the specific written request of a holder of an Eligible Mortgage on a Unit or its servicer to the Executive Board, the mortgagee shall be entitled to receive some or all of the following as designated in the request:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Executive Board to the Owner of the Unit covered by the mortgage;

(b) Any audited or unaudited financial statements of the Executive Board which are prepared for the Executive Board and distributed to the Unit Owners. The holder of any mortgage on a Unit shall be entitled to have an audited statement prepared at its own expense if one is not otherwise available;

(c) Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;

(d) Notice of substantial damage to or destruction of any Unit (in excess of \$1,000) or any part of the Common Elements (in excess of \$10,000);

(e) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

(f) Notice of any default of the owner of the Unit which is subject to the mortgage, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

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

(h) Notice of any decision by the Executive Board to terminate professional management and assume self-management of the Property;

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

(j) Such other financial data as such Eligible Mortgagee shall reasonably request;  
or

(k) Any proposed action which would require the consent of a specified percentage of first mortgagees as set forth in Section 7.4. below.

Section 7.3.2. The request of an Eligible Mortgagee or its servicer shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made hereunder by an Eligible Mortgagee. The Executive Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the person making such request is not entitled to the material so requested and may establish reasonable rules to implement this Section 7.3.2.

Section 7.3.3. Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Executive Board.

Section 7.3.4. Any Eligible Mortgagee shall have the right, exercisable upon written request to the Executive Board, to examine the books and records of the Association at any reasonable time.

Section 7.4. Approval of Mortgagees. Subject to the limitations imposed by Section 76-856 of the Act, and further subject where applicable to the agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are required by the Act:

(a) The prior written approval of holders of first mortgages of Units representing at least sixty-seven percent (67%) of the votes of Units subject to first mortgages shall be required to terminate the condominium status of the Property for reasons other than substantial destruction or condemnation of the Property;

(b) The prior written approval of at least two-thirds (2/3) of the holders of first mortgages on Units (based upon one vote for each first mortgage owned) shall be required for any of the following:

(i) The termination or abandonment of the condominium status of the Property except for termination or abandonment as a result of condemnation or substantial loss to the Units and/or Common Elements;

(ii) A change in the schedule of Common Element Interest Allocations set forth in Exhibit "C" allocated to each Unit;

(iii) The partition or subdivision of any of the Common Elements;

(iv) The abandoning, encumbering, selling or transferring of the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Elements shall not be deemed a transfer within the meaning of this subsection);

(v) The use of hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property;

(c) The prior written approval of holders of first mortgages of Units representing at least fifty-one percent (51%) of the votes of Units subject to first mortgages shall be required to make an amendment of a material nature to the Condominium Documents. A change in the provisions of any Condominium Document directly relating to any of the following shall for this purpose be considered material:

(i) Voting rights;

(ii) Assessments, assessment liens or subordination of assessment liens;

(iii) Reserves for maintenance, repair and replacement of the Common Elements;

(iv) Responsibility for maintenance and repairs;

- (v) Reallocation of interests in the General or Limited Common Elements or rights to their use;
- (vi) Convertibility of Units into Common Elements or of Common Elements into Units;
- (vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (viii) Insurance or fidelity bonds;
- (ix) Leasing of Units;
- (x) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xi) A decision by the Association to establish self-management if any professional management had been required previously by an Eligible Mortgage;
- (xii) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (xiii) Actions to terminate the legal status of the Condominium after substantial destruction or condemnation occurs;
- (xiv) Provisions that expressly benefit holders, insurers or guarantors of Eligible Mortgages.

(c) Notwithstanding anything to the contrary in this Section 7.4., written approval of holders of first mortgages on Units shall not be required for an amendment to this Declaration made pursuant to Article X hereof.

Section 7.5. No Severance of Ownership. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and his or her corresponding Allocated Interests, including his or her share in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other, shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

## **ARTICLE VIII.** **LEASING**

### Section 8.1. Restrictions.

Section 8.1.1. A Residential Unit Owner may lease his Unit (but not less than his entire Unit) at any time and from time to time provided that:

(a) No Unit may be leased for transient or hotel purposes or for an initial term of less than ninety (90) days;

(b) No Unit may be leased or subleased without a written lease or sublease;

(c) At no time shall more than thirty percent (30%) of the total number of Units be occupied by non-owners;

(d) A copy of such lease or sublease shall be furnished to the Executive Board for approval no less than ten (10) days prior to the date the lessee or sublessee obtains possession of the Unit. In the event the Executive Board does not approve of the lease in writing within five (5) days after the lease has been furnished to it, the lease shall be deemed to have been approved by the Executive Board; and

(e) The rights of any lessee of the Unit shall be subject to, and each such lessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any Common Expense assessments or special assessments on behalf of the owner of that Unit.

Notwithstanding the foregoing, the provisions of Section 8.1.1 shall not apply to a holder of an Eligible Mortgage who is in possession of a Residential Unit following a default in such mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

Section 8.1.2. There shall be no restriction on the leasing or subleasing of any Commercial Unit; provided, however, the rights of any lessee of a Commercial Unit, or any portion thereof, shall be subject to, and each such lessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, except that the use by any such lessee shall not be restricted to the prior use of any previous lessee or occupant so long as the use complies with the use restrictions on the Commercial Unit as described in Section 6.1. A default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Commercial Unit owner to pay any Common Expenses or special assessments on behalf of the owner of that Commercial Unit.

Section 8.1.3. Notwithstanding the foregoing, the restrictions set forth in Section 8.1.1 shall not apply to the Declarant during the Declarant Control Period and Declarant shall have unrestricted authority to lease the Units owned by Declarant during the Declarant Control Period. Upon the expiration of the Declarant Control Period, the restrictions set forth in Section 8.1.1 shall apply to the Declarant.

Section 8.1.4. Notwithstanding the foregoing, the provisions of Section 8.1.1. shall not apply to a holder of a first mortgage who is in possession of a Unit following a default in such mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure.

Section 8.2. Exception to Restrictions. Notwithstanding the restrictions in Section 8.1, above, a Unit Owner may lease his or its Unit to Declarant, to the Association or to a managing agent acting on behalf of either Declarant or the Association, for use by residents of the Condominium as an office, a dining room, a club room, party room or a meeting room, under such terms and conditions as may be mutually agreed upon between the Unit Owner on the one hand and either Declarant, the Association or a managing agent on the other.

**ARTICLE IX.**  
**BUDGETS; COMMON EXPENSES;**  
**ASSESSMENTS; ENFORCEMENT AND VALUATION**

Section 9.1. Monthly Payments. The Executive Board shall levy and enforce the collection of general and special assessments for Common Expenses. Assessments shall commence upon the fee title conveyance of the first Unit to a Person other than the Declarant. All Common Expense annual assessments shall be due and payable in equal monthly installments, in advance, on the first day of each month. Special assessments shall be due and payable in *equal monthly installments, in advance*, on the first day of each month, during such period of time as established by the Executive Board. Assessments, other than special assessments, shall be deemed to have been adopted and assessed on a monthly basis, payable in monthly installments, and not on an annual basis.

Section 9.2. Subordination of Certain Charges. Any fees, charges, late charges, fines and interest which may be levied by the Executive Board pursuant to Sections 76-860(a)(10), 76-860(a)(11), and 76-860(a)(12) of the Act, shall be subordinate to the lien of a first mortgage on a Unit.

Section 9.3. Surplus Funds. Surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves may in the discretion of the Executive Board either be returned to the Unit Owners pro rata in accordance with each Unit Owner's Percentage Interest or be so credited on a pro rata basis to the Unit Owners to reduce each Unit Owner's future Common Expenses assessments.

Section 9.4. Valuation. Pursuant to the requirements of any Tax Increment Financing plan related to the Property and approved by the City of Omaha, a Unit Owner shall not protest or appeal any real estate valuation of that Owner's Unit, made by the Douglas County Assessor's Office for property tax purposes, which is less than or equal to the purchase price of the Unit.

**ARTICLE X.**  
**DECLARANT'S RIGHTS**

Section 10.1. Declarant Control of The Association.



Section 10.1.1. The Declarant may, at its option, control the Association during the Declarant Control Period.

Section 10.1.2. During the Declarant Control Period the Declarant may appoint and remove the officers and members of the Executive Board except as otherwise provided in Section 76-861 of the Act or Section 10.1.3. below.

Section 10.1.3. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Declarant, a Transition Election shall be held at which time two (2) additional members shall be elected to the Executive Board by Unit Owners other than the Declarant who shall not be subject to removal by the Declarant.

Section 10.2. Termination of Declarant Control Period.

Section 10.2.1. The Declarant Control Period shall commence with the date of recording this Declaration and continue for a period of: (i) not to exceed sixty (60) days after conveyance of fee title to ninety percent (90%) of the Units comprising the Condominium to Unit Owners other than Declarant, or (ii) two (2) years after Declarant has ceased to offer units for sale in the ordinary course of business, whichever first occurs.

Section 10.2.2. Anything in Section 10.2.1. to the contrary notwithstanding, the Declarant Control Period and the extent of such control may be modified, changed or altered in any way in a written agreement to be entered into between Declarant and fifty percent (50%) or more of the Unit Owners other than Declarant.

**ARTICLE XI.**

**UNITS SUBJECT TO CONDOMINIUM DOCUMENTS; EMINENT DOMAIN**

Section 11.1. Applicability of Condominium Documents. Each present and future owner, lessee, occupant and mortgagee of a Unit shall be subject to and comply with the provisions of the Act, this Declaration (including the Plat and Plans), the Bylaws and the Rules and Regulations and with the covenants, conditions and restrictions as set forth in this Declaration, and the deed to such Unit; provided that nothing contained herein shall impose upon any lessee or mortgagee of a Unit any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit, shall constitute an agreement that the provisions of the Act, this Declaration (including the Plat and Plans), the Bylaws, the Rules and Regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee, mortgagee or lessee insofar as applicable. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Section 11.2. Eminent Domain. Whenever all or part of the Common Elements shall be taken, injured or destroyed by eminent domain, the Association shall represent the Unit Owners in

negotiations, settlements and agreements with the condemning authority. Each Unit Owner appoints the Association as Attorney-in-Fact for this purpose. Each Unit Owner shall be entitled to notice thereof, but in any proceedings for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. The award or proceeds of settlement shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

**ARTICLE XII.**  
**EXECUTIVE BOARD OF THE ASSOCIATION**

Section 12.1. Powers of Executive Board. The Executive Board of the Association shall possess all of the duties and powers granted to the Executive Board by the Act.

Section 12.2. Composition of Executive Board. The Executive Board shall initially consist of five (5) members who shall be elected at Annual Meetings of Association members except that until the Transition Election there shall be only three (3) members of the Executive Board, which three (3) members and any successors to such three (3) members shall be appointed by the Declarant until the end of the Declarant Control Period. Two (2) additional Executive Board members shall be elected at the Transition Election. At the Transition Election all Unit Owners other than the Declarant shall have the right to vote for the additional two (2) Executive Board members. During the Declarant Control Period successors to the two (2) additional members of the Executive Board shall be elected by the vote only of Unit Owners other than the Declarant. At the end of the Declarant Control Period, the Executive Board shall consist of four (4) members. Each Executive Board member shall hold office pursuant to the provisions relating thereto in the Bylaws. Cumulative voting shall be permitted by Unit Owners with respect to election of Executive Board Members.

Section 12.3. Disputes. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of this Declaration (including the Plat and Plans), the Bylaws or the Rules and Regulations, the ultimate determination with respect thereto by the Executive Board following an appeal to such Executive Board from the Association body making a determination in the first instance shall be final and binding on each and all such Unit Owners, except as may be otherwise provided in a Management Agreement negotiated between the Declarant and fifty percent (50%) or more of the Unit Owners, as contemplated by the Bylaws. Subject to such limitations as may be otherwise set forth in said Management Agreement, the Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief or order to assist it in carrying out its responsibilities under this Section 12.3. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of disputants, by the Association as a Common Expense.

Section 12.4. Amendments to the Condominium Documents. The Condominium Documents may be amended only in accordance with the Act and the Condominium Documents. Notwithstanding any other provisions of this Declaration to the contrary, if any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provisions of the Condominium Documents that are defective, missing or inconsistent with any other provisions thereof, then at any time and from time to time, the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this Section 12.4. shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more officers of the Executive Board.

Section 12.5. Abating and Enjoining Violations by Unit Owners. The violation of any Rules and Regulations adopted by the Executive Board, the breach of any provision contained in the Bylaws or the breach of any provision of this Declaration or the Act by any Unit Owner, shall give the Executive Board and any aggrieved Unit Owner the right, in addition to any other rights to which it may be entitled, to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 12.6. Insurance. The Executive Board shall obtain and maintain insurance as provided in the Bylaws.

### **ARTICLE XIII.** **COMMERCIAL UNIT**

Section 13.1. Notwithstanding anything to the contrary herein, the following shall not be effective unless and until the Commercial Unit owner, or all of the Commercial Unit owners (in the event additional Commercial Units are created), consent in writing:

(a) Any reallocation which increases the Commercial Unit's Common Element Interest Allocation or changes the Commercial Unit's designated Limited Common Elements or decreases the Commercial Unit's allocation of Voting Rights.

(b) Any change in the use restriction of any Commercial Unit as set forth in Section 6.2.

Section 13.2. The Commercial Unit owner, or all of the Commercial Unit owners (in the event additional Commercial Units are created), shall be allowed to utilize the roof and/or the exterior walls of the building for advertising signage for its business, provided that such signage shall be of reasonable size and construction, and shall not interfere with any Residential Unit Owner's use of their Unit. Such signage must be approved by the Executive Board, or by the Declarant during the Declarant Control period, and such approval shall not unreasonably be withheld.

Section 13.3. The first floor Commercial Unit owner shall be allowed to utilize the roof and/or the exterior walls of the building for placement of a satellite television dish and associated wiring, provided such satellite television dish is located such that it will not unreasonably interfere with any Residential Unit Owner's use of the rooftop Common Elements.

[Signature pages to follow.]

IN WITNESS WHEREOF, Downtown Dodge Developers, L.L.C., a Nebraska limited liability company, has caused these presents to be executed the day and year first above written.

Downtown Dodge Developers, L.L.C.,  
a Nebraska limited liability company, Declarant

By: *Brian T. Moffett*  
TRINITY PARKWAY, INC., its MANAGING MEMBER

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

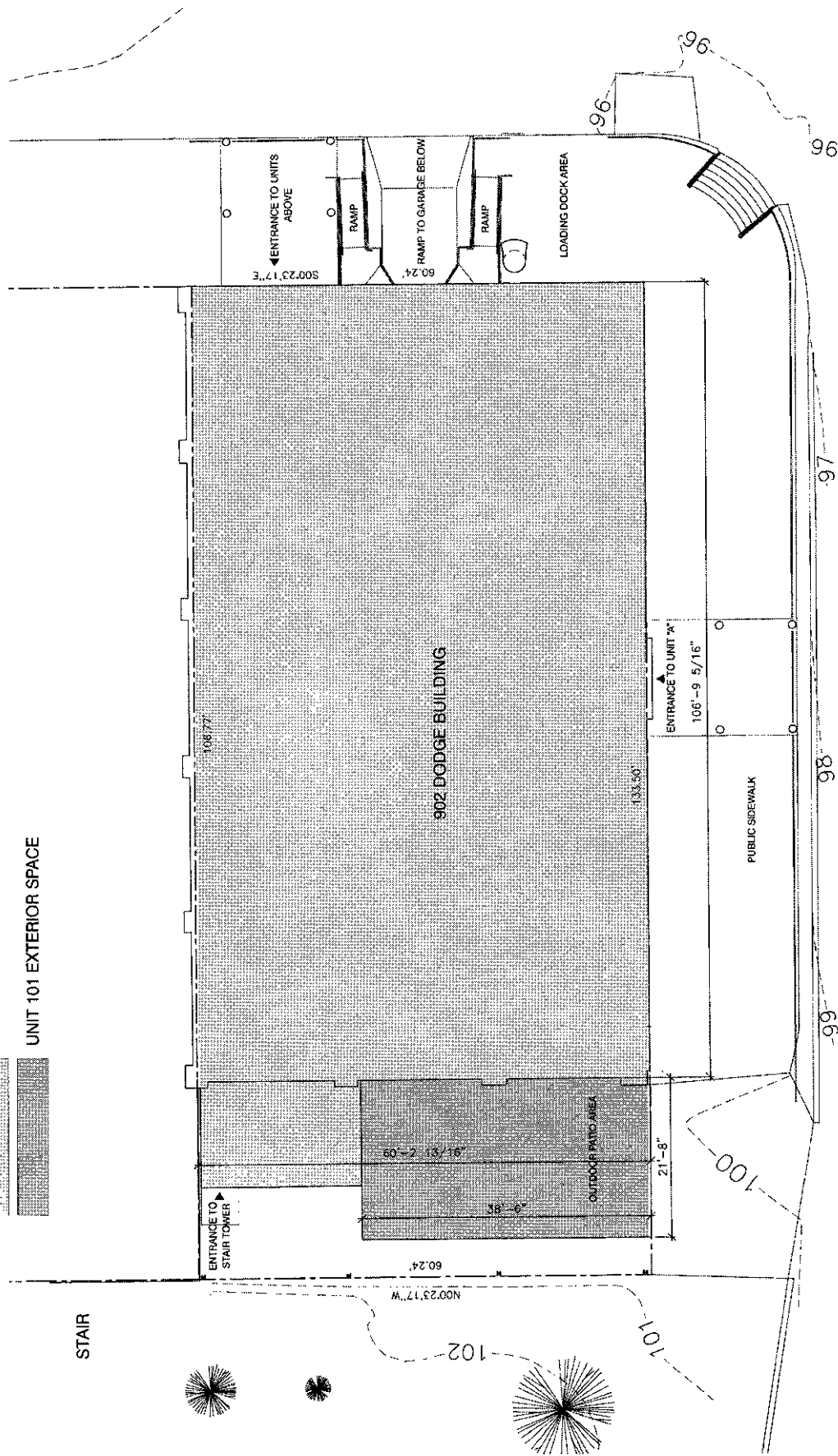
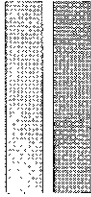
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of September 2006 by Brian T. Moffett of Downtown Dodge Developers, LLC, a Nebraska limited liability company, on behalf of said company.

*Amy L. Graham*  
Notary Public  
*my commission expires July 6, 2010*





COMMON ELEMENTS  
 902 BUILDING  
 UNIT 101 EXTERIOR SPACE

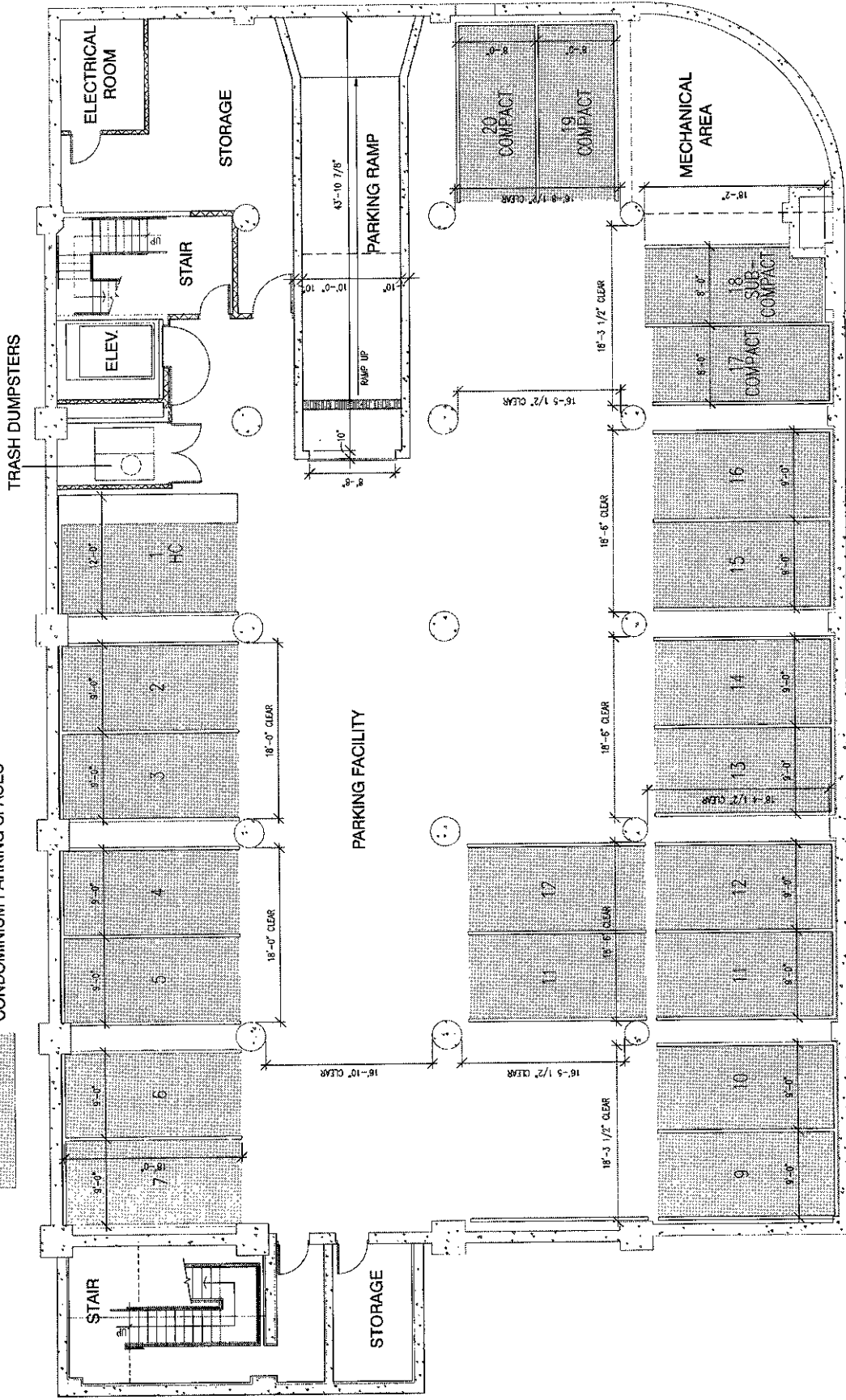


SITE PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-1

COMMON ELEMENTS  
 CONDOMINIUM PARKING SPACES



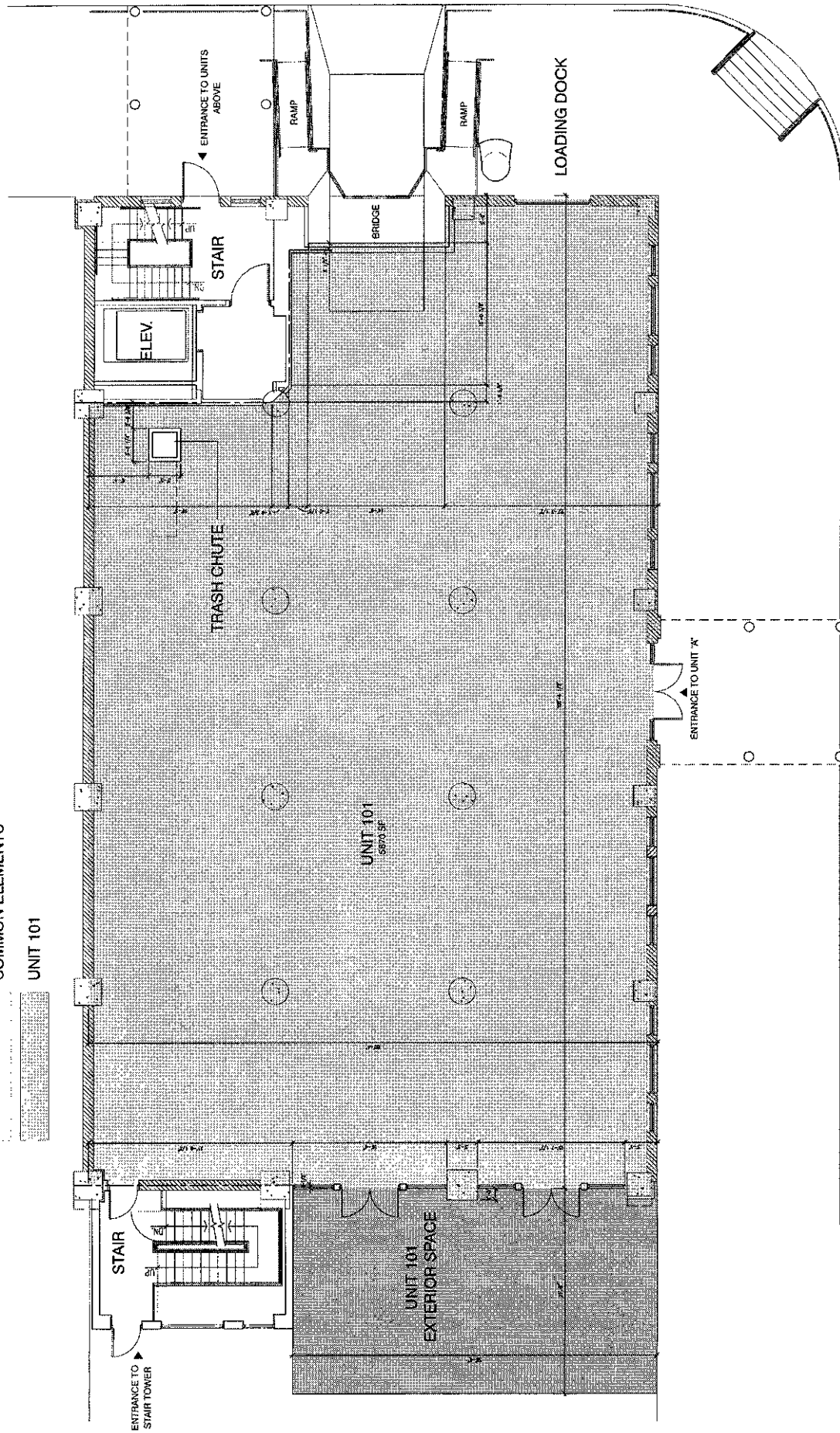
BASEMENT FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-2



- UNIT 101 EXTERIOR SPACE
- COMMON ELEMENTS
- UNIT 101

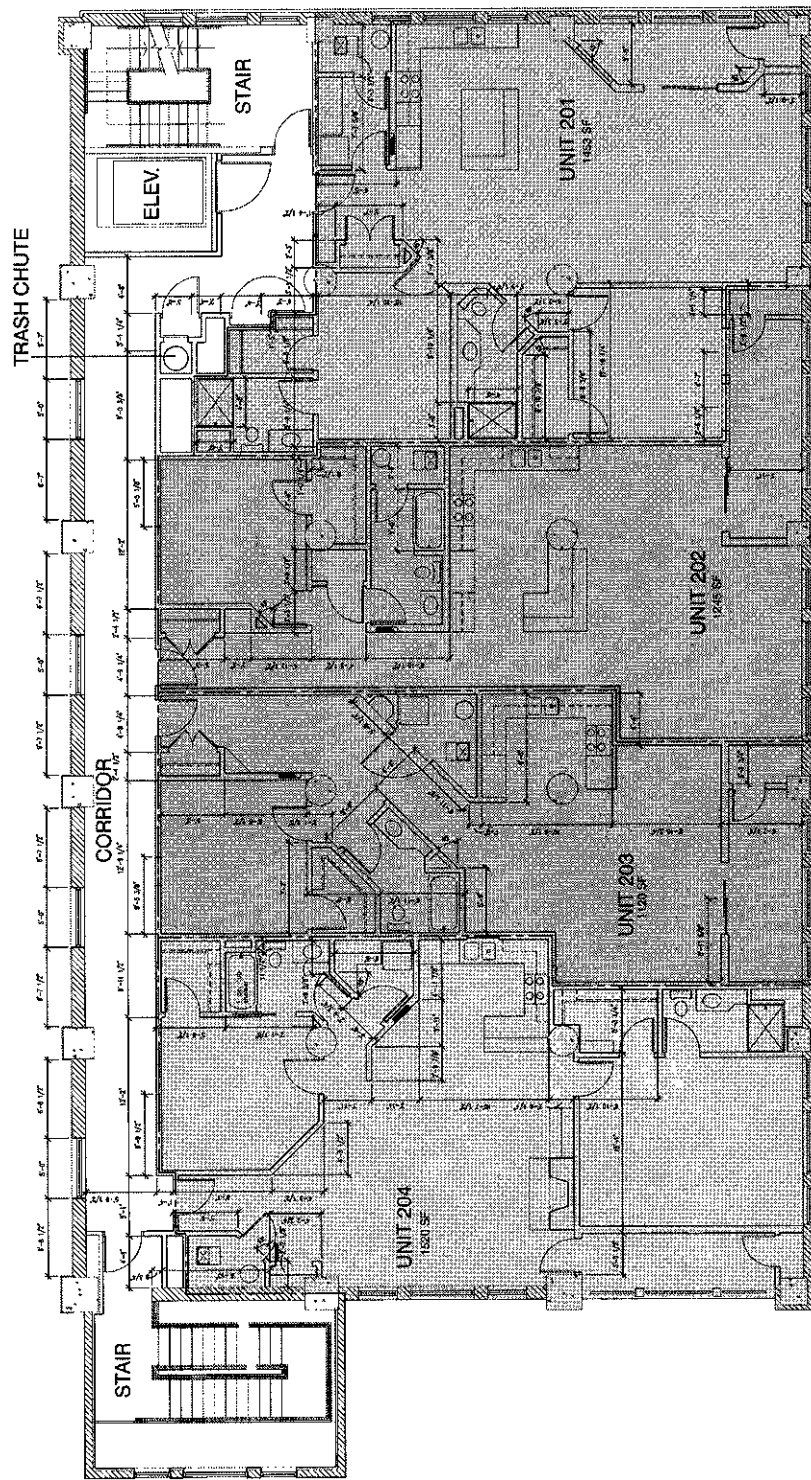


FIRST FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-3

COMMON ELEMENTS  
CONDOMINIUM UNITS

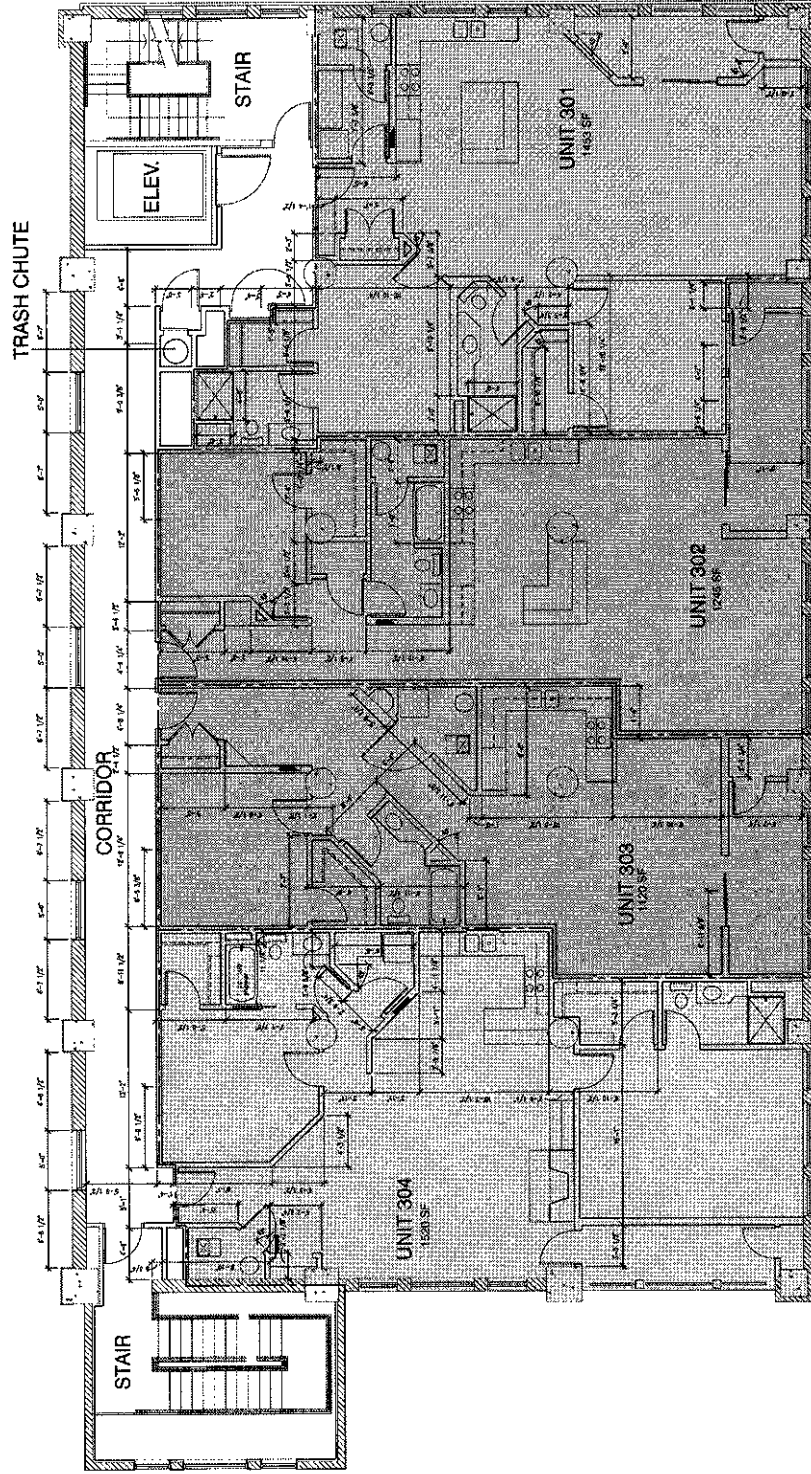


SECOND FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-4

COMMON ELEMENTS  
 CONDOMINIUM UNITS

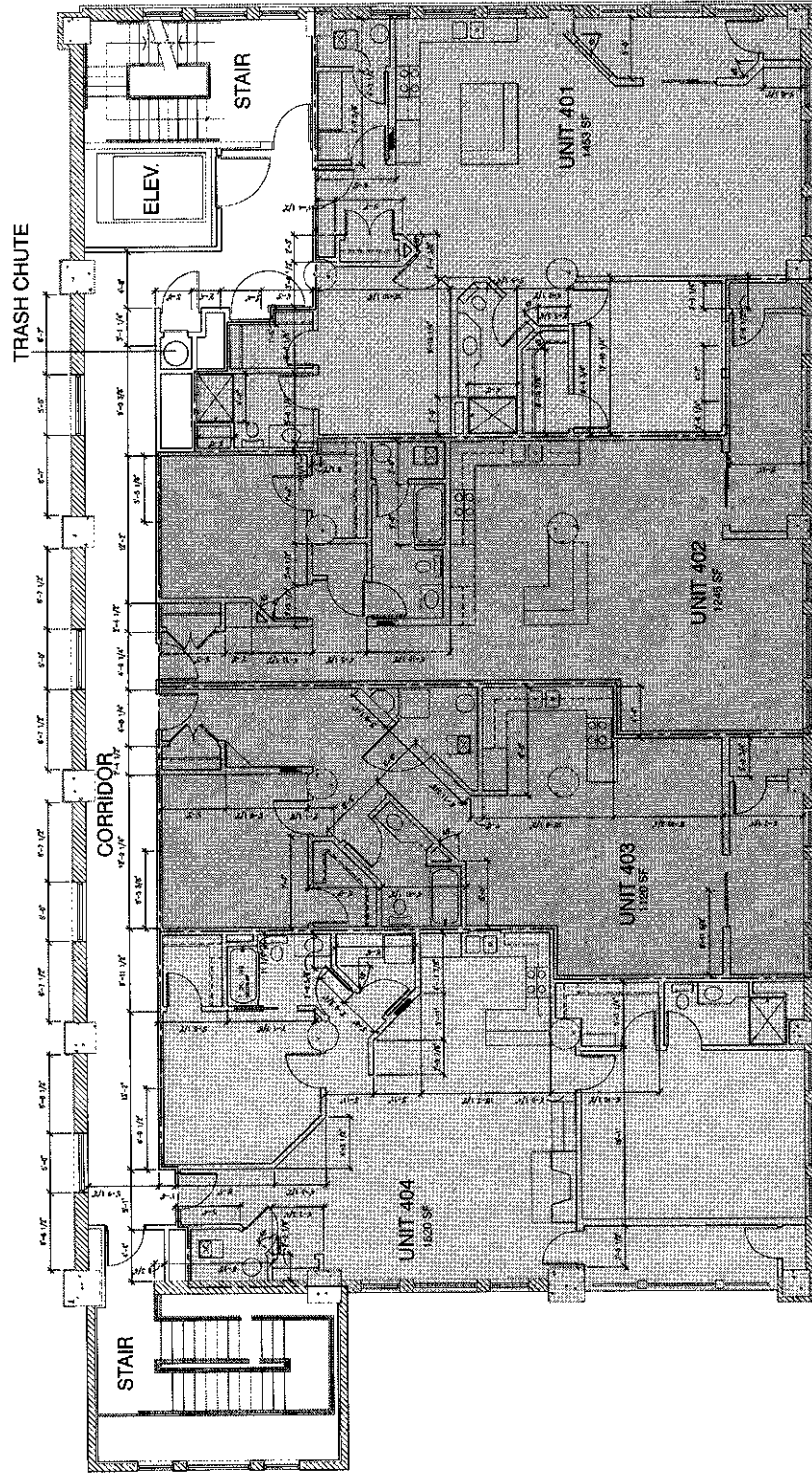


THIRD FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-5

COMMON ELEMENTS  
CONDOMINIUM UNITS

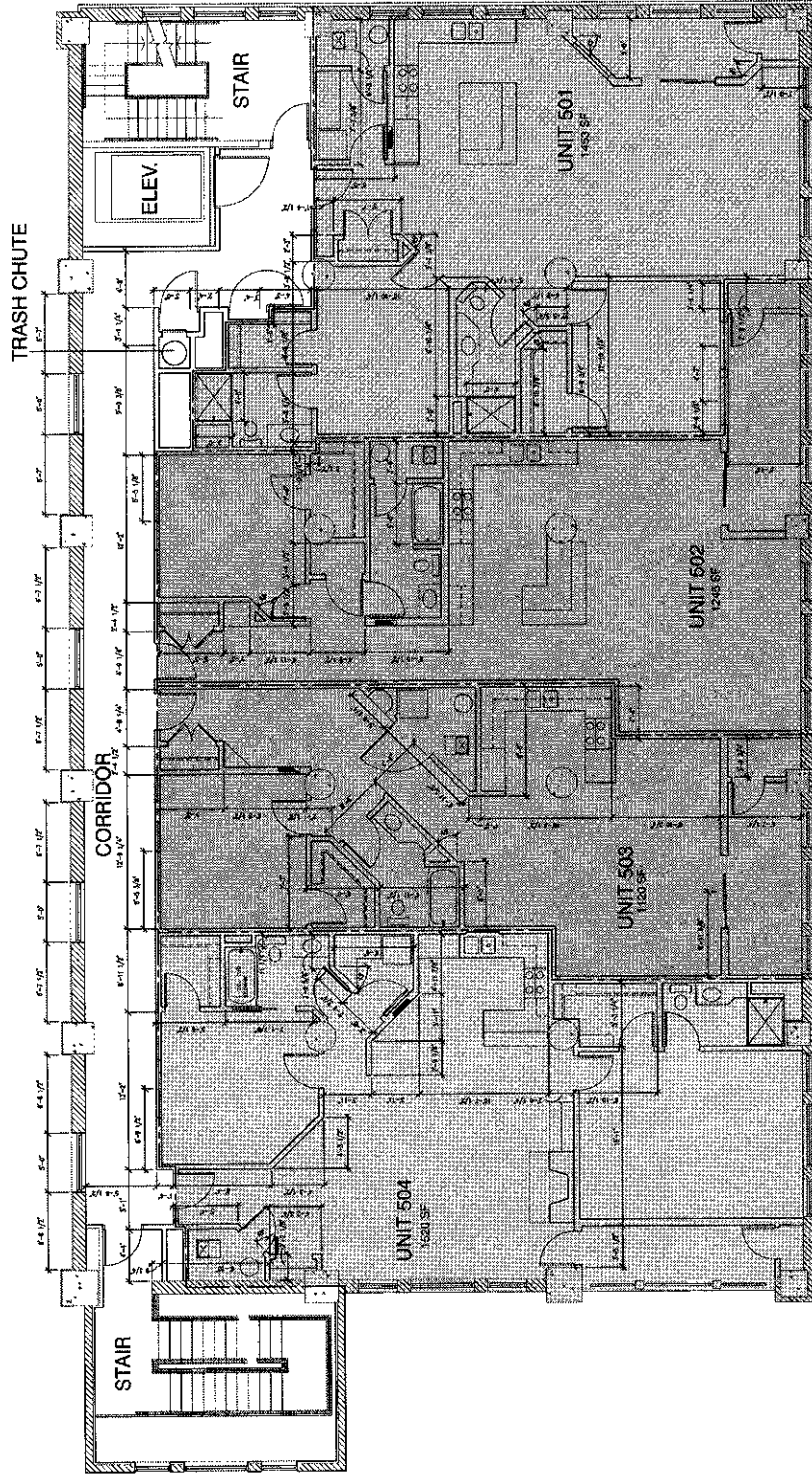


FOURTH FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-6

COMMON ELEMENTS  
CONDOMINIUM UNITS

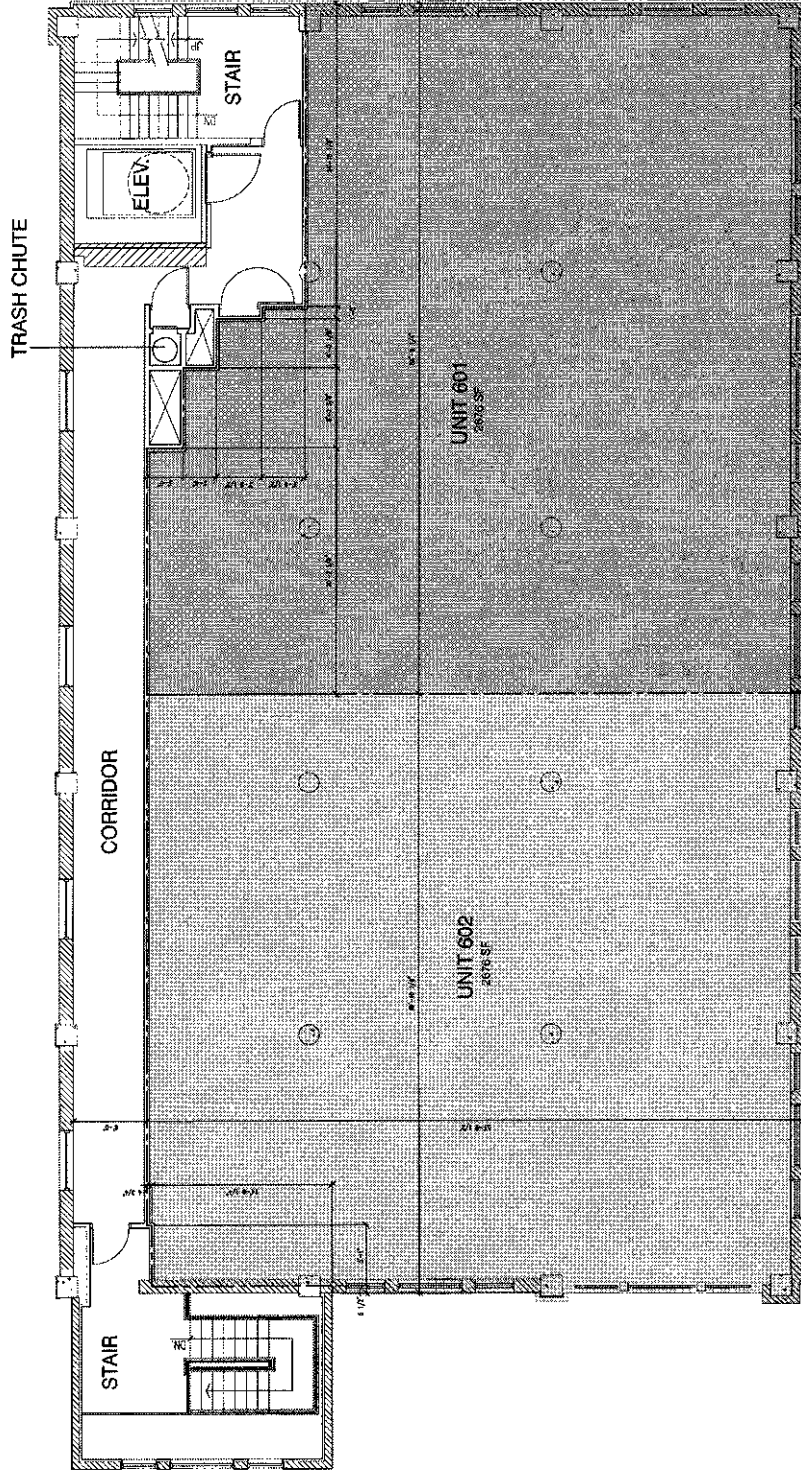


FIFTH FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-7

COMMON ELEMENTS  
CONDOMINIUM UNITS

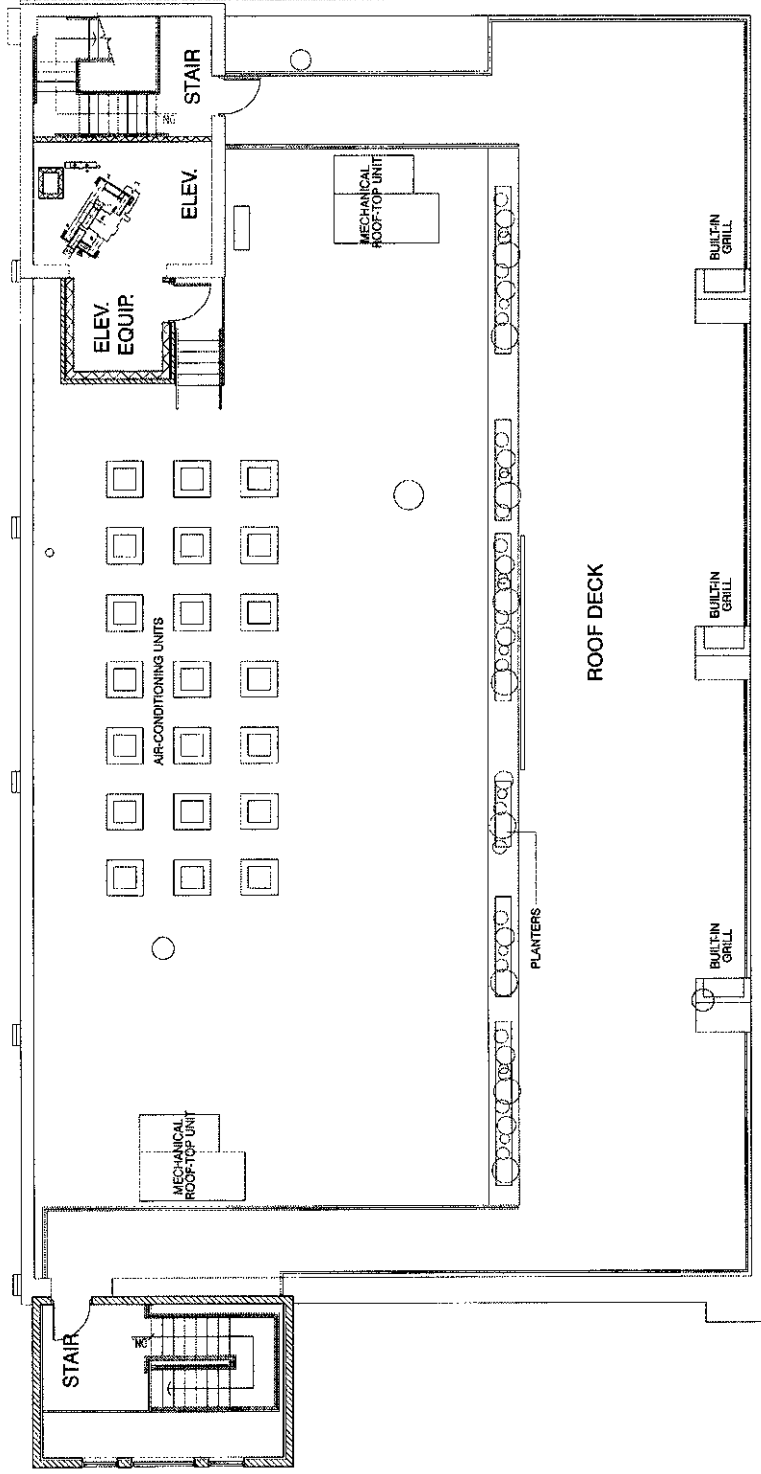


SIXTH FLOOR PLAN

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-8

COMMON ELEMENTS

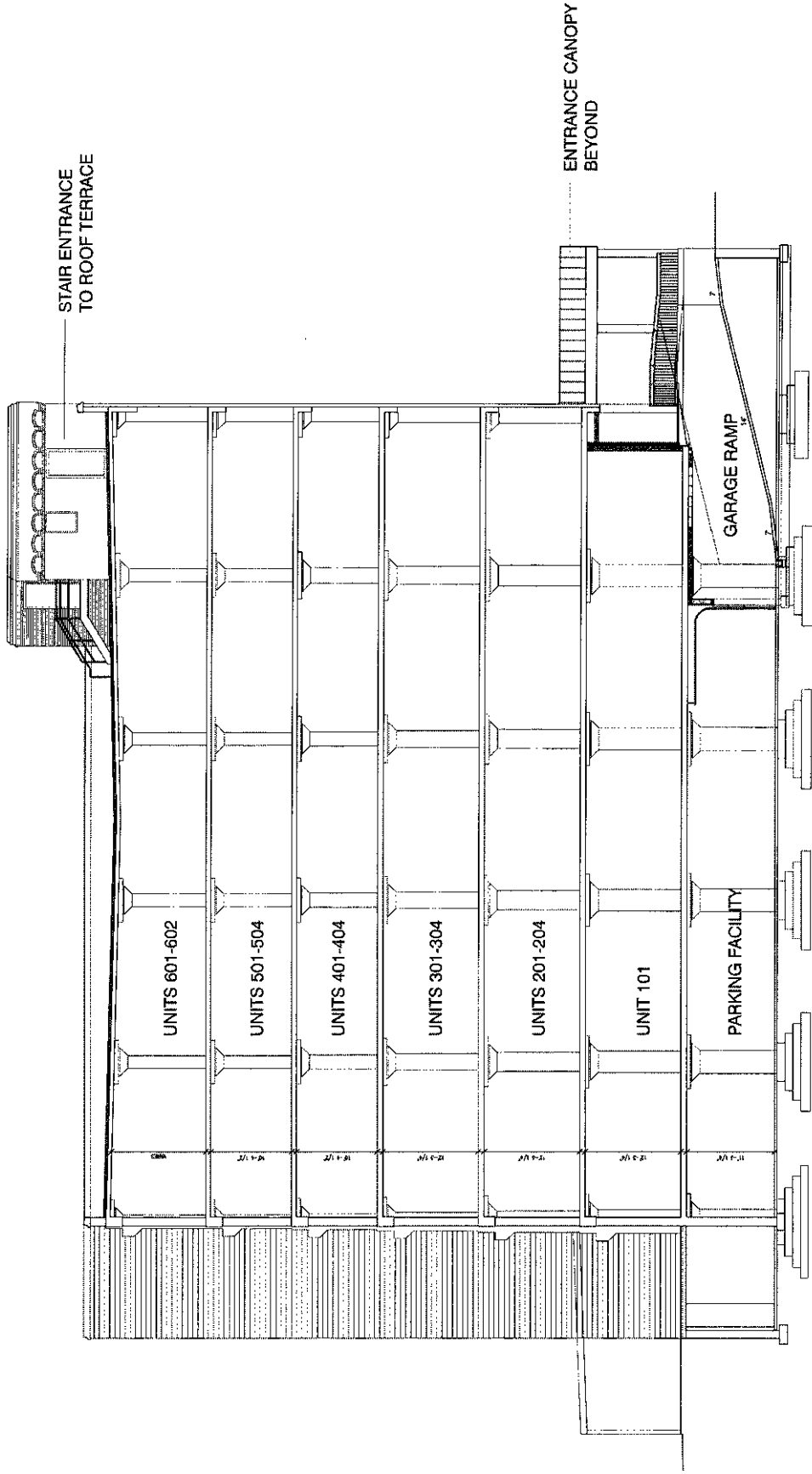


ROOF PLAN



# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-9

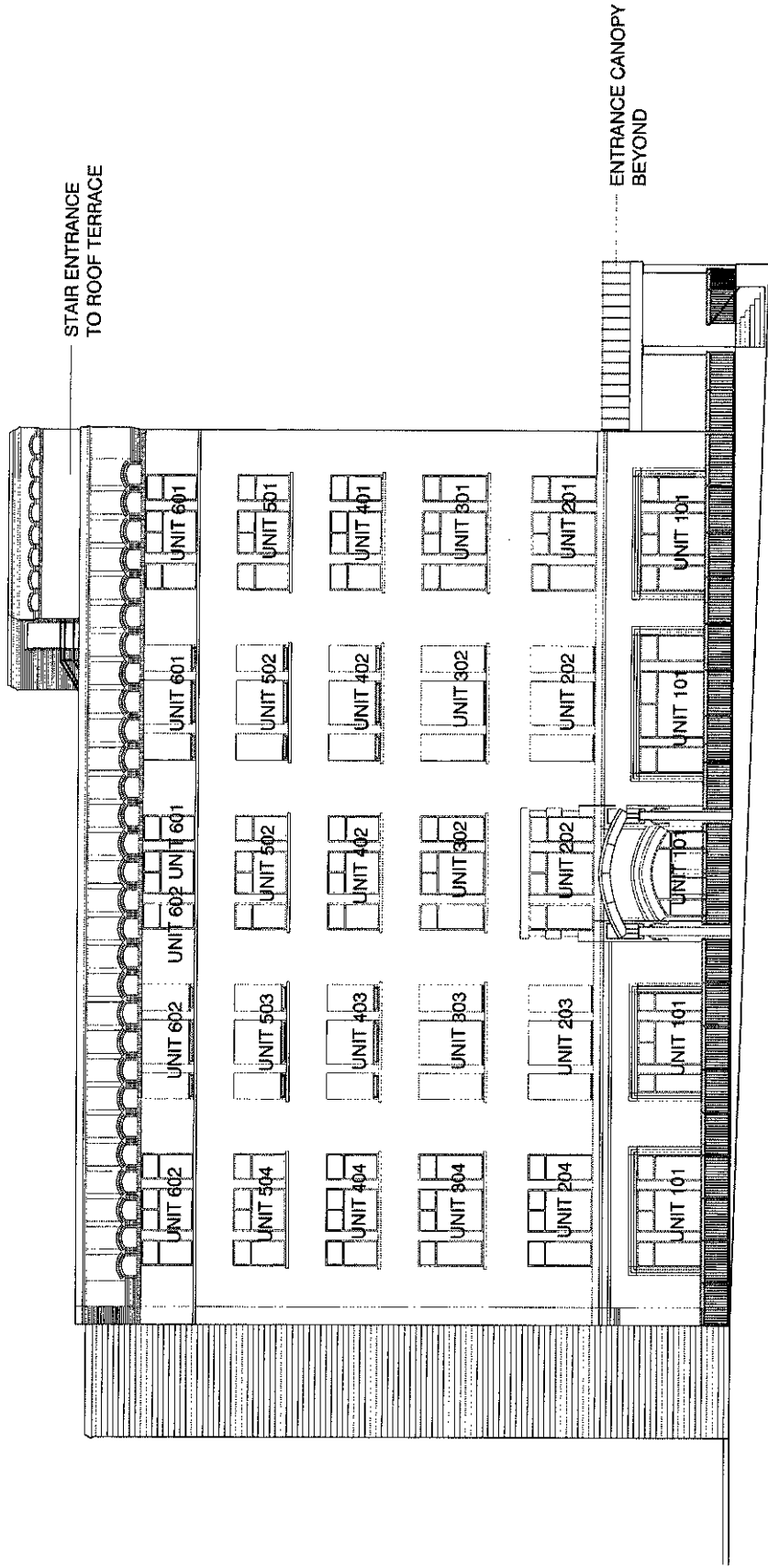


BUILDING SECTION LOOKING NORTH

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-10

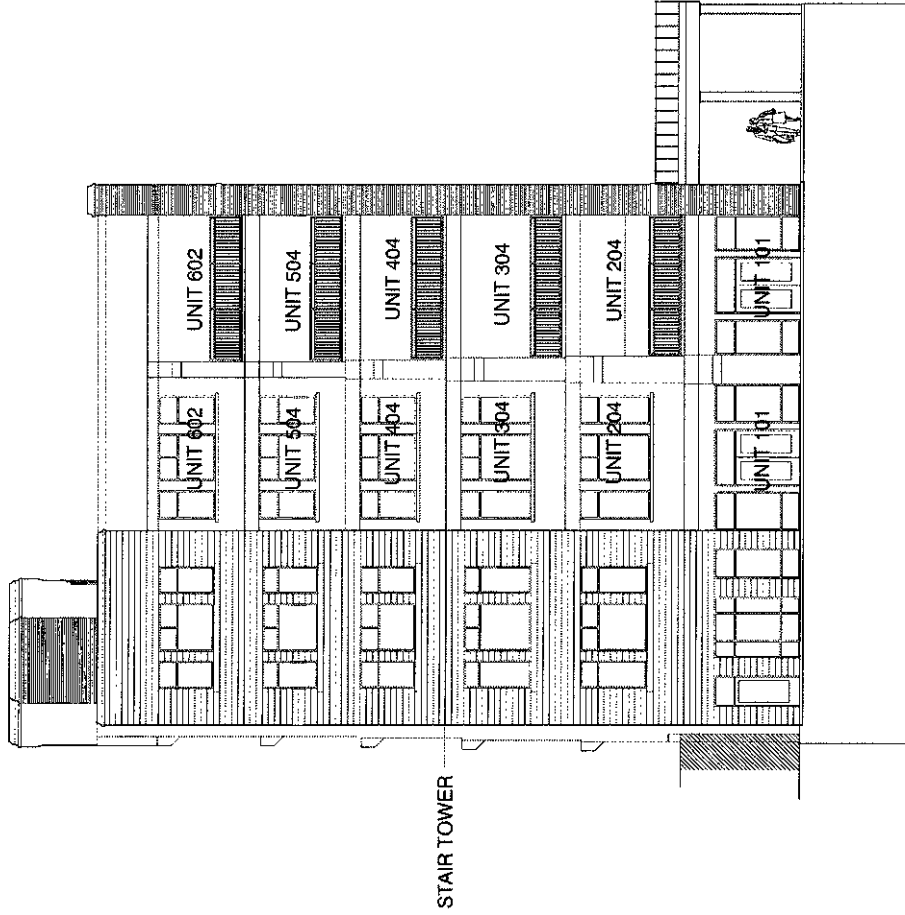




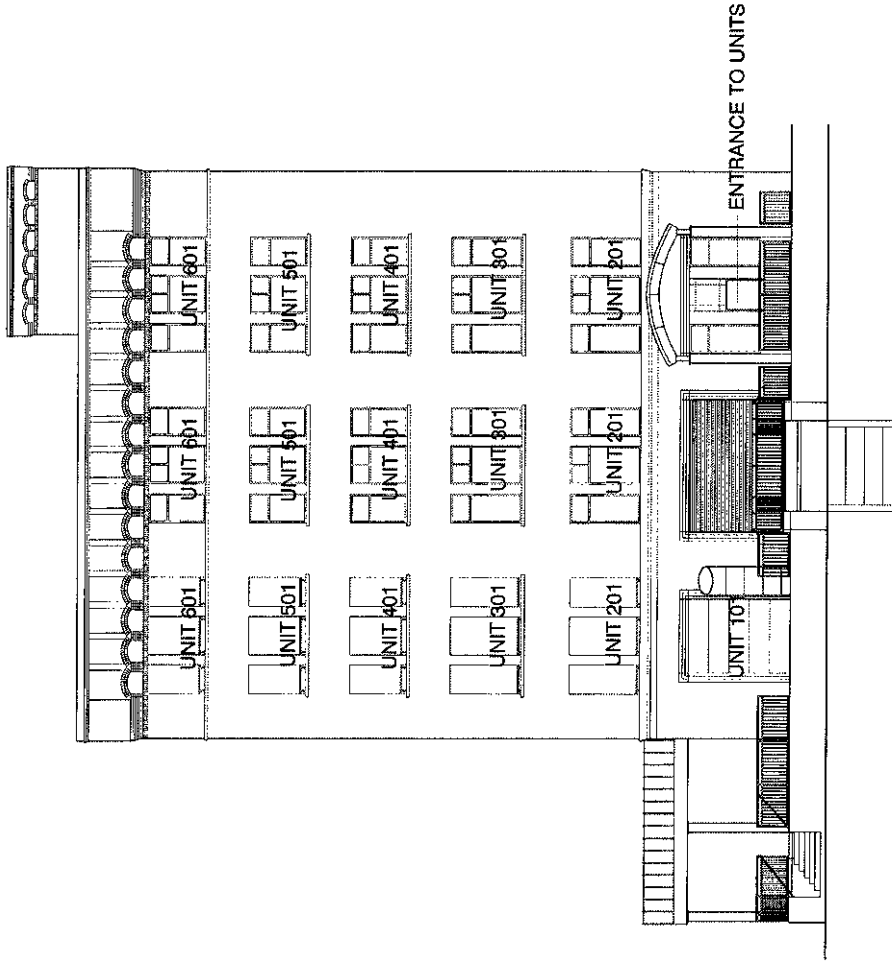
SOUTH BUILDING ELEVATION

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-11



WEST BUILDING ELEVATION



EAST BUILDING ELEVATION

# DECLARATION FOR 902 DODGE CONDOMINIUM

EXHIBIT B-12

**EXHIBIT "C" TO DECLARATION**

**COMMON ELEMENT INTEREST ALLOCATION TABLE**

<b>Unit Number</b>	<b>Square Footage</b>	<b>Allocated Interest Common Elements and Expenses</b>	<b>Allocated Interest Residential Units – Limited Common Elements</b>	<b>Allocated Interest Commercial Units – Limited Common Elements</b>
101	5,870	18.02%	0%	100%
201	1,453	4.46%	5.44%	0%
202	1,245	3.82%	4.66%	0%
203	1,120	3.44%	4.19%	0%
204	1,520	4.67%	5.69%	0%
301	1,453	4.46%	5.44%	0%
302	1,245	3.82%	4.66%	0%
303	1,120	3.44%	4.19%	0%
304	1,520	4.67%	5.69%	0%
401	1,453	4.46%	5.44%	0%
402	1,245	3.82%	4.66%	0%
403	1,120	3.44%	4.19%	0%
404	1,520	4.67%	5.69%	0%
501	1,453	4.46%	5.44%	0%
502	1,245	3.82%	4.66%	0%
503	1,120	3.44%	4.19%	0%
504	1,520	4.67%	5.69%	0%
601	2,676	8.22%	10.02%	0%
602	2,676	8.22%	10.02%	0%
<b>TOTALS</b>	<b>32,574</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**EXHIBIT "D" TO DECLARATION**

**ALLOCATION OF UNIT OWNER'S VOTING RIGHTS**

<b>Unit Number</b>	<b>Unit Square Footage</b>	<b>Association Voting Interest</b>
101	5,870	18.02%
201	1,453	4.46%
202	1,245	3.82%
203	1,120	3.44%
204	1,520	4.67%
301	1,453	4.46%
302	1,245	3.82%
303	1,120	3.44%
304	1,520	4.67%
401	1,453	4.46%
402	1,245	3.82%
403	1,120	3.44%
404	1,520	4.67%
501	1,453	4.46%
502	1,245	3.82%
503	1,120	3.44%
504	1,520	4.67%
601	2,676	8.22%
602	2,676	8.22%
<b>TOTALS</b>	<b>32,574</b>	<b>100%</b>

**EXHIBIT "E" TO DECLARATION  
PARKING LICENSE AGREEMENT**

THIS PARKING LICENSE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between 902 Dodge Condominium Association, Inc., a Nebraska nonprofit corporation ("Licensor") and \_\_\_\_\_ ("Licensee").

**RECITALS:**

This Agreement is made with respect to the following facts:

A. Prior to or concurrent with the execution of this License, the Licensee has acquired Unit No. \_\_\_\_ of the 902 Dodge Condominium (the "Unit"), and, as part of the sale and purchase of the Unit, Licensor has agreed to assign and Licensee has agreed to accept \_\_\_\_ parking spaces (the "Parking Spaces") located within the basement level of parking located in the six story structure and basement on Lot 8, Block 93 in the Original City of Omaha, in Douglas County, Nebraska (the "Parking Garage"), consisting of enclosed parking stalls, including the right of ingress and egress from the Parking Spaces over and across such portions of Parking Garage as may be reasonably designated from time to time by the Licensor for such purposes.

B. The Licensor and Licensee desire to enter into this Agreement to set forth their respective rights and obligations with respect to the use of and payment for the Parking Spaces and such collateral rights by Licensee.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Licensor and Licensee agree as follows:

**ARTICLE 1  
PARKING SPACES**

The Licensor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements contained herein, hereby assigns and grants to Licensee and Licensee's Authorized Users (as defined below) an exclusive license to use and occupy the Parking Spaces, and Licensee hereby accepts and assumes the right to use and occupy such Parking Spaces subject to the terms and conditions of this Agreement, together with the right of ingress to and egress from the Parking Spaces over and across such portions of the Parking Garage as may be reasonably designated by the Licensor from time to time. If any of the Parking Spaces are unavailable for use because the Parking Garage has been damaged or destroyed or because of the need for maintenance, repairs or alterations, and other parking spaces in the Parking Garage are usable for parking, the Licensor shall attempt to make available such other spaces in the Parking Garage to temporarily serve as Licensee's Parking Spaces. Licensee understands and acknowledges that the Parking Spaces are appurtenant to the Unit. For the purposes of this

Agreement, the term Authorized Users shall be limited to Licensee's respective agents, mortgagees, lessees, employees, customers, and invitees.

## **ARTICLE 2 TERM**

The term of this Agreement shall commence on the date the Parking Garage is substantially completed and ready for use by Licensee and its Authorized Users (the "Commencement Date"), and terminate on a date which Licensee transfers and conveys legal title to his or her Unit (the "Expiration Date").

## **ARTICLE 3 OPERATING EXPENSES**

The Licensee shall pay its pro-rata share of all maintenance, repair and operating expenses of the Parking Garage, and indemnify and hold Licensor harmless from the payment of, all costs of management, operation and maintenance of the Parking Garage, including without limitation, the following costs: real and personal property taxes and assessments allocable to the Parking Garage (and any tax levied in whole or in part in lieu of or in addition to real property taxes), wages, salaries and compensation of employees, costs of consulting, accounting, legal, janitorial, maintenance, guard and other services, management fees, costs of power, water, waste disposal and other utilities, materials and supplies, costs of maintenance and repairs, costs of insurance obtained with respect to the Parking Garage, depreciation on personal property and equipment, any general assessments, special assessments, or other fees or charges assessed by any entity authorized to operate, maintain, and repair the Parking Garage (hereinafter referred to collectively as the "Operating Expenses").

## **ARTICLE 4 INSURANCE**

**4.1 Insurance.** Throughout the Term, the Licensor will, at its sole expense, obtain and keep in force commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 per occurrence, including coverage for contractual liability and personal injury without limitation. Licensee shall have the right to obtain its own liability and/or hazard insurance with respect to the use and occupancy of the Parking Garage as Licensee determines appropriate in its discretion. Licensor shall not be liable or responsible to Licensee or any Authorized User for any injury to person or damage to property that may occur within the Parking Garage unless caused by the gross negligence or willful misconduct of Licensor.

**4.2 Waiver of Subrogation.** The Licensor and Licensee each waive any and all rights to recover against the other party, any occupant, subtenant or licensee of the Parking Garage who is required to or who does maintain a policy of property insurance covering any real or personal property located in the Parking Garage, and the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of any of the foregoing, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such party or actually carried by such party to the

extent of the limits of such policy. The Licensor and Licensee will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements in accordance with this Section 4.2 to all property insurance policies carried in connection with the Parking Garage.

## **ARTICLE 5 USE**

### **5.1 Entry System: Reserved Spaces: and Authorized Users.**

(a) The Licensor shall construct and at all times maintain a card entry system for ingress to and egress from the Parking Garage. At or before the Commencement Date and thereafter, Licensee shall be issued such number of cards as it shall request from time to time. If a card is lost or stolen, Licensee may notify the Licensor and the Licensor shall promptly cancel the lost or stolen card. There shall be a \$10.00 charge for each card issued to Licensee. Licensee shall determine the persons who will be entitled to use its Parking Spaces from time to time and shall distribute its cards to such persons (such persons will be referred to herein as "Authorized Users"). Licensee and the Licensor may hereafter agree on a different mutually acceptable controlled entry system to accomplish the intent of this Section 5.1

(b) The Licensor shall not be liable for the unauthorized use of any of the Parking Spaces by persons other than Authorized Users so long as the Licensor makes reasonable efforts to prevent such usage (including towing unauthorized vehicles parked in the Parking Spaces upon notification thereof by Licensee).

**5.2 Manner of Use and Access.** Licensee and Authorized Users shall use the Parking Spaces only for the parking of passenger model vehicles, small vans, and small trucks. Licensee and Authorized Users shall use the Parking Spaces in a safe, careful and proper manner, in compliance with (i) reasonable rules and regulations adopted by Licensor from time to time, and (ii) any present or future governmental or quasi-governmental laws, rules, regulations or orders. Licensee and Authorized Users shall have unrestricted access and use of the Parking Spaces twenty-four (24) hours per day, seven days per week throughout the entire Term. Licensee, at its expense, may post reasonable signage indicating which Parking Spaces are reserved for Licensee.

## **ARTICLE 6 MAINTENANCE AND ALTERATIONS**

**6.1 Operation and Maintenance of Parking Garage.** The Licensor shall, through such agents, representatives or independent contractors as it may designate, operate, maintain and keep the Parking Garage in good condition and repair, reasonable wear and tear excepted, in such manner as will ensure Licensee and any Authorized Users the continued availability, use and enjoyment of the Parking Spaces during the Term. Such maintenance shall include, but not be limited to, keeping the Parking Garage reasonably clean, free of debris, ice and snow, and appropriately sanding, salting, painting and striping the Parking Garage and Parking Spaces. The Licensor shall have, the right to enter upon or restrict access to the Parking Spaces or any of them for purposes of performing the Licensor's obligations under this Section 6.1, provided that the

Licensors will use its best efforts in connection with such entry or restriction of access to minimize any disruption to any Licensee's or Authorized User's use of the Parking Spaces.

**6.2 Alterations and Improvements.** The Licensor may, from time to time, make additions, improvements and alterations to the Parking Garage; provided, however, that any addition, alteration, or improvement (other than one necessary to operate and maintain the Parking Garage as provided in Section 6.1) which materially impairs access to or use of the Parking Spaces, either temporarily or permanently, shall be made only with reasonable prior notice to Licensee. If any such action, improvement or alteration to the Parking Garage causes Parking Spaces to be unavailable for use and alternate spaces are not available in the Parking Garage, Licensee's pro-rata share of the Operating Expenses shall abate on a pro rata basis.

## **ARTICLE 7 CASUALTY**

If the Parking Garage is damaged or destroyed in whole or in part by any casualty, the Licensor will promptly commence and diligently complete any necessary repairs or restoration.

## **ARTICLE 8 ASSIGNMENT AND SUBLETTING**

Except as provided herein, Licensee may, with the prior written consent of the Association, which consent shall not be unreasonably withheld, reallocate, convey and transfer the Parking Spaces among or between any Units by assignment, lease, easement or license; provided, however, any such assignment shall be subject to all rules and regulations adopted by the Association from time to time. Licensor shall not reassign or reallocate any Parking Space held by a Licensee without the prior written consent of the Licensee affected thereby. If Licensee requests the Licensor to do so, the Licensor and Licensee will amend this Agreement, at no cost to Licensor, to reduce the number of Parking Spaces assigned to Licensee hereunder and the Licensor will enter into a separate Parking Lease Agreement with such third party in substantially the form of this Agreement.

## **ARTICLE 9 QUIET ENJOYMENT**

So long as Licensee pays its pro-rata share of the Operating Expenses and observes and performs all the terms, covenants and conditions of this Agreement on Licensee's part to be observed and performed, Licensee may peaceably and quietly enjoy the Parking Spaces subject, nevertheless, to the terms and conditions of this Agreement.

## **ARTICLE 10 DEFAULT**

**10.1 Events of Default.** The following events are referred to collectively as "Events of Default," or individually, as an "Event of Default":



(a) Licensee defaults in the due and punctual payment of its pro-rata share of the Operating Expenses, and such default continues for ten (10) days after written notice from the Licensor;

(b) This Agreement or the Parking Spaces are taken upon execution or by other process of law directed against either party hereto, or are subject to any attachment at the instance of any claimant against either party hereto, and such attachment is not discharged within thirty (30) days after its levy, and the party subject to such execution or attachment is not actively seeking such discharge;

(c) Either party hereto files a petition in bankruptcy or insolvency, or a petition for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of such petition by answer or otherwise, or is dissolved, or makes an assignment for the benefit of creditors;

(d) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of either party hereto are instituted against such party or a receiver or trustee is appointed for all or substantially all of the property of such party, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment, and such party is not actively pursuing the vacation of such action; or

(e) Either party hereto breaches any of its other obligations under this Agreement, and such breach continues for thirty (30) days after notice by the non-breaching party to the breaching party or, if such default cannot reasonably be cured within such 30-day period, the breaching party fails to commence such cure within such 30-day period or thereafter fails to proceed diligently to cure such breach within a reasonable time.

**10.2 Remedies.** If an Event of Default occurs, then the non-defaulting party will have the right, at its election, either:

(a) To give the defaulting party written notice of termination of this Agreement in which case Licensee's right to possession of the Parking Spaces will cease and this Agreement will be terminated as of a date thirty (30) days from the first day of the calendar month following the date of such notice; or

(b) With respect to Licensee's default, the Licensor may after demand and notice, reenter and take possession of the Parking Spaces or any of the Parking Spaces, repossess the same, expel Licensee and those claiming through or under Licensee, including, without limitation, the Authorized Users, and remove the effects of both. Should the Licensor elect to reenter as provided in this subsection (b), or should the Licensor take possession pursuant to legal proceedings or pursuant to any notice provided by law, the Licensor may, from time to time, without terminating this Agreement, collect and receive payments from Authorized Users for use of all or any portion of the Parking

Spaces. No such reentry or taking possession of the Parking Spaces by the Licensor will be construed as an election on the Licensor's part to terminate this Agreement unless a written notice of such intention is given to Licensee. The Licensor reserves the right following any such reentry to exercise its right to terminate this Agreement by giving Licensee written notice in accordance with subsection (a), in which event this Agreement will terminate as specified in such notice; or

(c) With respect to the Licensor's default, whether in the performance of the Licensor's duties under Article 7 hereof or otherwise, Licensee may (a) provide written notice to the Licensor specifying the nature of such default, and, if the Licensor fails to cure such default within thirty (30) days following receipt of such written notice, Licensee may seek any other remedy at law or in equity, including but not limited to, injunctive relief and/or specific performance.

**10.3 Cumulative Remedies.** Unless otherwise provided in this Agreement, each right and remedy provided in this Agreement will be cumulative and will be in addition to every other right or remedy provided in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party hereto of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by such party of any or all other such rights or remedies.

## **ARTICLE 11 MISCELLANEOUS**

**11.1 Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

**11.2 No Waiver.** The waiver by either party of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice which may occur between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Agreement.

**11.3 Estoppel Certificate.** At any time and from time to time but within ten (10) days after written request made by the Licensor or Licensee to the other party to this Agreement, such other party will execute, acknowledge and deliver to the requesting party a certificate certifying (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification, (b) the date, if any, to which the Operating Expenses payable under this Agreement have been paid, (c) that no notice has been delivered to such party of any default by such party which has not been cured, except as to default specified in such certificate, (d) that no Event of Default then exists under this Agreement and that no event has occurred which, with the giving of notice or passing of time, or both, could result in an event of default, except as to Events of Default or other events specified in such certificate. At any time and from time to time, promptly after written request made by the Licensor or Licensee to the other party

to this Agreement, such other party will execute, acknowledge and deliver to the requesting party a certificate regarding such other matters as may be reasonably requested by such requesting party. Any such certificate may be relied upon by any prospective purchaser of, or existing or prospective mortgagee or beneficiary under any deed of trust encumbering, the Parking Garage or any real estate owned, leased, or used by Licensee.

**11.4 Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth below, or by depositing the same in the United States mail postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below:

Licensor: Downtown Dodge Developers, Inc.  
13906 Gold Circle, Suite 203  
Omaha, Nebraska 68144  
Attn: Brian T. Moffett

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

All notices, demands and requests shall be effective upon receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least ten (10) days prior notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**11.5 Severability.** If any provision of this Agreement shall prove to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, a provision will be added as a part of this Agreement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**11.6 Written Amendment Required.** No amendment, alteration, modification or addition to this Agreement will be valid or binding unless expressed in writing and signed by the party or parties to be bound.

**11.7 Entire Agreement.** This Agreement contains the entire agreement between the Licensor and Licensee with respect to the subject matter hereof. This Agreement may be amended only by subsequent written agreement between the parties hereto.

**11.8 Captions.** The captions of the various Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

**11.9 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska.

**11.10 Binding Effect.** The covenants, conditions and agreements contained in this Agreement will bind and inure to the benefit of the Licensor and Licensee and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

**LICENSOR:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_ who is the \_\_\_\_\_ of Downtown Dodge Developers, Inc., on behalf of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT "F" TO DECLARATION**

**BYLAWS OF  
902 DODGE CONDOMINIUM ASSOCIATION, INC.**

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**BYLAWS OF**  
**902 DODGE CONDOMINIUM ASSOCIATION, INC.**

**A Nebraska nonprofit corporation**

**SECTION 1**  
**Offices**

**1.1 Name.** The name of the corporation is "902 Dodge Condominium Association, Inc." It is incorporated under the laws of the State of Nebraska as a nonprofit corporation. The corporation is the Condominium Association referenced in the Declaration (as defined below).

**1.2 Applicability.** These Bylaws ("Bylaws") shall relate to the property commonly known as the 902 Dodge Condominium, a condominium located in Omaha, Douglas County, Nebraska, more particularly described in a Declaration of Condominium as referenced below.

**1.3 Location.** The principal office of the corporation shall be located at 13906 Gold Circle, Suite 203, Omaha, Nebraska 68144, in Douglas County, Nebraska. Meetings of Members and Executive Board members may be held at such places as may be designated by the Executive Board from time to time.

**SECTION 2**  
**Definitions**

**2.1 Definitions.** All capitalized terms used herein shall have the meaning as set forth in the Declaration unless otherwise defined in these Bylaws. The term "**Declaration**" shall mean, collectively, the Declaration For 902 Dodge Condominium, recorded \_\_\_\_\_, Document No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_, in the Office of the Douglas County Register of Deeds ("**Register's Office**"), as amended and supplemented from time to time and any additional declarations as may be recorded from time to time with the Register's Office, which relate to the condominium commonly known as "**902 Dodge Condominiums.**"

**SECTION 3**  
**Membership**

**3.1 Membership Generally.** Except for the Declarant as provided in the Declaration, membership in the Association shall be limited to persons or entities that are the Owners of the fee interest in any Unit which is now or hereafter within the jurisdiction of the Association. Persons or entities who hold an interest merely as security for the performance of an obligation shall not be Members. Membership shall be appurtenant to and may not be separated from Ownership of a Unit.

**3.2 Suspension of Membership.** During any period in which a Member shall be in

default in the payment of any Assessment levied by the Association as provided in the Declaration, the voting rights of such Member shall be suspended by the Executive Board until such Assessment has been paid except for those specific circumstances as set forth in the Act when a certain consent or unanimous vote is required. Such rights of a Member may also be suspended by the Executive Board, after notice and hearing, for a period not to exceed 90 days, for violation of any of the rules and regulations established by the Executive Board governing the use of the Common Elements in or available to the Condominium.

**3.3 Representatives.** Where a Unit is owned by a corporation, partnership or other entity, such entity shall designate a person who is entitled to vote respecting such Unit and to serve, if elected or appointed, as an Executive Board member of the Association, such designation to be made by filing a written instrument with the Secretary to that effect with the Association.

**3.4 Registration.** It shall be the duty of each Owner to register his or her name and Unit number with the Secretary of the Association. If an Owner does not so register, the Association shall have no duty or obligation to recognize such membership.

**3.5 Prohibition of Assignment or Alienation of Member's Share in Funds of Association.** The share of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered, alienated or transferred in any manner except as an appurtenance to such Unit.

## **SECTION 4**

### **Member's Meeting and Voting**

**4.1 Place of Meeting.** Meetings of the Association shall be held at the registered office of the Association, or such suitable places within Omaha, Nebraska, convenient to the Members, as may be designated from time to time by the Executive Board.

**4.2 Annual Meetings.** The Members shall meet at least once a year. The annual meeting of the Members shall be held on the first day in September in each year, commencing in 2007, and if such day shall be a legal holiday, then on the next business day following, at such time and place as is specified by the President or Secretary of the Association in the notice of such meeting; provided that the Executive Board, from time to time, at any regular or special meeting, may designate a different day for the annual meeting. At each annual meeting, the Members shall elect the Executive Board to serve for terms as set forth in Section 5 hereof and may transact any other business authorized to be transacted by the Members.

**4.3 Special Meetings.** Except as otherwise provided in these Bylaws and in the Declaration, special meetings of the Members may be called at any time by the President or by a majority of the Executive Board, and must be called by the President upon receipt of a written request for a special meeting signed by at least thirty percent (30%) of the Members of the Association. No business shall be transacted at a special meeting except as stated in the notice thereof.

**4.4 Notices.** Notice of all meetings of the Members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each Member. Notices of special meetings shall also state the purpose thereof. Such notice shall be in

writing, shall be sent by United States mail to the addresses of the respective Unit Owners or to such other addresses as any Member may have designated to the President or Secretary, and shall be mailed not less than ten (10) days and not more than fifty (50) days in advance of any annual, regularly scheduled or special meeting; provided, however, that such notice may be delivered personally to any Member if not prohibited by the statutes of the State of Nebraska. Such notice shall state the time and place of the meetings and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove an Executive Board member or officer. Proof of such mailing or delivery shall be given by the affidavit of the person mailing or delivering the notice. Notice of the meeting may be waived in writing by any Member before or after such meeting.

**4.5 Attendance of Mortgagee at Meeting.** Any Mortgagee of a Unit may attend and participate in any general or special meeting, but shall not be entitled to vote unless granted such by proxy.

**4.6 Quorum.** A quorum at meetings of the Members shall consist of Members present, in person or by proxy, representing at least fifty percent (50%) of the total votes in the Association.

**4.7 Voting; Association Not to Vote.** The voting Members shall be based upon the Units owned and the vote allocated to such Units by Declaration. When more than one person is the Owner of a Unit, the votes for that Unit shall be cast as the Owners shall determine, but in no event shall more than the vote allocated by the Declaration to the Unit be voted. The votes allocated to a Unit shall not be split, but shall be voted as a single whole. Notwithstanding anything herein to the contrary, the Association shall not be entitled to cast the votes allocated to any Unit owned by it during the period of its Ownership.

**4.8 Manner of Casting Votes.** A vote may be cast in person or by proxy. A proxy must be in writing and signed by all Owners of the Unit. The vote which is subject to the proxy may be given only to another Member or a security holder in that Unit and must be filed with the Secretary before the applicable meeting. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

**4.9 Action by Members Without Meeting.** Any action required by law to be taken at a meeting of the Members, or any action that may be taken at a meeting of the Members, may be taken without a meeting if authorization in writing, setting forth the action taken is signed by two-thirds (2/3) of the Members or as may otherwise be required by the Declaration or Nebraska statutes.

**4.10 Adjournment When Quorum Lacking.** If a meeting cannot be organized because a quorum has not attended, the meeting shall be adjourned until a quorum is present.

**4.11 Manner of Acting.** When a quorum is present at a meeting, any question brought before the meeting shall be decided by a majority of those voting present in person or by proxy, unless a greater vote is required under applicable Nebraska statutes, the Act, the Declaration, or these Bylaws.

**4.12 Statement of Members and Votes.** At the beginning of each meeting, the Secretary,

or other person designated by the presiding officer, shall certify a statement listing all Members present in person or by proxy at such meeting, the votes of each, and the total percentage of votes represented at the meeting.

**4.13 Prohibition of Cumulative Voting.** There shall be no cumulative voting.

**4.14 Order of Business at Annual and Other Meetings.** The order of business at the annual meetings of the Members and, so far as is applicable and practical, at all other meetings of the Members shall be:

- (a) Certification of Members and votes present.
- (b) Calling of the roll.
- (c) Proof of notice of meeting or waiver of notice.
- (d) Approval of minutes from previous meetings.
- (e) Reports of officers.
- (f) Reports of committees.
- (g) Appointment by presiding officer of judges of election.
- (h) Election of Executive Board members for the second and subsequent Boards.
- (i) Unfinished business.
- (j) New business.
- (k) Adjournment.

The presiding officer may vary such order as the presiding officer deems necessary.

## **SECTION 5**

### **Executive Board Members**

**5.1 Initial Executive Board.** The initial Executive Board shall consist of at least three (3) persons appointed by the Declarant, and successors to any thereof appointed by Declarant. The initial Executive Board and officers elected thereby shall serve until their successors have been duly elected and have qualified.

**5.2 Number of Qualified Executive Board Members.** The Executive Board shall initially consist of five (5) members who shall be elected at Annual Meetings of Association members. Two (2) additional Executive Board members shall be elected at the Transition Election. At the Transition Election all Unit Owners other than the Declarant shall have the right to vote for

the additional two (2) Executive Board members. During the Declarant Control Period successors to the two (2) additional members of the Executive Board shall be elected by the vote only of Unit Owners other than the Declarant. At the end of the Declarant Control Period, the Executive Board shall consist of four (4) members. Each Executive Board member shall hold office pursuant to the provisions relating thereto in the By-Laws. Cumulative voting shall be permitted by Unit Owners with respect to election of Executive Board Members.

### **5.3 Election of Executive Board Members.**

(a) **During Declarant Control Period.** At the first annual meeting of the Members, and at each subsequent annual meeting during the Declarant Control period, the Executive Board members shall be elected by Declarant, or persons designated by Declarant; provided, however, that no later than sixty (60) days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, a regular or special meeting shall be held at which time two Executive Board members will be elected by the Members other than Declarant and the other Executive Board members shall be elected by Declarant.

(b) **After Declarant Control Period.** Not later than the termination of the Declarant Control Period, the Executive Board members shall be elected by the Members. In order to assure that the Executive Board members will be so elected, a regular or special meeting of the Members shall be held prior to such termination, to elect, effective upon such termination, who shall become Executive Board members upon such termination.

(c) **Votes Required.** Executive Board members shall be elected by a majority vote. At each meeting at which there is to be an election of Executive Board members, the Members shall first adopt a resolution establishing the number of Executive Board members to be elected at such meeting. In order to provide continuity on the Board, not more than one-third (1/3) of the Executive Board members shall be replaced at any annual election except for cause.

**5.4 Term.** The term of each Executive Board member after the first annual election by the Members shall be for three (3) years, and until that Executive Board member's successor has been duly elected and has qualified.

**5.5 Removal.** Any member of the Executive Board may be removed, with or without cause, by a vote of the Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, at a special meeting called for such purpose, and a successor may then and there be elected by the Members to serve for the balance of the predecessor's term, and until his or her successor has been duly elected and has qualified; provided, however, that any Executive Board member on the initial Executive Board, and any Executive Board member on any subsequent Executive Board, whom Declarant appointed or elected may be removed and replaced at any time during the Declarant Control Period (as defined in the Declaration), only by act of Declarant, and with or without cause.

**5.6 Vacancies.** During the Declarant Control Period, any vacancy in the Executive Board arising out of the removal, death, or resignation of an Executive Board member appointed or elected

by Declarant shall be filled only by appointment made by Declarant. Any other vacancy in the Executive Board shall be filled by act of the remaining Executive Board members, whether or not they constitute a quorum, and an Executive Board member so elected shall serve for the unexpired term of his or her predecessor in office, and until his or her successor has been duly elected and has qualified.

**5.7 Organizing Meeting of Newly Elected Executive Board.** The organizational meeting of a newly elected Executive Board shall be held within ten (10) days of its election, at such time and place as shall be fixed by such Executive Board members at the meeting at which they were elected, and no further notice of such organization meeting shall be necessary, provided a quorum shall be present.

**5.8 Regular Meetings.** Regular meetings of the Executive Board may be held at such time and place as shall be determined, from time to time, by a majority of the Executive Board members. Notice of regular meetings shall be given to each Executive Board member, personally or by mail, telephone, or telegraph, at least three (3) days prior to the day designated for such meeting, unless such notice is waived. All Executive Board meetings shall be open to the Members. At least one regular meeting shall be held annually.

**5.9 Special Meetings.** Special meetings of the Executive Board may be called by the President and must be called by the Secretary at the written request of two (2) Executive Board members. Not less than three (3) days' notice of such special meeting shall be given personally or by mail, telephone, or facsimile; provided, however, in the case that the President or any Executive Board member determines that an emergency exists, then a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose of such meeting. No business shall be transacted at a special meeting except as stated in the notice thereof.

**5.10 Waiver of Notice.** Any Executive Board member may waive, in writing, notice of a meeting, either regular or special, before or after such meeting, and such waiver shall be deemed equivalent to the giving of notice.

**5.11 Quorum.** A majority of the Executive Board shall constitute a quorum for the transaction of business at any meeting of the Executive Board.

**5.12 Adjournment When Quorum Lacking.** If at any meeting of the Executive Board there shall be less than a quorum present, the majority of those present shall adjourn the meeting until a quorum is present. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice. If an Executive Board member signs the minutes of a meeting, such signing shall constitute the presence of such Executive Board member at that meeting for the purpose of determining a quorum.

**5.13 Manner of Acting.** Each Executive Board member shall be entitled to one (1) vote, and the act of a majority of the Executive Board members present at a meeting at which a quorum is present shall constitute the act of the Board unless the act of a greater number is required by these Bylaws, the Declaration or the Act.

**5.14 Board Action Without Meeting.** Any action required by law to be taken at a meeting of the Board, or any action that may be taken at a meeting of the Board, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all Executive Board members.

**5.15 Presiding Officer.** The presiding officer at meetings of the Board shall be the President. In the President's absence, the Executive Board members who are present shall designate one of their number to preside.

**5.16 Compensation of Executive Board Members Restricted.** Executive Board members shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Executive Board members.

**5.17 Powers and Duties of Executive Board.** All of the powers and duties of the Association shall be exercised by the Executive Board, including those existing under common law, applicable statutes, the Act, the Declaration, the Articles of Incorporation and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, and Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide Members annually a report containing at least the following:

(i) A statement of any capital expenditures in excess of five percent (5%) of the current total operating budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the Association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments to which the Association is a party.

(v) A statement of the insurance coverage provided by the Association.

(vi) A statement of any unpaid Assessments due and payable to the Association, identifying each Unit, each Member and the amount of the unpaid assessment.

(b) To appoint an agent or property management company as manager of the Condominium and Common Elements, and to delegate such of its powers to such agent or

manager as may be required for proper maintenance and operation of the Condominium and Common Elements.

(c) To make contracts and incur liabilities and to pay, out of the Assessments against Owners, the following items (among others):

(i) Service charges for water, sewer, garbage, electrical, telephone, gas, heating, air-conditioning, security, and other desirable or necessary utility services for the Common Elements and (if not separately metered or charged) for the individual Units.

(ii) Premiums for workers' compensation insurance to the extent necessary to comply with any applicable laws or as is otherwise desirable.

(iii) Compensation for the manager of the Association and for all employees of the Association, including medical and hospitalization insurance, pension plans and such other compensation as the Board shall deem appropriate.

(iv) Accounting and consultant fees (up to \$2,000 each annually, such amount to be annual adjusted in accordance with the All Items component of the U.S. Consumer Price Index as published by the United States Department of Labor, or a successor index thereto) and legal fees for services necessary or proper in the operation of the Association or enforcement of the restrictions and covenants herein contained and other rules and regulations adopted by the Board.

(v) Charges for regular and preventive maintenance, painting, gardening, landscaping, pest control, janitorial and security services, and repair of the Common Elements, and for such equipment, and furniture for the Common Elements as the Board shall determine is appropriate or desirable, and the Board shall have the exclusive right and duty to purchase and maintain the same.

(vi) The costs of any other materials, supplies, furniture, labor, services, maintenance, repairs or structural alterations, which the Board is required to secure or pay for pursuant to the terms of the Declaration, the Articles or the Bylaws, or which, in its opinion, shall be necessary or desirable for the Common Elements or the enforcement of the Declaration, the Bylaws or the Rules and Regulations.

(vii) Any amount necessary to discharge a lien or encumbrance levied against the Condominium or any part thereof which may, in the opinion of the Executive Board, constitute a lien against the Common elements, rather than merely against the interests of a particular Owner or Owners, except that where one or more Owners are responsible for the existence of any lien, they shall be jointly and severally liable for the cost of discharging such lien.

(viii) Expenses for maintenance and repair of any Unit if such maintenance and repair is necessary, in the opinion of the Executive Board, to protect and preserve the



Common Elements, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity for such maintenance or repair is delivered personally or by certified mail to said Owner or Owners pursuant to Section 11.3 hereof. The Executive Board, its agents and employees are hereby given the right and license to enter upon any Unit and levy a Special Assessment against the Owner or Owners of any such Unit to pay for the costs or expenses incident to said maintenance, repair, and Assessment pursuant to Section 9 hereof.

(ix) Taxes and Special Assessments which are or would become a lien on the Common Elements.

(x) Expenses of employing, equipping and providing uniforms for security guards, doormen, parking attendants, switchboard operators, maintenance engineers, cleaning personnel and similar required expenses, if any.

(xi) Expenses for providing and maintaining recreational facilities, if any.

(d) To authorize and contract for capital additions and improvements to the Common Elements, which shall be charged to the Owners in accordance with their respective percentages of Common Element Interests. However, no such capital additions or improvements estimated to cost in excess of twenty-five percent (25%) of the budgeted gross expenses of the Association of the previous fiscal year shall be authorized in any one year without the vote or written consent of a Majority of the membership. The Declarant shall not be deemed to be an Owner for purposes of voting for such capital improvements to the Common Elements.

(e) To establish and maintain a contingency reserve account in an amount equal to at least five percent (5%) of the projected annual operating budget for the upcoming year, to assure the availability of funds for unanticipated or extraordinary Common Expenses.

(f) To adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments from the Owners.

(g) To institute, defend, or intervene in litigation or administrative proceedings, in its own name or on behalf of two (2) or more Owners, on matters affecting the Condominium. All costs and expenses incurred in connection with any such action or lawsuit, including settlement thereof, not paid by the opposing party or parties or the Members benefited thereby, shall be a Common Expense.

(h) To regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements and to regulate the use and improvement of Units as they affect the Common Elements.

(i) To maintain, repair, remodel, reconstruct and make improvements to the Limited Common Elements, the costs of which shall be assessed to the Owners to whom

such Limited Common Elements are assigned or appurtenant.

(j) To acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 76-870 of the Act.

(k) To grant easements, leases, licenses, and concessions through or over the Common Elements.

(l) To make reasonable accommodations in the rules, regulations and declarations adopted by the Association or any other restrictions applicable to the Condominium if such accommodations are required by law to afford a disabled person equal opportunity to use and enjoy the Condominium.

(m) To impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements, and for services provided to Owners.

(n) To impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, or rules and regulations of the Association.

(o) The Board shall have the right, power and privilege to suspend the voting rights of an Owner or Owners for the period during which an Assessment against its Unit remains unpaid and delinquent. The Board shall also have the right to suspend the voting rights of every Owner of a Unit for a period not to exceed thirty (30) days for any one (1) violation of the Declaration or infraction of the rules and regulations of the Association committed by such Owners, their respective guests, servants, family members, tenants or invitees; provided that any suspension of voting rights (except for failure to pay Assessments) shall be made only after written notice and the opportunity for a hearing are provided in accordance with these Bylaws. Further, no such suspension shall apply to any vote for which the Act specifies a minimum percentage necessary to establish a quorum or take a specific action where the presence or vote of any such suspended Member is required to meet said minimum percentage.

(p) To provide for the indemnification of its officers and Executive Board members and to maintain Executive Board members' and officers' liability insurance.

(q) To assign its rights to future income, including the right to receive Common Expense Assessments, but only to the extent expressly provided in the Declaration.

(r) To adopt and amend these Bylaws and the Rules and Regulations governing the use of the Unit, Building, Common Elements and the improvements and facilities located thereon.

(s) To exercise any other powers conferred by the Declaration, in the Articles or

Bylaws, or necessary and proper for the administration of the Association.

(t) To contract with other parties for use by Owners of recreational facilities.

(u) To impose and collect reasonable charges, including attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, preparation of resale certificates required by Section 76-884 of the Act, or statements of unpaid Assessments.

(v) Except with respect to the Declarant, to assess against any Owner who fails or refuses to make any payment of Assessments when due, the amount thereof, together with a late charge of sixteen percent (16%) per annum, as set forth in Sections 76-873 and 76-874 of the Act.

(w) To keep financial records sufficiently detailed to enable the Association to comply with Sections 76-884 of the Act.

## **SECTION 6**

### **Officers**

**6.1 Designation of Officers.** The officers of this Association shall be a President, a Vice-President, a Secretary, an Assistant Secretary, and a Treasurer (individually and collectively referred to herein as "Officer(s)"). Each Officer, except the Assistant Secretary and except those who hold office pursuant to Section 6.3 beyond their term as an Executive Board member, shall be a Member of the Board. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association.

**6.2 Election of Officers.** Each Officer of the Association shall be elected at the organization meeting of the Executive Board as provided in Section 5 hereof, except that the initial Executive Board shall elect its officers as soon as practicable after filing of the Declaration.

**6.3 Term.** Each Officer shall serve until the next meeting at which time Executive Board members are elected after the organization meeting at which he is elected, and until his successor has been duly elected and has qualified, except that the Officers elected by the initial Executive Board shall serve until their respective successors have been elected and qualified.

**6.4 Removal and Resignation.** Any Officer may be removed, with or without cause, and without notice, by a majority vote of the Executive Board members at any meeting of the Board. Resignations will take effect on the date of receipt of notice thereof or at any later time specified in the notice and, if not otherwise specified in the notice, the acceptance of the resignation will not be necessary to make it effective.

**6.5 Vacancy.** Any vacancy in any office shall be filled by the Executive Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office, and until his successor has been duly elected and has qualified.

## 6.6 Powers and Duties of Officers.

(a) **President.** The President shall be the chief executive officer of the Association. The President shall have all of the powers and duties that are usually vested in the office of the President of a corporation, including, but not limited to, the duty to preside at all meetings of the Executive Board and of the Members at which the President is present, and the general supervision over other officers in the management of the business and affairs of the Association. The President shall see that all actions and resolutions of the Board are carried into effect. The President shall exercise and discharge such other duties as may be required by the Executive Board.

(b) **Vice-President.** The Vice-President shall perform such duties of the President and, in the absence of the President, shall perform the duties and functions of the President and will exercise and discharge such other duties as may be required by the Executive Board.

(c) **Secretary.** The Secretary shall record the votes of and keep the minutes of all proceedings of the Executive Board and the Members. The Secretary shall attend to the giving and serving of all notices to the Members and Executive Board members and all other notices required by law. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of a secretary of a corporation, and as may be required by the Executive Board members or the President.

(d) **Assistant Secretary.** The Assistant Secretary shall perform such duties of the Secretary as shall be assigned to the Assistant Secretary by the Secretary or President and, in the absence of the Secretary, shall perform the duties and functions of the Secretary and will exercise and discharge such other duties as may be required by the Executive Board.

(e) **Treasurer.** The Treasurer shall have custody of all intangible property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the books of the Association in accordance with good accounting practices and principles, and shall submit them, together with all his vouchers, receipts, records, and other papers to the Executive Board for their examination and approval, as often as they may require. The Treasurer shall deposit all monies and other valuable effects in the name of or to the credit of the Association in such depositories as may be designated from time to time by the Board, shall disburse the funds of the Association as ordered by the Board, and shall perform all other duties incident to the office of a Treasurer of a corporation. The Treasurer shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting and deliver or make copies available to each of the Members. If a managing agent or manager is employed, the Board may designate some or all of the foregoing functions to be entrusted to such manager, subject to overseeing control by the Treasurer.

6.7 **Execution of Agreement.** All agreements, contracts, deeds, mortgages, or other instruments shall be executed by any two (2) Officers, or by such other person or persons as may be designated from time to time by the Board.

**6.8 Compensation of Officers Restricted.** No Officer of the Association shall receive compensation for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing the Officer's duties.

**6.9 Additional Officers.** The Executive Board may from time to time create additional officers and designate their powers and duties by resolution and elect such other officers at their discretion when they find it to be required or desirable to manage the affairs of the Association. Such additional officers need not be Executive Board members, but must be Members of the Association.

## SECTION 7

### Executive Board Members' and Officers' Indemnity

7.1 **Indemnity.** The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by Nebraska statutes, as now enacted or hereafter amended.

## SECTION 8

### Fiscal Management

8.1 **Depository.** The depository of the monies of the Association shall be such bank or banks as from time to time shall be designated by the Executive Board. Withdrawal of monies from such depository shall be only by checks signed by any two (2) Officers of the Association, or any other persons as may from time to time be authorized by the Executive Board.

8.2 **Records of Association.** The books, accounts, and records of the Association shall be open to inspection and examination by any Member of the Association and any Security Holder at all reasonable times.

8.3 **Fidelity Bonds.** Fidelity bonds shall be required by the Board for each Executive Board member, officer, employee, or agent of the Association, and from any manager, trustee, contractor or other person handling or responsible for handling Association funds. The amount of such bond shall be determined by the Executive Board, but shall not be less than one and one-half (1 and 1/2) times the total of the estimated annual operating expenses and reserves of the Association. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on such bonds shall be a Common Expense.

8.4 **Payment Vouchers.** Payment Vouchers shall be approved by the Executive Board unless such authority to approve the same has been delegated to any officer or manager by the Executive Board.

8.5 **Fiscal Year.** The fiscal year of the Association shall be the calendar year; provided that the Executive Board, from time to time, by resolution, may change the fiscal year to some other designated period.

## SECTION 9

### Assessments

9.1 **Obligation of Members to Pay Assessments; Amount of Levy.** Until the Association levies a Common Expense Assessment, Declarant shall pay all accrued expenses of the Condominium. Thereafter, each Owner shall be jointly and severally liable, and obligated to pay, for the Common Expenses that are levied against Unit while an Owner. Each Unit shall be assessed in accordance with that Unit's percentage of Common Expenses as allocated by the Declaration, as amended.

9.2 **Allocation of Common Surplus.** Any common surplus shall be allocated to each

Unit in accordance with its percentage of Common Expenses, and shall be owned by the Owner of that Unit and credited against that Unit's proportionate share of Common Expenses subsequently assessed.

**9.3 Annual Budget and Levying of Assessments.** At least once each fiscal year, beginning with the fiscal year beginning January 31<sup>st</sup>, 2007, the Executive Board shall prepare a budget for that fiscal year, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary and advisable by the Executive Board for reserves. Within thirty (30) days after adoption of any proposed budget, the Executive Board shall provide a summary of the budget to all Members, and shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Members reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Declarant or the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Executive Board. After either ratification or rejection of the budget, the Executive Board shall provide each Member with a copy and shall give each Member notice of the interest to be charged on delinquent payments thereof. The Assessment shall be deemed levied upon the giving of such notices. Notwithstanding the foregoing, the first budget after creation of the Condominium and Association shall be prepared and adopted by the initial Executive Board only for the balance of the then fiscal year of the Association, shall be prepared and adopted as soon as practicable after such creation, and notice of the amount of the Assessment against each Unit for such balance of the fiscal year shall be given by the Executive Board or Declarant to each Member as soon as practicable after adoption of such Assessment and shall be deemed levied upon notice thereof given by the Executive Board, and shall be due as provided in Section 9.5 hereof.

No capital improvement over Ten Thousand Dollars (\$10,000.00) or increase in the annual Assessment by the Board in any one year of over ten percent (10%) above the previous year's Assessment plus the amount of any increased real estate tax Assessment may be made without the consent of at least sixty-seven (67%) percent of the Units.

**9.4 Assessment is a Lien.** All Assessments of any kind not paid by an Owner when due, including interest thereon at the rate of sixteen percent (16%) per annum, shall constitute a lien on such Unit superior and prior to all other liens and encumbrances, except: (a) liens and encumbrances recorded before the recordation of the Declaration, including any Mortgage; (b) all liens under any Mortgage for the purchase of a Unit recorded prior to the date such Assessment become delinquent; (c) liens for real estate taxes and other governmental Assessments or charges against the Unit; and (d) except for delinquent Assessments or fines, up to a maximum of six (6) months' Assessments or fines, which are due prior to any subsequent refinancing of a Unit or for any subsequent second mortgage interest.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association. Such lien shall attach from the date the Assessment becomes due. The lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in the same manner as a

Mortgage on real estate under the Nebraska statutes, subject to Section 76-874 of the Act.

**9.5 Payment of Assessments.** Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Executive Board in each such notice. If no times and amounts are specified, 1/12<sup>th</sup> of the Assessment shall be paid on or before the first day of each month of the fiscal year of the Association. Payments shall be made to the Association, or as the Executive Board may from time to time otherwise direct.

**9.6 Lien after Foreclosure.** When Ownership of a Unit is transferred by foreclosure or a deed in lieu of foreclosure, under the remedies provided in any first Mortgage, any unpaid Assessments as to the Unit shall continue to accrue except as otherwise provided under any governmental loan program. The Unit and Owner acquiring title under the remedies provided in a first Mortgage shall be subject only to the lien of Assessments which become due after such transfer of title. Nothing in this paragraph shall be construed as a waiver or release of the obligation of the former Owner to pay the delinquent Assessments.

**9.7 Maintenance Fund and Reserves.** All sums collected by the Association from Assessments shall be accounted for as follows:

(a) **Regular Assessments.** Regular Assessments shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents of the Condominium and, in particular, of the Condominium and the facilities devoted to said purposes.

(b) **Working Capital Fund.** Each purchaser of a Unit shall contribute at Closing to this fund an amount equal to two (2) months of the then current monthly Assessment for such Unit as determined by the Executive Board. The purpose of the working capital fund is to ensure that the Executive Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Executive Board for the performance of its obligations. Amounts paid into the fund are not to be considered as advance payment of Regular Assessments.

(c) **Reserve Fund.** The Executive Board may establish a reserve or sinking fund to be maintained in a segregated interest-bearing account, in order to accumulate funds for the anticipated cost of maintenance, repair and replacement of capital improvements, including fixtures and personal property relating thereto. The Executive Board may levy Assessments for the reserve fund as it deems necessary or desirable, payable no more frequently than monthly, in the same manner as Regular Assessments. Amounts paid into the reserve or sinking fund are not to be considered as advance payment of Regular Assessments.

**9.8 Special Assessments.** In addition to the Assessments levied as provided in Section 9.3, the Executive Board, in its discretion, may levy Special Assessments at such other and additional times as in its judgment are required for:

(a) **Repair and Maintenance of Common Elements and Condominiums.**



Maintenance, repair, and restoration of or to the Common Elements, and operation of the Condominium.

(b) **Alterations, Improvements and Additions to Common Elements.** Alterations, improvements, and additions to the Common Elements; provided, however, that any Special Assessment involving the expenditure of Ten Thousand Dollars (\$10,000.00) or more shall be first approved by the voting Members of the Association representing at least sixty-seven (67%) percent of the total votes in the Association, at a special meeting called for such purpose.

(c) **Taxes.** If any taxes are assessed against the Common Elements or the personal property of the Association, rather than against an individual Unit, said taxes shall be added to the annual Assessments and, if necessary, a Special Assessment may be levied against a Unit in an amount equal to said taxes, to be paid in equal installments, the number of installments and date for payment based upon the number of installments permitted by the Douglas County Treasurer, payable thirty (30) days prior to the due date of each tax installment.

(d) **Curing of Member's Default.** Costs and expenses incurred in curing defaults of a Member pursuant to Section 9.13 hereof.

Special Assessments made pursuant to this Section shall be deemed levied upon notice thereof being given to the Members subject to such Special Assessment, and shall be payable as determined by the Executive Board and as set out in such notice.

**9.9 Special Unit Expenses Associated with Limited Common Elements or Benefiting Less than All Units.** In addition to their liability for Common Expenses, each Owner shall also pay any and all Assessments imposed by the Association for Special Unit Expenses in the amount attributable to its Units and Limited Common Elements as determined by the Association in its reasonable discretion. Special Unit Expenses may be based upon any of actual or estimated costs to the Association attributable to an Owner, independent billings of respective creditors, usage, estimated insurable values, insurance risks, or the relative size of each Unit in relation to the size of all Units in the aggregate. Special Unit Expenses shall include, but not be limited to, real estate taxes or Assessments, as well as late charges, fines or penalties imposed by the Board upon specific Owners from time to time.

**9.10 Failure to Prepare Budget and Levy Annual Assessments Deficiencies in Procedure.** The failure of the Executive Board to prepare or delay of the board in preparing any budget, and to levy or in levying Assessments, shall not constitute a waiver or release of the obligation of any Member to pay Assessments whenever the same shall be determined and levied by the Executive Board.

Until a new Assessment is levied by the Executive Board pursuant to Section 9.3, each Member shall continue to pay the Assessment previously levied pursuant to Section 9.3 in the same amount and at the same periodic times as levied, or as the Executive Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Executive Board in levying an Assessment shall not in any way affect its validity or the obligation of Members

to pay such Assessment.

**9.11 Assessment Roll; Statement.** All Assessments shall be set forth upon a roll of the Units, which shall be available in the office of the Association for inspection at all reasonable times by Members and Mortgagees, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the Member or Members, all Assessments levied, and the amount of all Assessments unpaid. The Association, upon written request, shall furnish to an Owner, or his authorized agent, a recordable statement setting forth the amount of unpaid Assessments currently levied against his Unit. The statement shall be furnished within ten (10) business days after receipt of the request and shall be binding upon the Association and all Owners. For such statement, a reasonable fee may be charged by the Executive Board.

**9.12 Delinquency and Enforcement.** If any Assessment, or installment thereof, remains delinquent for thirty (30) days, with or without notice, then such Assessment, and all other Assessments then a lien against that Unit, may be declared by the Executive Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Section 76-874 of the Act.

**9.13 Interest on Delinquent Assessments.** Assessments, or installments thereof, paid before they become delinquent shall not bear interest. All Assessments of any kind not paid by an Owner when due shall bear interest at the rate of sixteen percent (16%) per annum as set forth in Section 76-873 of the Act. Such Assessments plus interest shall constitute a lien on such Unit when such Assessments are due pursuant to Section 7.08 of the Declaration. All payments upon account shall be applied first to interest and then to the Assessment, or installment thereof, which has been delinquent for the longest period of time. Any interest or charge added by the Association to a delinquent payment shall be considered a late fee constituting a portion of the administrative and other expenses of the Association associated with the collecting of late payments, as well as the related cost of funds.

**9.14 Common Expenses.** Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: Taxes and Special Assessments against the property until the Units are separately assessed; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amounts not covered by insurance; utility and service charges not charged directly to Owners; legal and accounting fees; the unpaid portion of any Assessment against a Unit that is acquired pursuant to mortgage foreclosure, or by deed (or assignment) in lieu of foreclosure, and not required to be paid by such acquirer; deficits remaining from any prior Assessment period, and the cost of all fidelity bonds.

**9.15 Rates, Fees and Charges.** All rates, fees, charges, fines and penalties imposed by the Executive Board against, or due from any Member or Unit may be collected and enforced as an Assessment.

## **SECTION 10**

### **Subdivision, Conversion, Relocation and Alterations of Units**

**10.1 Prohibition.** No Owner may subdivide, convert, relocate or alter the boundaries of his or her Unit, except as otherwise set forth in the Declaration.

## **SECTION 11**

### **Compliance, Enforcement, Fines and Penalties**

**11.1 Compliance.** Each Owner, occupant and Mortgagee, shall be governed by and shall comply with the terms, conditions, obligations, and provisions of the Act, the Declaration, the Articles, these Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

**11.2 Default and Remedies.** A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, or the rules and regulations, as the same may be amended from time to time, by any Owner or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election for any action or cause of action to receive fines and penalties for such default or failure as determined by the Board, sum due for the Association or, if appropriate, by any one or more aggrieved Members, or both. Also, if any Member fails to perform any obligation under the Act, the Declaration, these Bylaws, or such rules and regulations then the Association may, but is not obligated to, perform the same for the Member's account, and at such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a Special Assessment against the Unit owned by such defaulting Member.

**11.3 Notice of Default and Failure to Cure.** In the event of any such default or failure, the Association shall promptly serve upon or mail to the defaulting Member and each first Mortgagee of that Member's Unit, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time specified in the notice, the defaulting Member may cure the default specifically or serve upon or mail a written notice to the Executive Board requesting a hearing before the Board. If a hearing is so requested, the Executive Board shall thereafter serve upon the defaulting Member, and to each such first Mortgagee, a notice specifying the time and place for such hearing. At the hearing, the Executive Board shall take such evidence and hear such testimony as it deems necessary or desirable.

**11.4 Remedy of Abatement in Addition to Other Remedies.** In the event a Member fails to effect the cure specified by the Executive Board in the notice of default within the time specified in such notice, where the default relates to a structure, thing, or condition existing in or on the premises of the Member's Unit, the Executive Board, or its duly authorized representative, shall have the right to enter upon the premises of the Member's Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting Member's expense (and levy an Assessment therefor), the structure, thing, or condition constituting the default, and the Executive Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass or be responsible for any expenses or damages associated therewith unless resulting from gross negligence or willful misconduct of any such parties.

**11.5 Recovery of Attorneys' Fees and Costs.** In any proceeding arising because of an alleged default by a Member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at sixteen percent (16%) per annum from the dates such costs are incurred until paid.

**11.6 Nonwaiver of Covenants.** The failure of the Association or of any Member thereof to enforce any term, provision, rights, covenant, or condition that may be granted by the Declaration, these Bylaws, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a Member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

**11.7 Assessment Lien.** Assessment liens shall be enforced pursuant to Section 9 hereof and not pursuant to this Section 11.

## **SECTION 12 Amendment**

**12.1 Declarant Approval Contingency.** As long as Declarant is the Owner of Units representing an aggregate of eleven percent (11%) or more of the Units in which votes in the Association are allocated, the Bylaws may only be amended with the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners of Units to which votes in the Association are allocated and the written approval of the Declarant.

**12.2 Procedure for Amendments.** Once the Declarant is the Owner of Units representing less than an aggregate of ten percent (10%) of the Units in which votes in the Association are allocated, the Bylaws may be amended with the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners of Units to which votes in the Association are allocated.

## **SECTION 13 General Provisions**

**13.1 Rules and Regulations.** The Executive Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Owners and occupants, and for the protection and preservation thereof.

In addition, the Executive Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Owners and occupants, including, without limitation, the right to adopt such rules and regulations with reference to children, animals and leases. Also, the Executive Board may, from time to time, establish penalties for infraction of such rules and regulations. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish or pose such rules or regulations shall not affect in any way their validity or enforceability. Any such rule or regulation adopted by the Executive Board may be amended, modified, or revoked,

and new and additional rules and regulations may be adopted, by the Members at an annual or special meeting of the Members. Any such act of the Members shall control over any contrary rule or regulation then or thereafter adopted by the Executive Board. All rules and regulations shall be equally and uniformly applicable to all Owners, occupants and Units, but need not be equally uniformly applicable if it is determined that such unequal or nonuniform application is in the best interest of the Association or if equal and uniform application is not practicable.

**13.2 Parliamentary Authority.** Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when no in conflict with the Declaration, these Bylaws, the Act or any statutes of the State of Nebraska applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian if he deems it necessary.

**13.3 Compliance with the Act; Conflict; Severability.** These Bylaws are established in compliance with the Act. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control.

If any such term, provision, limitation, paragraph or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

**13.4 Interpretation of Bylaws.** Whenever appropriate the singular number may be read as the plural, and the plural may be read as the singular. The masculine gender may be read as the feminine gender or as the neuter gender. Compound words beginning with the prefix "here" shall be read as referring to this entire set of Bylaws and not merely to the part of it in which they appear.

**13.5 Organized as Nonprofit Corporation.** The Association is not organized for profit. No Member of the Association, Executive Board member or person from whom the Association may receive any property or funds will receive or will be lawfully entitled to receive any pecuniary profit from the operations of the Association, and in no event will any part of the funds or assets of the Association be paid as a dividend or to be distributed to, or inure to the benefit of, any Executive Board member; provided, however, that upon dissolution of the Association, the assets remaining after payment of outstanding liabilities shall be transferred to all of the then Owners of the Units as tenants in common, in proportion to their Allocated Interests.

### **CERTIFICATE**

I hereby certify that I am the Secretary of 902 Dodge Condominium Association, Inc., a Nebraska nonprofit corporation (herein the "Association"), and the keeper of its corporate records; that the Bylaws to which this Certificate is attached were duly adopted by said Association's Executive Board as and for the Bylaws of the Association effective as of the \_\_\_\_ day of \_\_\_\_\_, 2006; and that these Bylaws constitute the Bylaws of the Association and are now in full force and effect.

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Secretary